



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

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Rana Anabtawi
Susan Christian
Rebekah Evenson
Steven Fama
Penny Godbold
Megan Hagler
Alison Hardy
Corene Kendrick
Kelly Knapp
Millard Murphy
Lynn Wu

Your Responsibility When Using the Information Provided Below:

When putting this material together, we did our best to give you useful and accurate information because we know that prisoners often have trouble getting legal information and we cannot give specific advice to all prisoners who ask for it. The laws change often and can be looked at in different ways. 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 still applies to your situation. Most of the materials you need should be available in your institution's law library.

**INFORMATION ABOUT
CALIFORNIA'S PRISON POPULATION REDUCTION PLANS
(November 7, 2011)**

We are sending you this letter because you asked for information about the plans to reduce California's prison population and how they might affect you. The move to reduce California's prison population is a result of the state's budget crisis and a United States Supreme Court decision ruling that California's prison overcrowding is resulting in cruel and unusual punishment. (*Brown v. Plata, et al.* (2011) __ U.S. __ [131 S.Ct. 1910; 179 L.Ed.2d 969.]) The Supreme Court decision requires the State to reduce its prison population by approximately 34,000 prisoners by the end of June 2013, to bring crowding down to 137.5 percent of the system's design capacity. The State has the right to choose the crowding reduction methods it will use.

This letter gives a general overview of the state's population reduction plans and who may be affected. All of the policies discussed in this letter went into effect on or before October 1, 2011. However, the changes in the state's laws are complex, and the courts and agencies are still deciding how some parts of the plans will be carried out.

IMPORTANTLY:

- None of the population reduction plans involve "early releases" of people currently in the state prisons (although many prisoners can earn more good conduct credits and some female prisoners can serve their time in an alternative custody program).
- None of the population reduction plans involve transferring current state prisoners to county jails.
- None of the population reduction plans involve transferring current state parolees to county supervision.

- None of the population reduction plans change the Two or Three Strikes laws or the credit limits for people serving sentences as second or third strikers.
- In-coming felons and parole violators who will be housed in the county jails under the new laws are in the legal custody of the counties and not the California Department of Corrections and Rehabilitation (CDCR). Different rules and policies may apply to these people because they are in county jails rather than in state prisons.

I. MANY PRISONERS CAN EARN MORE GOOD CONDUCT CREDITS

Many Prisoners Can Earn More Conduct Credits for Time in County Jail Before Sentencing.

As of January 25, 2010, many people can earn more credits for the time they spend in county jail waiting to be convicted and sentenced. The calculation formula has changed a little bit, and the relevant statutes have been reorganized, but the general rule is that most people sentenced to prison after January 25, 2010 get “half-time” (one day of conduct credit each day served) for their pre-sentence time if they behave well in jail.¹

The new credit laws do *not* change prior laws stating that (1) people with current convictions for violent felonies can earn conduct credits only in the amount of 15 percent of the actual days served and (2) people convicted of murder and some repeat offenders convicted of very serious crimes cannot earn any conduct credits.

There is agreement that the January 25, 2010 amendments to the credit laws apply to people sentenced after the date that the new law went into effect. However, there is disagreement about whether half-time pre-sentence credits must be granted to eligible prisoners whose criminal judgments were still appealable or on appeal when the law changed. There also is an unresolved question about whether the new credit laws should be applied to all eligible people who were still serving their prison terms when the new laws went into effect. The California Supreme Court is currently reviewing those issues in a case called *In re Brown*, No. S181963. If you want more detailed information about the new credit laws or legal issues about how they are being applied, please write to the Prison Law Office to request a free letter on the new credit laws. That letter is also available on the Resources page at prisonlaw.com.

¹ The law that went into effect on January 25, 2010 said that some jail inmates would still get no more than “third -time” (about one day of credit for each two days served). This exception applied to prisoners who were required to register as sex offenders, who had current or prior convictions for serious felonies, or who had prior convictions for violent felonies. However, a later amendment removed this exception in regards to people whose offenses were committed on or after September 28, 2010.

