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Your Responsibility When Using the Information Provided Below:

When we wrote this Informational Material we did our best to give you useful and accurate information because we know that prisoners often have difficulty obtaining legal information and we cannot provide specific advice to all the prisoners who request it. However, 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.

**INFORMATION RE:
RECENT CASES AFFECTING CDCR CREDITS FOR
CONCURRENT, CONSECUTIVE AND STAYED SENTENCES FOR VIOLENT FELONIES
(IN RE REEVES, IN RE POPE, PEOPLE V. DUFF AND IN RE TATE)**

(Updated August 2010)

We are sending you this letter because you have asked for information or advice about recent court cases concerning how the CDCR applies the goodtime credit laws in cases in which prisoners have concurrent or consecutive sentences for a mix of non-violent and violent felonies. We cannot provide legal representation to individual prisoners who want to check whether their release dates are correct or who want to get the CDCR to correct credit errors. Also, because we receive a large volume of mail, we are unable to provide individualized responses to all the prisoners and parolees who write to us. In this letter, we will attempt to answer the most common questions about this issue.

The credit calculation laws are quite complex. In the past few years, the California courts have issued several decisions interpreting the credit laws. Some of those cases found that the CDCR was not applying credits properly in some situations involving a mix of violent and non-violent felonies. Other cases found that the CDCR's applications of the credit laws were correct.

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Who is affected by the recent cases regarding goodtime credits for violent felonies?

The laws that say that CDCR prisoners who are convicted of violent felonies committed on or after September 21, 1994 may earn no more than 15 percent conduct credits.¹ On the other hand, prisoners who are not convicted of violent felonies (and who are not subject to any other statutory credit limits) are eligible to earn one-for-one credits (“half time”) or even two-for-one credits.² The statutes do not specifically say how the laws are to be applied when a prisoner is convicted of multiple counts, some of which are violent and some of which are non-violent. Under past CDCR policy, a prisoner who was convicted of both non-violent felonies and violent felonies in the current case could never earn more than 15 percent credits.

Several recent court cases have held that some prisoners who are sentenced for both violent and non-violent felonies are eligible to earn half-time credits for the portions of their sentences that are for non-violent felonies. The most important cases and their holdings are as follows:

¹ Penal Code 2933.1. The crimes that currently are “violent felonies” under Penal Code § 667.5(c) are: murder or voluntary manslaughter; mayhem; rape (§§ 261(a)(2) or (a)(6) and 262(a)(1) or (4)); sodomy (§ 286(c) or (d)); oral copulation (§ 288a(c) or (d)); lewd or lascivious act (§ 288(a) or (b)); any felony punishable by death or imprisonment for life; any felony in which the defendant inflicted great bodily injury on a person other than an accomplice (§§ 12022.7, 12022.8, or 12022.9) or used a firearm (§§ 12022.3(a), 12022.5, 12022.53 and 12022.55); any robbery; arson (§ 451(a) or (b)); sexual penetration (§ 289(a) or (j)); attempted murder; explosion of a destructive device (§12308, 12309, or 12310); kidnapping; assault with the intent to commit a specified felony (§ 220); continuous sexual abuse of a child, (§ 288.5); carjacking (§ 215(a)); rape, spousal rape, or sexual penetration, in concert (§ 264.1); extortion for street gang purposes (§§ 518 and 186.22); threats to victims or witnesses for street gang purposes (§§ 136.1 and § 186.22); first degree burglary where another person, other than an accomplice, was present in the residence; weapons of mass destruction (§ 11418(b) or (c)).

Penal Code § 2933.1 applies to any person convicted of a crime that was added to the list of violent felonies before the person’s crime was committed. *People v. Van Buren* (2001) 93 Cal.App.4th 875 [113 Cal.Rptr.2d 510] Because the list of “violent felonies” has been modified many times, a prisoner who wishes to determine whether her or she was convicted of a violent felony should check the annotated statutes to determine what version of § 667.5 was in effect at the time of his or her offense.

