

The Prison Law Office Handbook on

RELEASE DATE CALCULATIONS

AND

CHALLENGING ERRORS IN A RELEASE DATE

Updated March 2005

Your Responsibility When Using this Information:

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 help and we cannot provide specific advice to all the prisoners who request it. However, be aware that 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 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.

**THE LEGAL STATUS SUMMARY SHEET
AND
CALCULATING THE EARLIEST POSSIBLE RELEASE DATE**

To calculate a prisoner's release date, one must begin with the sentence (prison term) imposed by the trial court. In deciding the length of the sentence, a court must follow the terms of the Determinate Sentencing Law (DSL).¹ If a prisoner is eligible to earn sentence credits for good behavior or job performance, those credits will reduce the portion of the sentence that the prisoner actually serves. Such credits include pre-sentence or pre-prison credits awarded by the trial court for actual days in custody and good conduct before sentencing. In addition, prisoners may earn good-time or work-time credits while serving their prison terms; these credits will be calculated by the California Department of Corrections (CDC). Numerous changes in the credit laws over the past 10 years have made sentence calculations increasingly difficult. This information letter sets forth the basic procedures for calculating a release date; prisoners who want more information on sentencing rules and what credit eligibility should check the relevant statutes and regulations or read Chapter 4 of The California State Prisoners Handbook, published by the Prison Law Office.

The Legal Status Summary (LSS) is a short computer print-out that summarizes a prisoner's sentencing and time credit information. The prison Case Records Office is responsible for preparing the LSS. The LSS shows a prisoner's Earliest Possible Release Date (EPRD), as well as the total term, pre-sentence credits, CDC credits earned, lost, and restored, and maximum release date. CDC must provide each prisoner with an updated LSS at six month intervals or whenever there is any change in the prisoner's anticipated release date. (Penal Code § 2932(e); 15 CCR §§ 3043(c)(5).) A blank LSS, with an explanation of its different components, is included in this packet. The CDC Operations Manual ("the DOM"), starting at §73010.1 also provides a detailed explanation of LSS calculations.

The EPRD, which is the date a prisoner is expected to be released, is the key date on the LSS.² The other dates on the sheet are helpful when computing the EPRD, but do not generally

¹ This letter does not address the calculation of Minimum Eligible Parole Dates (MEPDs) for indeterminate-sentenced prisoners who are serving life terms with the possibility of parole.

² For a prisoner who is ineligible to earn work credits because of conviction of a violent felony or sentencing under the two strikes law, the expected release date will be called the Minimum Adjusted Release Date ("Min Adj Rel Dt" or "MIN DSL"). For a prisoner serving a parole revocation/return to custody term, the expected release date will be called the Projected Revocation Release Date (PRRD or RRD); more specific information on parole revocation terms, credit eligibility and revocation extension is available in the Prison Law Office's Parolee Rights Handbook.

LEGAL STATUS SUMMARY

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CDC NUMBER \ NAME \ ETHNIC \ BIRTHDATE
(1) \ (2) \ (3) \ (4)
-----
TERM STARTS \ MAX REL DATE MAX ADJ REL DT \ CURRENT REL DT
(5) \ (6) (7) \ (8)
-----
BASE TERM (9) + ENHANCEMENTS (10) = TOTAL TERM (11) \ PAROLE PERIOD
(12)
-----
PRE-PRISON + POST SENTENCE CREDITS
CASE P2900-5 P1203-3 P2900-1 CRC-CRED MH-CRED P4019 P2931 POST-SENT TOT
(13) (14) (15) (16)
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RCV DT/ COUNTY/ CASE/ SENTENCE DATE/ OFFENSE DATE
CNT OFF-CODE DESCRIPTION
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CONTROLLING PRINCIPAL AND CONSECUTIVE (INCLUDES ENHANCEMENTS/OFFENSES):

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-- CONTROLLING CASE --
(17) (18) (19)

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IWTIP WAIVER BEGINNING CREDIT TOTAL TOTAL NET
DATE BALANCE APPLIED LOST RESTORED TOTAL
(20) (21) (22) (23) (24) (25)
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CREDITS AUTO VESTED PER PC-2934: (26)

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TRAN DATE END DATE LOG NUMBER RULE VIOL
TYPE DATE END DATE LOG NUMBER NUMBER CAT DAYS
(27) (28)
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ETO BALANCE = (29)

EPRD IS (30) BASED ON CREDIT APPLIED THRU (31) AND WORK GROUP (32)

reflect when a prisoner will be released. Also, an EPRD is only a predicted release date or “best guess” because the EPRD is based on the assumption that the circumstances which determine term length or credit earning status will not change. If a prisoner’s credit earning status changes, credits are lost or restored, or the prisoner receives a new criminal term, then the EPRD will change.