Many Prisoners Can Earn More Good Conduct Credits for Time in Prison.

As of January 25, 2010, many prisoners can earn more good conduct credits while they are in prison. The law now allows many prisoners to earn half-time (day for day) conduct credits, even if they are on waiting lists for program assignments or undergoing reception center processing. Prisoners who are waiting for conservation camp or institution firefighter assignments or who are working in such jobs are eligible to earn two days of conduct credit for every one day served. (Penal Code § 2933.3.) These new credit laws do not change prior laws limiting credit-earning for people convicted of certain crimes. Under those laws, (1) people sentenced under the Two Strikes law can earn conduct credits only in the amount of 20 percent of the actual days served, (2) people with current convictions for violent felonies can earn conduct credits only in the amount of 15 percent of the actual days served, and (3) people sentenced under the Three Strikes law, people convicted of murder or certain very serious repeat offenses, and some other people sentenced to life terms cannot earn any conduct credits. The new laws also do not prevent the CDCR from placing prisoners on zero-credit earning status for some types of serious disciplinary violations or prison gang activity.

Also, as of January 25, 2010, some prisoners can earn up to six weeks of “Milestone” credits per year for completion of approved programs. Milestone credits are not available to anyone who is serving a current term for a violent offense, who is sentenced under the Two or Three Strikes law, or who is required to register as a sex offender.

The CDCR is calculating credits earned by prisoners since January 25, 2010 in accord with the changes in the law. The CDCR is not applying the new laws to any time served prior to January 25, 2010. There may be an equal protection argument that the new laws should apply retroactively to anyone in prison, similar to that regarding pre-sentence credits described above.

II. VERY FEW PEOPLE CAN BE RETURNED TO PRISON FOR PAROLE VIOLATIONS

Many People Will be Placed on Post-Release Community Supervision (PRCS) Rather Than on State Parole.

People who are released from Prison on or after October 1, 2011 can be placed on Post-Release Community Supervision (PRCS). People on PRCS will be supervised by county agencies rather than by the CDCR. Some people are not eligible for PRCS, and must be placed on CDCR parole; this includes anyone whose current commitment offense is a serious or violent felony, who has been sentenced under the Three Strikes Law, or who is classified as a high-risk sex offender or Mentally Disordered Offender (MDO).

The maximum PRCS term is three years, but people can get discharged earlier if (1) they serve six months of violation-free time and the agency recommends discharge or (2) they serve a full year of violation-free time. Counties are encouraged to use “alternative sanctions” other than incarceration when people violate their PRCS conditions. However, the law does provide for “flash incarceration” of up to 10 days with no hearing and formal PRCS revocation terms of up to 180 days in county jail.

Many Parolees Are Eligible for Earlier Discharge.

People who are on state parole for non-serious, non-violent offenses and who are not required to register as sex offenders are now eligible for parole discharge review after six months of continuous parole. The period of violation-free parole must occur after October 1, 2011; violation-free time before October 1, 2011 does not count toward this early discharge period.

Some Parolees Cannot Have Their Parole Revoked.

As of January 25, 2010, some low-risk parolees have been eligible for placement on “summary” parole, which is parole without supervision. People on summary parole cannot be returned to custody for parole violations; they can only be put back in prison or jail if they commit new criminal offenses. Few if any people will be placed on summary parole after October 1, 2011, since most people with non-serious, non-violent, non-sex offense cases will be placed on PRCS instead of parole.

Parole Violators will Serve Shorter Revocations Terms and Go to County Jails Rather than State Prison.

Parolees who are not on summary parole can still have their parole revoked. But for parole violations on or after October 1, 2011, the revocation terms for non-life parolees cannot exceed 180 days in length. People who are serving revocation can earn day for day (half-time) conduct credits toward their revocation terms. Revocation terms cannot be extended for in-custody disciplinary violations. Almost all parole revocation terms will be served in county jail; only people who are on parole from a life term can be revoked to prison.