² Penal Code § 2933, as amended effective January 25, 2010, sets forth the general rules for good conduct credit or “half-time” eligibility. Penal Code § 2933.3(b) discusses special two-for-one credit earning for prisoners who are working in conservation camps and as firefighters. 15 CCR § 3043 and Penal Code § 2933.05 discuss additional “milestone” credits that are now available to some prisoners who successfully participate in rehabilitative programming.

In addition to Penal Code § 2933.1, there are other statutes that limit the credits that certain prisoners can earn. Some of these credit limits include: (1) prisoners sentenced to doubled terms under the Two Strike Law may earn no more than 20 percent credits (Penal Code §§ 667(c)(5)) and (2) prisoners convicted of specified felony offenses committed on or after January 1, 1991, who have two or more prior convictions and prison terms for those types of offenses, are not eligible to earn any credit (Penal Code § 2933.5). There are also credit limits that apply to most prisoners serving life terms, including those convicted of murder and those sentenced under the Three Strikes Law. A separate law (Penal Code § 3057) limits the credits that can be earned by some parole violators.

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- ***In re Reeves*** (2005) 35 Cal.4th 765 [28 Cal.Rptr.3d 4] – The California Supreme Court held that
 - (1) when sentences for non-violent and violent felonies are run consecutively, they merge into a single “aggregate term,” and the 15 percent limit under § 2933.1 applies to the whole sentence.
 - (2) when sentences for non-violent and violent felonies are run concurrently, the 15 percent limit under § 2933.1 applies only to the portion of the sentence for the nonviolent felony and does not apply to any portion of the sentence served for the non-violent offense only. Since the sentences for violent felonies are usually longer than the sentences for non-violent felonies, most prisoners who get concurrent sentences for both types of crimes will be serving the violent felony sentence for their whole time in prison. However, in some cases, the concurrent sentence for a non-violent felony might still be running after the violent felony portion of the sentence is fully served. This might happen, for example, if the non-violent felony sentence is imposed later in another case and does not start to run until after the prisoner has already served some of the violent felony term.

(Note that the *Reeves* decision affects only the credits that a person can earn after sentencing. Another case established that the 15 percent limit applies to the entire time spent in custody prior to sentencing if the person is sentenced for both non-violent and violent felonies.³)

- ***In re Pope*** (Aug. 19, 2010) ___ Cal.4th ___; 2010 Daily Journal DAR 13032 – The California Supreme Court held that a violent felony count triggers the 15 percent credit limit under § 2933.1 even if the sentence for the violent felony is stayed under Penal Code § 654. *In re Pope* overruled a previous court of appeal case, *In re Phelon* (2005) 132 Cal.App.4th 1214, 1217 [34 Cal.Rptr.3d 276]. The California Supreme Court also decided ***People v. Duff*** (Aug. 19, 2010) ___ Cal.4th ___ 2010 Daily Journal DAR 13036, holding that Penal Code § 2933.2, which bars murderers from earning any conduct credits, applies even if the sentence for the murder conviction is stayed under Penal Code § 654.
- ***In re Tate*** (2006) 135 Cal.App.4th 756 [37 Cal.Rptr. 3rd 710] – A state Court of Appeal held that when a prisoner is sentenced for a violent felony and then commits a non-violent felony while in prison, the 15 percent credit limit under § 2933.1 does not apply to the sentence for the non-violent term. The reason for this is because under California law a consecutive sentence for an in-prison offense runs totally separate from the sentence for the original commitment offense.⁴

³ *People v. Ramos* (1996) 50 Cal.App.4th 810 [58 Cal.Rptr.2d 24].

⁴ Penal Code § 1170.1(c); *People v. McCart* (1982) 32 Cal.3d 338, 340, 343.

What should I do if I think my credits are not being properly calculated?

If you think that the CDCR is not applying the credit laws properly in your case, and that you should be receiving additional credits, you should take action to get the CDCR to check your credits and release date. You should also take action if the CDCR has checked your credits but you think the case records staff did not properly re-calculate your release date.