The date that the LSS was printed will be shown in the top right corner. In some cases, there will also be a statement that the Summary is “Discrepant,” which means that either there may be a possible sentencing error, that some needed information is missing or unclear, or that because of case complexities, the calculation could not be performed by the computer and had to be corrected by hand. A prisoner with a discrepant Legal Status Summary should try to determine whether something should be done about the “discrepancy.”

What follows is a step-by-step explanation of a typical LSS for a prisoner sentenced under the Determinate Sentencing Law (DSL). The numbers in the explanation correspond to those in parentheses on the sample Legal Status Summary.

1. CDC identification number.
2. Name.
3. Ethnic background.
4. Birthdate.

5. “Term Starts.” The date a prisoner arrives at a CDC Reception Center is the date the term starts. See Penal Code § 2900(a). Even though the term date doesn’t start until a prisoner gets to the Reception Center, the credit for time spent in jail prior to arriving in the CDC will still be credited toward the prisoner’s term. However, CDC good-time and work-time credits will only start accumulating on the term start date.

6. “Max Rel Date.” Maximum Release Date. This date is obtained by adding the total term (see #11) to the term start date (#5), then subtracting the total pre-prison and post-sentence credits (see ##13, 14, 15, and 16).

7. “Max Adj Rel Dt.” Maximum Adjusted Release Date. This date is obtained by subtracting from the Maximum Release Date (#6) any “vested” credits. (Vested credits are discussed in detail in #26, below. Vested credits cannot be taken away even if a prisoner is found guilty of a rule violation). The Maximum Adjusted Release Date is the actual “Max date” – the date on which the prisoner must be released even if no credits are earned or all credits are lost because of rules violations. However, because this date does not take into account any good-time or work-time credits earned in prison, it will not be a prisoner’s actual release date unless the prisoner “maxes out.” A prisoner “maxes out” if he or she never earns any credits at all, or loses so many credits through disciplinary violations as to end up with a negative credit balance (a total of more credits lost than credits earned).

8. “Current Rel Dt.” Current Release Date. This date is obtained by subtracting from the Maximum Adjusted Release Date (#7) the net total of credits earned in prison up to the day that credits were last applied. (The net total of credits can be found at #25. The day that credits were last counted can be found at #31.) Because the Current Release Date takes into account only credits earned to the present, and does not consider the probability of a prisoner earning credits in the future or having lost credits restored, it is not necessarily a true release date. However, the probability of earning future credits is taken into account in the Earliest Possible Release Date (EPRD) (#30).³

9. “Base Term” and

10. “Enhancements.” California law regarding sentences has very technical definitions as to what is a “base term” and what is an “enhancement.” The “Legal Status” sheet, however isn’t concerned with the technical definitions. The “base term” will be a prisoner’s base term (in years), and “enhancements” will be the total of all other terms being served.

11. “Total Term.” The number of years a prisoner is serving on all cases.

12. “Parole Period.” The basic amount of time required to be served on parole once the prisoner is released. It has nothing to do with the release date.

13. “P2900-5.” This is a short hand for Penal Code § 2900.5. That law requires that a person be given credit against a prison term for actual days spent in the county jail before sentencing.⁴ These days are calculated by the court at the time of sentencing, and the CDC gets the number from the “Abstract of Judgment,” which is the sentencing summary prepared by the court; there should be a copy of the Abstract of Judgment in every prisoner’s CDC central file.

14. “P4019.” Shorthand for Penal Code § 4019. That statute allows a person to earn good behavior credits while in county jail. These credits are granted by the court at the time of sentencing. The credits are listed on the Abstract of Judgment.

15. “Post Sent.” Shorthand for post-sentence credits. It is here that the CDC lists credits

³ The LSS may be different for prisoners who are not eligible to earn work-time credits, such as person convicted of a violent felony (who may earn only 15 % credits under Penal Code § 2933.1) or a person sentenced to a doubled term under the “two strikes law” (who may only earn 20% credits under Penal Code § 667(c)(5)). In such cases, the equivalent of the Current Release Date will be called the Minimum Release Date (“Min Rel Date”) and the equivalent of the Earliest Possible Release Date will be the Minimum Adjusted Release Date (“Min Adj Rel Dt”).

⁴ There are also a variety of other sub-categories under the “Pre-Prison and Post Sentence Credits” section of the LSS for documenting pre-prison credits earned in other less-common circumstances, such as time confined as incompetent to stand trial (“MH Cred”) or time in the Civil Addict Program (“CRC-Cred”). See DOM § 73010.6.5 for additional information.

for the actual days served in the county jail after sentencing but before arrival at the Reception Center. See Penal Code § 2900.5(e). Any behavior credits for these days are included in vested credits (#26).

