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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 want legal advice backed by a guarantee, try to hire a lawyer to address your specific problem. If you use this information, 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: NEW SENTENCE CREDIT LAWS (updated February 2, 2010)

We have received your letter asking whether there have been recent changes to the sentence time credit laws or to the Three Strikes law or whether there are new state policies or court orders that require early release of some prisoners. Because we cannot respond to all letters individually, we are sending you this overview of the most recent developments.

I. There Are New Credit Laws Effective January 25, 2010

In 2009, the California legislature passed a new law (Senate Bill xxx 18) that made changes to the credits that prisoners can earn. The Governor signed the law and it went into effect on January 25, 2010. The new law affects credits earned in the county jail before and after sentencing and credits earned in prison. Many of the details about how the new law will be implemented and who will be affected are still not known. The following is a summary of the information that we have as of February 1, 2010.

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A. Changes to Credits Earned in County Jail

Previously, most criminal defendants who were in custody awaiting trial and sentencing could earn credit for the actual days they served plus two days of good conduct credit for every six days served. The same credits were also applied to time spent in jail after sentencing and before transportation to a CDCR prison. Some types of inmates could not earn full pre-sentence/pre-prison conduct credits.

Effective January 25, 2010, Penal Code § 4019 has been amended so that some people will now earn more credits for time in custody awaiting trial and sentencing. Unless an exception applies, a prisoner now earns two days of conduct credit for every four days served. With all credits, a total term of four days will be deemed served for every two days actually spent in jail; this is also called “half-time.” (Penal Code § 4019(f).) Also, prisoners who have been sentenced and are awaiting transfer to the CDCR will earn one day of conduct credit for every day served. (Penal Code 2933(e).) There are several exceptions:

- C Some prisoners still can earn only two days of conduct credit for each six days actually served. This applies to anyone who is (1) required to register as sex offender under Penal Code § 290 et seq., (2) is being sentenced for or has a prior conviction for a serious felony as defined in Penal Code § 1192.7, or (3) has a prior conviction for a violent felony as defined in Penal Code § 667.5. (Penal Code § 4019(b)(2) and (c)(2).)
- C Some prisoners can earn credits only in the amount of 15 percent of the actual days served. This includes anyone convicted of a violent felony (Penal Code § 2933.1 and § 4019(b)(1) and (c)(1)); see also Penal Code § 12022.53(i).
- C Some prisoners cannot earn any credit. This includes (1) anyone convicted of murder (Penal Code § 2933.2(c)) and (2) anyone convicted of certain offenses, who has served two or more prison terms for prior convictions for those specific offenses. (Penal Code § 2933.5; *People v. Goodloe* (1995) 37 Cal.App.4th 485.)

The new laws on county jail credits almost certainly apply to anyone sentenced on or after January 25, 2010. However, there are open questions regarding the extent to which the law applies to prisoners who were sentenced before that date. There is a good argument that the new law should apply all people whose criminal cases were being appealed and were not final on January 25, 2010. This argument is based on two grounds. First, there is a general rule that, unless the legislature specifically says otherwise, new laws that reduce punishment must be applied to cases in which the judgments are not yet final. (See *In re Kapperman* (1974) 11 Cal.3d 542; see also *In re Estrada* (1965) 63 Cal.2d 740, 744-745; *People v. Hunter* (1977) 68 Cal.App.3d 389, 393; *People v. Doguniere* (1978) 86 Cal.App.3d 237, 240.) Second, because the legislature passed the new law in response to concerns about budget deficits and prison overcrowding, it is reasonable to conclude that the legislature wants the credit increases to apply to as many prisoners as possible. It is less likely that the new pre-sentence credit law will be applied to prisoners whose criminal judgments were already final as of January 25, 2010, but it is possible that such legal arguments can be made.

People who are still awaiting trial and sentencing should be awarded credit in accord with the new law when they appear at their sentencing hearings. People who have already been sentenced and are appealing their criminal cases should contact their appellate attorneys to determine whether they are entitled to additional pre-sentence credits and how any credit issue should be raised.

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B. Changes to Credits Earned in Prison

The laws that went into effect on January 25, 2010 also increase the amount of prison credits that many prisoners can earn. The changes are as follows:

- C All eligible prisoners who are discipline-free will be granted one day of credit for every day served (“half-time”), regardless of whether they are working full-time or part-time or on waiting lists for assignments or undergoing reception center processing. (Penal Code § 2933(a)-(b).) This provision also applies to those parole violators returned to custody who are otherwise eligible for credits. (See Penal Code § 3057(d).)
- C More prisoners are eligible to earn two days of credit for every one day served. This type of credit used to apply only to prisoners who were working at fire camps. It now also applies to prisoner fire-fighters who are assigned to an institution rather than to a camp. In addition, two-for-one credits now apply to prisoners who have completed firefighter training. These new credits are applicable only to inmates who are eligible after July 1, 2009. (Penal Code § 2933.3(b).) The law also gives the CDCR authority to provide additional credits for prisoners who successfully complete firefighter assignments (Penal Code § 2933.3(c)); however, the CDCR has not yet adopted any regulations to this effect.
- C The law also requires the CDCR has been directed to write regulations allowing prisoners to earn up to 6 weeks of additional credit for successful completion of approved rehabilitation programs such as academic, vocational, therapeutic life skills and substance abuse programs. The CDCR has not yet written the regulations, so it is not known which programs and prisoners will qualify. However, the law does bar certain prisoners from earning these additional credits. Specifically, the additional credits cannot be earned a person who is (1) required to register as a sex offender under Penal Code section 290 et seq., (2) serving time on a parole violation without a new term, (3) serving a term for a violent felony as defined in Penal Code § 667.5(c), or (4) serving a term under the Two or Three Strikes Law described in Penal Code § 667(b)-(I) and § 1170.12. (Penal Code § 2933.05.)

The new laws do not change the statutes that limit or prohibit credit-earning for certain categories of prisoners. These include the following:

- C Prisoners sentenced under the Two Strikes Law can earn only 20 percent credits. (Penal Code § 667(c)(5) and § 1170.12(a)(5).)
- C Prisoners convicted of violent felonies can earn only 15 percent credits. (Penal Code § 2933.1; see also Penal Code § 12022.53(i).)
- C Some prisoners cannot earn any credits. These include (1) prisoners convicted of murders committed on or after June 3, 1998 (Penal Code § 2933.1) and (2) prisoners convicted of certain offenses, who have served two or more prison terms for prior convictions for those specific offenses. (Penal Code § 2933.5.) It also includes many, but not all, other prisoners serving terms of life with the possibility of parole; eligibility for credits on a life term depends on whether the sentencing statute for the crime incorporated Penal Code section 2930 et seq. at the time the person committed the offense.

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- C Parole violators who are serving parole revocation terms cannot earn any credits if they have committed certain types of crimes or parole violations. (Penal Code § 3057(d).)

There is one new law that decreases the credits that prisoners can earn. Under prior law, prisoners were ineligible to earn credits while they were in a Security Housing Unit (SHU) or Administrative Segregation Unit (ASU) for certain types of serious misconduct or prison gang membership. The bar on credit-earning has been expanded so that it now also applies to prisoners who commit such types of misconduct and are placed in Psychiatric Services Units (PSUs) and Behavioral Management Units (BMUs). (Penal Code § 2933.6.)

We do not know exactly when and how the CDCR will implement the new credit laws. Senate Bill xxx 18 recognizes that the CDCR has limited resources and gives the CDCR a “reasonable time” to determine which prisoners will get additional credits. The law also says that prisoners cannot sue for damages if there is a delay in granting credits under the new law. However, credit for any excess time served in prison is supposed to be applied to the prisoner’s parole term. (SB xxx 18, § 59.)

It is expected that the CDCR will calculate credits earned by prisoners from January 25, 2010 onward in accord with the new laws. What is unclear is whether the CDCR will also apply any of the new credit laws to time periods served prior to January 25, 2010. We do know that the CDCR has decided that parolees housed in county jails will not get half-time credit unless they came into custody on or after January 25, 2010; parolees who came into custody prior to that time and who remain at the county jail for their revocation terms will stay on one-for-two or “third-time” status.

There may be legal arguments that the new laws should have more-far-reaching retroactive applications. (See, e.g., *In re Kapperman* (1974) 11 Cal.3d 542.) However, as of February 1, 2010, the exact scope of the new laws are still uncertain.

Any prisoner who thinks the law is not being properly applied to his or her case should file a 602 administrative appeal and pursue it through the Third Level of Review. If a 602 does not solve the problem, a prisoner may file a petition for writ of habeas corpus in state court. A free manual on state habeas corpus petitions is available from the Prison Law Office upon request.

II. There are No Changes to the Three Strikes Laws

In the past years, there have been several propositions and legislative bills that proposed changes to the Three Strikes laws. As of February 2010, *none* of those proposals has been adopted.

III. The Court Order Requiring the CDCR to Reduce Overcrowding Has Not Gone Into Effect

On January 12, 2010, a federal court issued an order for California officials to reduce prison overcrowding, in accord with a plan that the state previously had submitted to the court. The state’s plan includes enhanced good-time credits, diversion of some low-risk/low-level offenders and parole violators away from prison, and creating additional bed spaces. However, the state is appealing the case to the U.S. Supreme Court and the lower federal court order is “stayed” while the appeal is pending. *This means that the January 12, 2010 federal court order will not take effect unless and until the U.S. Supreme Court upholds it.* The U.S. Supreme Court is not expected to decide the case until late 2010 or early 2011.