Prisoners should attempt to solve release date problems by taking following actions:

(1) File a CDCR Form 602 Administrative Appeal

If you file a Form 602 administrative appeal complaining about a mis-calculation of prison credits, the CDCR should review your case, award any additional credits that the law requires, and re-calculate your release date. If you think that re-calculation of your release date will make you due for immediate release, or if you think you may already be overdue for release, you can file your 602 as an emergency appeal.⁵

There are a few special rules for processing 602s about credit computation or release date issues.⁶ To obtain informal review, prisoners must submit such appeals concerning to the prison records office. The records office staff have 10 working days to answer. If the appeal is denied, the response must be hand-delivered to the prisoner, who must sign an acknowledgment of receipt.

If an appeal is denied at the informal level, the prisoner may submit it the appeals coordinator. First level review is bypassed. Second level review consists of a “computation review hearing.” The hearing must be conducted by a case records manager and must take place within 15 days. The prisoner must be provided with a copy of the computation review hearing decision on a CDCR Form 1033.

If the appeal is denied, or the prisoner is dissatisfied with the computation review hearing decision, the prisoner can submit the appeal to the CDCR chief of inmate appeals for third level review.

If a prisoner files a 602 appeal, and the CDCR staff determine that the error is the responsibility of the court (for example, if a matter concerns pre-sentence credits), the CDCR must refer the matter to the court.⁷

⁵ The rules concerning emergency appeals are set forth in 15 CCR § 3084.7(a). To file an emergency appeal, write “Emergency Appeal” on the top of the 602 form and submit it directly to the Appeals Coordinator. If emergency processing is granted, the informal and first formal levels are waived and the appeal will be sent to the second formal level for review. Prison staff will have five working days to answer the appeal. (15 CCR § 3084.7(a)(2)(B)). To file the appeal to the third level of review, you must send the 602 back to the Appeals Coordinator, who will fax it to the CDCR Chief of Inmate Appeals; third level review must be completed within five working days.

⁶ These rules are set forth in 15 CCR § 3084.7(h). See also *Haygood v. Younger* (9th Cir. 1985) 769 F.2d 1350 and *Alexander v. Perrill* (9th Cir. 1990) 916 F.2d 1392 (prisoners have constitutional due process right to have CDCR investigate and hold informal hearings on complaints regarding credits and release date calculations). The timeframes within which the CDCR is supposed to respond to appeals are set forth in 15 CCR § 3084.6(b).

⁷ 15 CCR § 3084.7(h)(2)(D).

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(2) File a Petition for Writ of Habeas Corpus in State Court

Being overdue for release directly affects a person's liberty, a fundamental interest characterized by the California Supreme Court as "second only to life itself."⁸ If you complete the administrative appeal process, and you think that the CDCR or the sentencing court is still violating the credit laws, you can file a petition for writ of habeas corpus in a state superior court. The process for filing such petitions is fairly straight-forward and state habeas cases can often be resolved within a few months.

Note that if you are granted additional credits, and the credit award exceeds the length of time remaining on your prison sentence, you will be entitled to immediate release. Any excess credits must then be deducted from your parole period.⁹ The deduction will be made from the controlling parole discharge date, not the presumptive early discharge date. An award of credits applied to the parole term will not allow you to avoid re-incarceration on a parole violation, unless your maximum parole discharge date expires before the end of the revocation term.¹⁰

Other Prison Law Office information packets may be enclosed with this letter. If not, and you want more information related to credit issues and legal challenges, please write to request our free information packets on (1) how to calculate release dates, (2) how to file an administrative appeal, (3) how to file a state court petition for writ of habeas corpus, and /or (4) recent changes in the credit statutes effective January 25, 2010. These information packets are also available at the Prison Law office website at www.prisonlaw.com.

⁸ People v. Olivas (1976) 17 Cal.3d 236, 251 [131 Cal.Rptr. 55].

⁹ *In re Reina* (1985) 171 Cal.App.3d 638, 642 [217 Cal.Rptr. 535]; *In re Ballard* (1981) 115 Cal.App.3d 647, 650 [171 Cal.Rptr.459].

¹⁰ *In re Monterrosa* (1987) 193 Cal.App.3d 851 [238 Cal.Rptr. 535].