16. “Tot.” Total. The number of actual days served by a prisoner before arriving at the Reception Center, plus the county jail credits awarded by the sentencing court. This total is obtained by adding all the days listed to the immediate left on the Legal Status Summary sheet.

17. “Controlling Case.” Here, the computer will list the case or cases for which a prisoner is serving a term. Consecutive sentences will be noted. Concurrent sentences that have been superseded by other sentences are usually listed under “Non-controlling” cases. This section will include the county of commitment, the case number, and the crime committed. The section will also indicate if a prisoner is sentenced under the Two Strikes or Three Strikes law. Note that the Legal Status Summary will say “no strikes: 2” to show that the prison can only earn 20% credit under the “two strikes law;” this does not necessarily mean a person has two prior offenses that will count as strikes in future cases. CDC staff use a Credit Code to indicate what type of credits CDC believes the prisoner is eligible to earn.

18. “Sentence Date.” The date of the sentencing hearing in court.

19. “Offense Date.” The date the crime was committed. If the crime was committed on or after January 1, 1983, a prisoner is automatically under the “one-for-one” (worktime) law. (Penal Code § 2933.) If the crime was committed before January 1, 1983, a prisoner must sign a waiver (see #20) to become eligible to earn one-for-one or day-for-day credit. (Penal Code § 2934.)

20. “IWTIP Waiver Date.” IWTIP stands for “Inmate Work Training Incentive Program.” Prior to 1983, there was no one-for-one (half-time) worktime credit. If a prisoner’s crime was committed before 1983, the prisoner can sign a “waiver” so that he or she can get worktime credit. The date listed here will be the date the “waiver” was signed and became effective. (If the crime was committed in or after 1983, the “waiver” date will be the date the prisoner arrived in the CDC.) Any credits earned in prison before this date are considered “vested” credits (see #26).

21. “Beginning Balance.” Imagine that the credits earned while in prison are in an account, like a bank account. The beginning balance is the number of credits earned and “in the bank” before the most recent updating of records. This number doesn’t reflect recent activity.

22. “Credit Applied.” The total number of credits earned from the day a prisoner arrived in prison to the current update.

23. “Total Lost.” The total number of credits lost through serious rule violations.

24. “Total Restored.” The total number of credits restored.

25. “Net Total.”⁵ The current net credit balance. Add together the “Credit Applied” (#22), and “Total Restored” (#24). From this total, subtract the “Total Loss” (#23). The result is the net total of credit earned. This total is subtracted from the Maximum Adjusted Release Date (#7) to get the Current Release Date (#8). Please note that a prisoner who has too many credit losses and not enough credits earned can have a negative credit balance. A prisoner in this situation will have to earn enough credits to make up the deficit before the release date will be affected by any new credits earned or restored.

26. “Credits Auto Vested Per PC-2934.” Credits automatically vested. “Vested” means the credits cannot be taken away even at a disciplinary proceeding. These include two types of credits: 1) “one-for-two” credits for a prisoner who was sentenced before 1983 and which were earned prior to the date that prisoner waived into the “one-for-one” worktime credit program (see Penal Code § 2934) and 2) good behavior credits for any time spent in the county jail after sentencing but before arrival at the Reception Center.

27. “Tran. Type.” Shorthand for Transaction Type. Listed here are recent credits gains, losses and restorations. The following abbreviations are used: “WCG” – Work Credit Gain; “WCL” – Work Credit Loss and “WCR” – Work Credit Restored. To the right of these abbreviations, and under the appropriate heading, will be date of the gain, loss, or restoration of credits, as well as the other identifying information.

28. “End Date.” The last day to which the credits have been counted will be listed here. This is the date that “credit was last applied.” (See #31).

29. “ETO Balance.” Excused Time Off. When a prisoner works at a work-time credit-qualifying job, he or she earns time that can be used for sick days or to take time off to take care of other business. The amount listed is in hours. “ETO” is not directly related to figuring a release date.

30. “EPRD.” Earliest Possible Release Date.⁶ The date a prisoner will be released if he or she (1) never loses another day of credit; (2) never has any more credits restored; (3) stays in the same credit earning status; and (4) keeps the same legal status (doesn’t get re-sentenced or pick up a new term). Because the EPRD is based on these four “ifs,” it can change. The EPRD is only a prediction or best guess of when a prisoner will be released. The EPRD is figured by counting the number of days from the date credit was last applied (see #31) to the current release date (#8) and then doing a calculation to figure out how much future credit could be earned. There are several different ways to calculate credits that may be earned in the future, depending on the prisoner’s individual circumstances:

⁵ The organization and terminology used in this section of the LSS may be slightly different for prisoners who are not eligible to earn work-time credits. However, the LSS should still show the same basic information, such as credits lost for rule violations or credits restored.

⁶ See foot note 3, above, for differences in terminology in cases where the prisoner is not eligible to earn work credits.

