



PRISON LAW OFFICE
General Delivery, San Quentin, CA 94964
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Deputy Director:
Sara Norman

Legal Director:
Margot Mendelson

Staff Attorneys:
Rana Anabtawi
Patrick Booth
Tess Borden
Claudia Ceseña
Steven Fama
Alison Hardy
Sophie Hart
Jacob Hutt
A.D. Lewis
Rita Lomio

Your Responsibility When Using the Information Provided Below:

When we wrote this information, we did our best to give you useful and accurate information because we know that incarcerated people often have difficulty obtaining legal information and we cannot provide specific advice to all those who request it. The laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in your institution law library.

**CONDUCT CREDITS FOR PEOPLE
SERVING FELONY COUNTY JAIL SENTENCES
revised September 2022**

We received your question about whether people who are in county jail serving felony sentences are entitled to the same types of increased conduct credits and early parole opportunities as people in CDCR state prisons. Unfortunately, we do not have the resources to provide individual responses or assistance to everyone who contacts us. We hope the information in this letter will help answer your questions.

In 2011, as part of the “Realignment” of California’s criminal justice system, the state legislature changed the law so that many people with felony convictions for non-serious, non-violent, non-sex crimes serve their sentences in county jail rather than in state prison. This change was enacted by Assembly Bill 109, which created Penal Code § 1170(h), the law that sets forth basic rules about which people serve their felony terms in prison and which people serve their felony terms in county jail. Most people with felony county jail terms have relatively short sentences, but some people get quite long sentences. For example, several people in Santa Clara County were sentenced to serve 28 years in county jail (plus 3 years of mandatory supervision) for drug trafficking crimes.

If you are serving a county jail term for a felony under § 1170(h), you earn good conduct credits of 2 days for every 2 days actually served. This is called “half time” or “50% credits” because for every 2 days in jail, you are deemed to have served 4 days of your sentence (2 days credit for actual time + 2 days good conduct credit). (PC § 4019.) These good conduct credits can be denied or taken away if you don’t follow jail rules or if you refuse to participate in assigned programs. (PC § 4019(b)-(d).)

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There are other laws that give county jail officials power to award you more credits. These laws grant authority to award:

- increased good conduct credits of 1.5 days for every 1 day served to people who are participating in in-custody work or job training programs (PC § 4019.1.);
- increased good conduct credits of 2 days for every 1 day assigned to a conservation camp or as a firefighter (PC § 4019.2.);
- additional “milestone” credits for completing objectives in approved rehabilitation programs, such as (PC § 4019.4.).

County jail officials may also offer early release programs to ease overcrowding, provide workers for public or non-profit projects, or help people transition back to the community. (See, for ex., PC §§ 4024.1-4024.2.) However, increased credits or early releases for people serving felony jail sentences are at the discretion of county officials. The laws do not require county officials to provide increased credits or early releases and different counties may have different policies.

In contrast, people who are in CDCR state prisons serving sentences for non-violent crimes have more rights to credit-earning. This is because California voters passed Proposition 57, which allows CDCR to adopt its own Title 15 credit regulations to reduce overcrowding and encourage rehabilitation. (Cal. Const. Art. I, § 32.) In CDCR, people serving terms for non-violent crimes earn the same amount of good conduct credits as people serving felony jail terms (1 day credit for each 1 day served or “50% credit”), but they have a right to increased good conduct credits (2 days credit for each 1 day served or “66.6% credits”) if they are in minimum custody or are firefighters or conservation camp workers. (15 CCR §§ 3043-3044.) In addition, people in CDCR prisons can earn “milestone” programming credits of up to 12 weeks in a 12-month period; rehabilitative achievement credits of up to 4 weeks in a 12 month period; education merit credits of 180 days for earning a GED, high school diploma, college degree, or offender mentor certificate; and extraordinary conduct credits of up to 12 months for heroic acts. (15 CCR §§ 3043.3-3043-6.) CDCR has active programs to award increased credits. These CDCR rules and programs do not apply to people serving felony county jail sentences.

Likewise, there are laws that allow some people in CDCR state prisons to be considered for early release. “Non-violent offender” parole consideration, created by Proposition 57 and CDCR regulations, requires that people with non-violent felonies be considered for early release when they finish serving the full base term for their primary offense, regardless of any enhancements or alternative sentences. (Cal. Const., Art.I, § 32; 15 CCR §§ 2449.1-2449.30; 3490-3497.) Early parole must be considered for many “youth offenders” (PC §§ 3051-3051.1, 4801; 15 CCR §§ 2440-2446, 3498.1-3498.2); elders (PC § 3055; 15 CCR §§ 3490-3492), and people who are medically incapacitated (PC § 3550; 15 CCR §§ 3359.1-3359.6). These laws and CDCR rules and programs do not apply to people serving felony county jail sentences.

People serving felony sentences in county jails may feel that they are being treated unfairly because they are not receiving the same conduct and programming credits and early release opportunities as people serving CDCR terms for non-violent crimes, especially those who are in minimum custody. It can be argued that this unfair treatment violates the U.S. Constitution's Fourteenth Amendment right to equal protection. To win an equal protection claim, a person must show that, for the purposes of the conduct credit or early release laws, the two groups of people are "similarly situated" and the state does not have a good enough reason for treating the two groups differently. (See e.g., *People v. Brown* (2012) 54 Cal.4th 314, 318 [142 Cal.Rptr.3d 824].) Unfortunately, we do not know of anyone who has had success on this type of issue. As of late September 2022, the only published court case on the issues ruled that the two groups are not similarly situated and there is a rational basis for treating them differently. (*In re Cuenca* (2022) 80 Cal.App.5th 194 [295 Cal.Rptr.3d 516 [petition for review pending as of 9/20/2022].)

If you think that you are not getting the correct amount of credits or that you should be considered for an early release program, you should complete the jail grievance process, asking to be granted additional conduct credits or consideration for early release. Likewise, if you want to raise an equal protection challenge or other legal challenge to the jail credit or early release policies, you should complete the jail grievance process. If your grievance is denied, you can file a state petition for writ of habeas corpus, starting in the local county superior court. On request, the Prison Law Office can provide free information on county jail grievances and on state court petitions for writ of habeas corpus. Those materials are also available on the Resources page at www.prisonlaw.com.