If you want more information on parole rules and rights or on PRCS, you can request a copy of the Prison Law Office’s free Parolee Rights Handbook and Update. Those materials are also on the Resources page at www.prisonlaw.com.

III. CDCR HAS ALTERNATIVE HOUSING OPTIONS FOR SOME PRISONERS

Some Prisoners Can Serve their Time in an Alternative Custody Program.

As of September 2011, the CDCR will allow some people to serve part of their sentences in residential homes, drug-treatment programs or transitional-care facilities. As of October 2011, the program is available only to female prisoners who are pregnant or who were primary caregivers for children prior to incarceration AND who have 24 months or less left to serve on their sentences. A prisoner will not be placed in the program if she has a current or prior conviction for a serious or violent felony, is required to register as sex offender, is a gang member or affiliate, has committed certain types of in-prison misconduct, or if has a felony or immigration detainer. Other types of convictions may result in exclusion from the program on a case-by-case basis. For more information, write to the Prison Law Office to request a free copy of the CDCR’s Fact sheet on the Alternative Custody Program. The fact sheet is also on the CDCR’s website at www.cdcr.ca.gov/Adult_Operations/FOPS/docs/ACP-Fact-Sheet-Final.pdf.

Some Prisoners Are or Will be Housed in Out-of-State Facilities.

Since 2006, the CDCR has contracted with correctional facilities in other states to house California prisoners. It appears that CDCR will continue to house some prisoners in out-of-state facilities. Prisoners can be housed in out-of-state facilities either voluntarily or involuntarily. Upon request, the Prison Law Office can provide an information letter with more details about the rules and procedures for transferring California prisoners to out-of-state facilities. The letter is also available on the Resources page at www.prisonlaw.com.

The State is Constructing Additional Prison Beds.

Projects currently being planned or constructed are a new prison health care facility in Stockton, new mental health facilities at existing prisons, conversion of some former juvenile facilities to adult prisons, and reentry facilities for some prisoners who are near their release dates.

IV. MORE PEOPLE WILL SERVE THEIR SENTENCES IN COUNTY JAIL RATHER THAN STATE PRISON

As of January 25, 2010, new laws raised the value of the property that must be taken and the number of prior offenses required for some property crimes to be classified as felonies. This change applies to prisoners who committed their crimes on or after January 25, 2011 or whose criminal judgments were still appealable or were being appealed as of that date.

For crimes committed on or after October 1, 2011, some lower-level felons will serve their sentences in county jail instead of state prison. There are exceptions so that state prison housing is required for some types of crimes; the sentencing rules and exceptions are set forth in the statutes governing the various crimes. Also, all defendants with current or prior convictions for serious or violent felonies or who are required to register as sex offenders will still have to serve their terms in state prison. Inmates serving felony sentences in county jails will be eligible to earn half-time credit on their terms. A county jail inmate who has trained for or is assigned to a conservation camp job can earn two days of conduct credit for every day served.

People who have questions about their pre-sentence credits should check with their public defenders and appellate attorneys to make sure the correct law is applied in their cases. Prisoners should file a CDCR Form 602 or other administrative appeal if they believe the CDCR is not properly calculating in-prison credits or is not fairly applying the rules for alternative custody, out-of-state facility placement, or release on PRCS or parole. A free manual on how to file administrative appeals is available by request from the Prison Law Office or on the Resources page at www.prisonlaw.com. The Prison Law Office can also provide a manual on how to file a state habeas corpus petition challenging a criminal sentence or unfair action by prison officials.

Any prisoner who pursues a CDCR administrative appeal through the Third (Director's) Level, and is not satisfied with the result, may send a copy of the appeal and responses to the Prison Law Office. The Office attorneys will review the appeal and determine whether they can provide assistance or information on further legal actions.