- the number of days is divided by 2 if the prisoner has a one-for-one (“half-time”) job;
- the number of days is divided by 3 if the prisoner is on one-for-two (“third-time”) status (e.g. waiting for a program assignment, many SHU or ad seg prisoners);
- the number of days is multiplied by .20 if a prisoner is serving a doubled sentence under the two strikes law (Penal Code § 667(c)(5));
- the number of days is multiplied by .15 if a prisoner was convicted of a violent felony (Penal Code § 2933.1);
- the number of days is multiplied by 2/3 if a prisoner is working in a conservation camp and earning two-for-one credit;
- in some cases, no behavior or work credits can be applied, either because the prisoner was convicted of certain crimes (Penal Code § 2933.5) or is serving time in ad seg or SHU for certain disciplinary violations (Penal Code § 2933.6).

After doing the appropriate calculation, the resulting number is subtracted from the current release date (#8) to get the EPRD.

31. “Credit Applied Thru.” This is the last date to which credits have been counted. This is usually the last day of the month prior to when the LSS was printed. For example, if the LSS is printed in August, it will usually show credits earned through the end of July.

32. “Work Group.” As explained above (#30), the EPRD is a projected or predicted release date. The prediction is based on a prisoner continuing to earn the credit entitled to a member of the Work Group listed here. One of the following Work Groups will be listed:

- A1: one-for-one (half-time) credit-earning status. Full time work or programming in a credit-qualifying assignment. Also applies to someone unable to hold an assignment because of total disability.
- A2: one-for-two (third-time) credit-earning status – prisoners waiting for a full time assignment.
- B: one-for-two (third-time) credit-earning status; half-time workers.
- C: zero credit earning status – those who voluntarily refuse a full-time or half-time assignment.
- D1: one-for-two (third-time) credit earning status; prisoners in SHU or ad seg.
- D2: zero credit earning status. SHU inmates who can’t earn one-for-one credit because of a 115 (disciplinary) credit loss followed by a SHU term.
- F: two-for-one credit-earning status for full-time workers in conservation camps.

As discussed in #30 above, a prisoner’s credit earning status may be affected by court-imposed sentencing limits; this means that in some cases a prisoner may be working in a job that would normally entitle him or her to A1 status, but will be earning only 20% or 15 % credits or no credit at all. The legal status summary should state if one of these limitations applies.

RELEASE DATE CALCULATION EXAMPLE

An example of a release date calculation may be the best way to show how the process works. This section also includes a blank worksheet outlining the steps used to calculate a release date. To make things simpler, all dates in this example will be approximate. REMEMBER, HOWEVER, THAT WHEN FIGURING YOUR OWN RELEASE DATE, YOU MUST BE EXACT. THIS MEANS YOU HAVE TO USE A CALENDAR.

Joe Jones was sentenced on December 10, 2003 to a 3 year term for a crime committed earlier in 2003; his crime was not a violent felony and he was not sentenced under the Two or Three Strikes Law. Mr. Jones spent 120 actual days in the county jail before he was sentenced. The judge gave him credit for this 120 days in jail, and also gave him credit for an additional 60 days of jail "good time." After sentencing, Mr. Jones spent another 20 days in the county jail. He arrived at a Department of Corrections' Reception Center on January 1, 2004. Mr. Jones got a full-time credit-earning job assignment on March 1, 2004. It's now July 1, 2004, and Mr. Jones wants to know when he's going home.

The numbers would work as follows. From the term start date, the date Mr. Jones arrived in CDC (1/1/04), add the total term (3 years). From this date (1/1/07) subtract all pre-prison actual days and pre-prison credits granted by the court.. Mr. Jones spent 120 days in jail before sentencing, was granted 60 days credit, and spent another 20 days in jail after sentencing but before he arrived at the Reception Center. This totals 200 or approximately 6 months and 20 days. When this time is subtracted from 1/1/07, the approximate date is June 10, 2006. This is Mr. Jones' "Maximum Release Date."

Next, subtract all "vested" credits from the June 10, 2006 "Maximum Release Date" to obtain the "Maximum Adjusted Release Date." "Vested" credits in the CDC include any earned before 1/1/83, when the worktime credit (one-for-one) law became effective. This does not apply to Mr. Jones as his crime was committed after 1/1/83. Vested credits also include any behavior credits earned on actual days in the county jail sentencing but before arrival at the Reception Center. Mr. Jones served 20 days in the county jail after sentencing. He is entitled to one-third (one-for- two) credit on these 20 days. So Mr. Jones has 10 days "vested" credit.

Subtracting 10 days from June 10, 2006 gives Mr. Jones a "Maximum Adjusted Release Date" of approximately 6/1/06. As explained above, this is Mr. Jones' "Max Date" or the longest he could be held even if he never earned any credit in prison.

Mr. Jones, however, has earned credit in prison. So the next step is to count the total credits he has earned in prison and to subtract the total from the "Maximum Adjusted Release Date" to reach the "Current Release Date."

Mr. Jones spent 60 in CDC before he got a credit-qualifying assignment and started working; he earned 30 days (1 month) of credit during this time. Then Mr. Jones worked from March 1 to June 30, 2004. During this 4 months, he earned "one-for-one" or "day-for-day" credit totaling 4 months credit. Adding the credits for these two time periods together, Mr.

Jones has earned a total of 5 months prison credit. This is also the net total because Mr. Jones has not lost any credits. Note that June 30, 2004 is the last day to which Mr. Jones' credit is being counted.

When 5 months is subtracted from the "Maximum Adjusted Release Date" of 6/1/06, a date of 1/1/06 is reached. This is Mr. Jones' "Current Release Date." This is the date Mr. Jones will be released on if he never earns or loses another credit.

But Mr. Jones expects to earn more credits. And, assuming he is going to keep earning credits, he wants to know when he will hit the streets. The "Earliest Possible Release Date" (EPRD) will give Mr. Jones this information.

Once the "Current Release Date" is calculated, figuring the EPRD is a simple, three-step process. First, count the number of days between the date that credit was last applied to the "Current Release Date."

June 30, 2004 was the date to which Mr. Jones' credit was counted. There are approximately 18 months between 6/30/04 and the 1/1/06 "Current Release Date."

It then must be determined how much actual time it will take Mr. Jones to serve the 18 months. Assuming Mr. Jones remains in his "one-for-one" job, the easy way to figure this out is to divide 18 months by 2. This equals 9 months. So, to serve his remaining 18 months, Mr. Jones actually serve only 9 months, as he will earn 9 months of credit.

Subtracting 9 months from the January 1, 2006 "Current Release Date" brings Mr. Jones' date to April 1, 2005. This is his "Earliest Possible Release Date" (EPRD). He will be released on this date if he continues with his one-for-one job, does not lose any credits, and does not pick up a new term or get re-sentenced.

If Mr. Jones is released on 4/1/05 he will have served one year and 3 months actual days in the CDC. He also served 120 days (4 months) in the county jail before sentencing and another 20 in jail after sentencing. So the total number of actual days Mr. Jones was incarcerated was 1 year, 7 months and 20 days.

Mr. Jones' actual incarceration was less than 3 full years because he earned 60 days (2 months) county jail pre-sentence behavior credits, 10 days behavior credit for his time in the county jail after sentencing, and 14 months credit after arriving in CDC. In total, Mr. Jones earned 1 year, 4 months and 10 days of credit.

Add this 1 year, 4 months and 10 days credit to the 1 year, 7 month and 20 days that Mr. Jones actually served and it equals 3 years – Mr. Jones' total term. It should always work out that actual days served plus the net total of credits earned equals the total term.

The above example shows a typical case in which the prisoner lost no credits lost as a result of disciplinary rule violations (which are documented on CDC Form 115). To show how a

prisoner's EPRD changes with a disciplinary credit loss, let's assume that Mr. Jones received a 60 day credit loss on June 1, 2004. Let's also assume that although he lost 60 days, Mr. Jones was not sent to ad seg or given a SHU term and did not lose his one-for-one job. The numbers would work as follows.

As is explained above, Mr. Jones' "Maximum Adjusted Release Date" does not change because of the credit loss.

The first step is to re-calculate the "Current Release Date." This is done by subtracting from the 6/1/06 "Max Date" the net total of credits in prison up to the 6/30/04 cut-off date.

Mr. Jones as explained above, has earned a total of 5 months credit. But he has now also lost 60 days (2 months) credit. So his net total credit is 5 months minus 2 months, equalling 3 months.

Subtracting 3 months from the 6/1/06 date gives Mr. Jones a "Current Release Date" of approximately 3/1/06. From this date the EPRD can be re-calculated using the same process described above.

To compute the EPRD, first count the number of days between the credit date was last applied (6/30/04) and the "Current Release Date" (3/1/06). In this case, it's 20 months.

Next, compute how much actual time it will take to serve the remaining 20 months. The amount of actual time that will be served is a function of the credit that will be earned. Mr. Jones works at a one-for-one credit-qualifying job, and it is assumed that he will continue to earn credit at that rate. He will then be able to serve the 20 months remaining on his sentence in 10 months actual time because he will also earn 10 months of worktime credit.

Subtracting 10 months from the 3/1/06 "Current Release Date" equals 5/1/05. This date is Mr. Jones' EPRD with the 60 day credit loss figured in.

Now compare Mr. Jones' two release dates. Without the 60 day credit loss, Mr. Jones has an EPRD of 4/1/05. With the 60 day credit loss, his EPRD 5/1/05. Notice that even though he lost 60 days of credit, his release date changed by only 30 days.

This confuses many people. Most people expect that when 60 days is lost, the release date will also change by 60 days. But that is not necessarily the way it works out. If a prisoner is on one-for-one status and keeps his job, a 60 day credit loss will change his release date by 30 days. The reason for this confusing result lies in the mathematics of computing future credit gains. Losing 60 days of credits means that a prisoner has 60 days more to serve in the CDC. But if the prisoner is earning one-for-one credit, he will serve that additional time in 30 days because he will also earn 30 days of credit. So the release date changes by only 30 days.

The process works the same way if a prisoner gets credit restored. Just as losing 60 credits doesn't necessarily move a release date back 60 days, restoring 60 days of credit doesn't

necessarily move the date forward by 60 days. This again is a function of computing future credit gains. For example, if Mr. Jones stays in his one-for-one job, and gets his 60 days lost credit restored, this will bring his release date forward by only 30 days. Again, to figure out the new release date after credit restoration, a prisoner needs to go back to re-calculate the current release date and the earliest possible release date.

Prisoners are also sometimes confused about how to calculate how many credits they have earned in the past and how to do the same for credits they will earn in the future. For time in the past that a prisoner was on one-for-one status, he earns a day of credit for each day he was on one-for-one status; that prisoner can just count the number of days on one-for-one status. If a prisoner was on one-third status, credit earned in the past is figured by dividing the number of days by 2. If a prisoner is serving an 80% sentence under the Two Strikes Law, he should multiply the number of days served by .20. If he is limited to 15% credit for a violent felony, he should multiply the number of days served by .15. If he is earning two-for-one credits, he can multiply the actual days by 2.

The computations are different when figuring how much credit can be earned in the future. Prisoners should use the formulas discussed in item #30 above and in the worksheet below. For example, because of variations in credit-earning status, prisoners who have 30 days to serve may actually spend different amounts of time in prison. For example, to serve 30 days, a prisoner might actually have to serve 10 days (if earning two-for-one credit); 15 days (if earning one-for-one credit); 20 days (if earning one-for-one credit); 24 days (if serving an 80% sentence under the two strikes law); 26 days (if sentences for a violent felony and limited to 15% credit); or 30 days (if not earning any credit at all).

Another mistake prisoners sometimes make is to count the number of actual days served in prison and somehow use these days to figure a release date. But this is not how it works. The only actual days that are subtracted or deducted from the top of a term are the days, if any served in county jail. To correctly figure a release date, a prisoner should always follow the method discussed above.

EPRD WORKSHEET

1.	Term Start Date (Date Arrived in Reception Center)			_____
2.	Add Total Term	+		_____
3.	Resulting Date	=		_____
4.	Subtract Pre-Sentence Credit	-		_____
5.	Resulting Date	=		_____
6.	Subtract Post-Sentence/Pre-CDC Days	-		_____
7.	Equals Maximum Release Date	=		_____
8.	Subtract Vested Credits	-		_____
9.	Equals Maximum Adjusted Release Date	=		_____
10.	Subtract Net Credits Received in Prison (credits earned minus credits lost plus credits restored) to the present date			_____
		-		_____
11.	Equals Current Release Date	=		_____
12.	Subtract Credit That Could Be Earned: (computed as shown below)	-		_____
13.	Earliest Possible Release Date (EPRD)	=		_____

 For step 12, calculate the credit that could be earned in future for prisoners who are eligible for CDC good behavior or participation credit by using the following steps:

- a. Count number of days between the present date and the Current Release Date (see # 11, above:) _____
- b. Divide the number of days by two if currently earning one-for-one ("1/2 time") worktime credit OR
 Divide the number of days by three if currently earning one-for-two ("1/3 time") credit OR
 Multiply the number of days by .20 if earning 20% credit OR
 Multiply the number of days by .15 if earning 15% credit OR enter 0 in step 12 if the prisoner is not eligible to earn any credits OR
 Multiply the number of days by 2/3 if currently earning two-for-one worktime credit in a conservation camp = _____

Note: When adding the total term to the term start date (steps 1 and 2), simply add the time without regard to the differing number of days in the months. For example, if a prisoner arrives at CDC on 1/15/00 with a 1 year, four month term, the resulting date (step 3 on the worksheet) would be 5/15/01. However, for every step after number 3 on the worksheet, time computations must take into account the differing number of days in the months if the prisoner wants an exact EPRD.

FIXING AN INCORRECT RELEASE DATE

The first step in challenging a release date error is to determine whether the error was made by the court or the prison officials. The following sections discuss how a prisoner can tell who made the error and what steps can be taken to correct it.

Generally, setting the length of the sentence and awarding the presentence credits is the duty of the court. Courts can make legal errors in imposing the sentence or adding up the presentence credits or clerical errors by putting incorrect information on the sentencing documents (especially the Abstract of Judgment).

On the other hand, the prison officials have the duty to credit the prisoner with goodtime and worktime credits earned in prison and to calculate the final release date. Prison officials can make errors in interpreting the court documents or in adding and subtracting prison credits.

A. Remedies for Sentencing Errors Made by the Court

A prisoner who believes that the court's sentence or pre-sentence credits are incorrect may take steps to correct it. The steps that should be taken will depend upon the nature of the error and when it is discovered.

Courts can make legal errors in sentencing, such as imposing a term not authorized by the Penal Code or failing to follow the sentencing rules. Such errors are more likely to occur when a prisoner is being sentenced on many different counts or cases. Determining whether a legal error was made will require research on the applicable sentencing statutes. Complicated issues also arise when a court enters a sentence that violates a plea agreement. If a lawful sentence cannot be imposed without violating the prisoner's plea agreement, then the prisoner should be given the option of withdrawing the plea.⁷

A court or its clerk can also make clerical mistakes, such as math errors in calculating credits or wrongly recording the sentence on the Abstract of Judgment. The sentencing court's actions will be reflected in the both the sentencing transcript and the Abstract of Judgment. Examine those documents to see exactly what the court said and did. Determining whether a clerical error was made relatively simple – there will be a difference between what the court said (as recorded in the transcript of the sentencing hearing) and what is recorded on the Abstract.

If the sentencing court made a legal or clerical mistake, and the error has increased the term, the prisoner's remedy lies exclusively with the courts. For this type of error, the prisoner should not use the CDC administrative appeal process, because that process can only be used to challenge the actions of prison officials.

⁷ People v. Olea (1997) 59 Cal.App.4th 1289 [69 Cal.Rptr.2d 772]; People v. Walker (1991) 54 Cal.3d 1013 [1 Cal.Rptr.2d 902]; People v. Mancheno (1982) 32 Cal.3d 855, 860 [187 Cal.Rptr. 441].

If a prisoner believes that the sentencing court made a mistake, the prisoner should contact the trial attorney. In particular, the trial attorney may have knowledge of circumstances (such as the terms of a plea bargain) which can explain the trial court's actions. In addition, if the error is discovered soon after sentencing, the trial attorney may be able get the court to re-sentence the prisoner, since a court can re-sentence the prisoner on its own motion up to 120 days after sentencing.⁸

Sentencing error may also be raised as part of a direct appeal of the conviction. Thus, if a direct appeal is pursued, the prisoner should make sure that information about the erroneous sentence is provided to the appellate attorney. The prisoner should also consult with the appellate attorney before raising a sentencing issue in order to avoid possibly increasing the term by drawing attention to an error favorable to the prisoner.

If a sentence is illegal, such as when the term exceeds that authorized by law or is based on a miscalculation of credits or misinterpretation of a statute, the sentence may be corrected at any time, even after the appeal process is finished.⁹ A prisoner may be able to convince the court to correct the sentence by writing a letter or informal motion to the court pointing out the error; such a request is most likely to be successful where the sentencing error is obvious and uncontroversial, or where a simple clerical error has been made.

A prisoner may also seek correction of an illegal sentence by filing a state court petition for writ of habeas corpus. Although a petition should be filed as soon as possible after discovery of the error, habeas corpus relief for an illegal sentence may be granted many years after the original sentencing.¹⁰ The petition should be filed in the court where the sentence was imposed. The Prison Law Office can provide a free manual on state court habeas corpus petitions.

A petition to correct a sentence should not be held moot even if the prisoner has already been released on parole, because any additional sentence credits or reduction can be applied against the parole period.¹¹

⁸ Penal Code § 1170(d).

⁹ People v. Jack (1989) 213 Cal.App.3d 913 [261 Cal.Rptr. 860]; In re Massengale (1970) 10 Cal.App.3d 689, 693 [89 Cal.Rptr. 237]. An illegal sentence may be corrected even if a proper judgment will result in a more severe sentence. In re Ricky H. (1981) 30 Cal.3d 176, 191 [178 Cal. Rptr. 324, 333]; People v. Serrato (1973) 9 Cal.3d 75, 764 [109 Cal.Rptr. 65].

¹⁰ See, e.g., In re Ward (1966) 64 Cal.2d 672, 675 [51 Cal.Rptr. 272], holding that a claim that a sentence was in excess of that allowed by law should be decided even though the original sentencing had occurred twenty years earlier.

¹¹ See for ex., People v. Goodson (1990) 226 Cal.App.3d 277 [277 Cal.Rptr.60]; In re Reina (1985) 171 Cal.App.3d 638, 650 [217 Cal.Rptr. 535]; In re Ballard (1981) 115 Cal.App.3d 647 [171 Cal.Rptr.459].

B. Remedies For CDC Sentence and Credit Computation Errors

The CDC can err by wrongly recording the sentence or pre-sentence credits in the prisoner's records or by incorrectly computing the total term when there is more than one Abstract of Judgment. The LSS will show how the CDC has recorded the court's sentence and pre-sentence credit award. The CDC could also err by failing to properly compute or apply the time credits earned in prison.

Prisoners with multiple commitments often have questions regarding CDC's computation of their total term, or CDC's application of pre-sentence credits. This is not surprising since multiple commitments, with the complicated rules regarding concurrent and consecutive sentences and pre-sentence credit when such sentences are imposed, can raise very complicated questions.

A prisoner who wishes to complain about any decision regarding a CDC time credit question must first use the CDC's administrative appeal process. CDC worktime credit determinations are subject to in the exhaustion of administrative remedies requirement and a court generally will not consider such an issue unless the prisoner has first presented the claim to the CDC through the "602" process.¹² Accordingly, prisoners concerned about how the CDC has computed or recorded a sentence should file an administrative appeal (CDC Form 602).

Appeals concerning release dates or term computations should be submitted first to the prison records office for informal level review.¹³ If the appeal is denied at that level, the written response must be hand-delivered to the prisoner, who must sign and date an acknowledgment of receipt.¹⁴

After an appeal is denied at the informal level, the appeal may be re-submitted to the appeals coordinator. First level review is bypassed, and a "computation review hearing," which constitutes the second level review, must be held.¹⁵ The computation review hearing, conducted by a case records manager or supervisor, must be held within 15 days of receipt of the appeal.¹⁶ The prisoner must be provided with a copy of the computation review hearing decision.¹⁷ The appeal is considered granted if the CDC corrects the error, or determines that the error is the responsibility of the court or another agency over which the CDC has no control; in the latter

¹² People v. Mendoza (1986) 187 Cal.App.3d 948, 954 [232 Cal.Rptr. 228].

¹³ 15 CCR § 3084.7(h)(1)(A).

¹⁴ 15 CCR § 3084.7(h)(1)(B).

¹⁵ 15 CCR § 3084.7(h)(2)(A) and (2)(B).

¹⁶ 15 CCR § 3084.7(h)(2)(C).

¹⁷ 15 CCR § 3084.7(h)(2)(E). The decision is documented on CDC Form 1033.

case, the CDC must refer the matter to the appropriate agency or court for review.¹⁸ If the appeal is denied, or the prisoner is dissatisfied with the computation review hearing decision, the appeal can be submitted to the third level by filing it with the Chief of Inmate Appeals at CDC's main offices in Sacramento.¹⁹

A prisoner with questions regarding what credit was awarded for particular time periods or whether credit has been restored on certain disciplinary offenses, should in the administrative appeal request copies of the "Work and Behavior Credit Query" print-outs for the periods in question. These computer generated sheets show a chronological listing of credits earned and credits lost and restored (listed by log number and date of offense). Along with the LSS, these documents should provide the information necessary to answer many CDC time credit questions.

When a prisoner has completed the administrative appeal process, he or she may pursue a CDC time credit issue claim in a petition for writ of habeas corpus filed in state court.²⁰ (Again, a free manual on state habeas corpus is available from the Prison Law Office.)

In some cases, the CDC may respond to an administrative appeal with a statement that it is simply following the order of the sentencing court on the issue in question. If that is the case, the prisoner will then know that relief must be obtained in the court; he or she need not continue the CDC administrative appeal process and should seek relief in the court by following the steps discussed in section "A" above.

If a prisoner is successful in an administrative appeal or subsequent habeas petition, the prisoner will receive the appropriate change in sentence or credits and his or her release date will be corrected accordingly. If the credits awarded exceeds the length of time remaining on the prison term, the prisoner will be entitled to release. Any excess credits will then be deducted from the prisoner's parole.²¹ This deduction will be made from the controlling parole discharge date (for most prisoners this is the three-year discharge date; it is not the presumptive early discharge date). An award of credits applied to the parole term will not allow a prisoner to avoid re-incarceration on a new parole violation, unless the maximum discharge date expires before the end of the revocation term.²²

¹⁸ 15 CCR § 3084.7(h)(2)(D).

¹⁹ 15 CCR § 3084.7(h)(2)(F).

²⁰ Ibid.

²¹ In re Reina (1985) 171 Cal.App.3d 638, 650 [217 Cal.Rptr. 535]; In re Ballard (1981) 115 Cal.App.3d 647 [171 Cal.Rptr.459].

²² In re Monterrosa (1987) 193 Cal.App.3d 851 [238 Cal.Rptr. 535].