

RESOLUTION 09-02-2013

DIGEST

Criminal Law: Increase in Credit Per Day of Custody from \$30 to \$100 Per Day

Amends Penal Code sections 1205 and 2900.5 to increase the rate of credit for incarceration against criminal fines from \$30 to \$100 per day.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to Resolution 02-12-2008 which was approved in principle.

Reasons:

This resolution amends Penal Code sections 1205 and 2900.5 to increase the rate of credit for incarceration against criminal fines from \$30 to \$100 per day. This resolution should be approved in principle because it represents a reasonable increase in the credit for time served to account for inflation.

A criminal defendant may choose, or a court may order a defendant, to serve jail time in lieu of paying a criminal fine. For example, Penal Code section 1205, subdivision (a), provides that if a fine is imposed as part of a sentence, the defendant may be “imprisoned until the fine is satisfied” at a rate of \$30 per day. Similarly, Penal Code section 2900.5, subdivision (a), provides that where a defendant serves time in custody as part of a sentence after a conviction, after the time served is credited toward the period of confinement imposed by the court, the remaining time shall be credited toward any fine at a rate of \$30 per day. Current law allows a defendant to “pay off” a criminal fine by serving jail time at the rate of thirty dollars per day. The resolution would increase the credit to \$100 per day. The thirty dollar per day credit was established 37 years ago, in 1976, and has never been increased. According to the Consumer Price Index Calculator on the United States Department of Labor Bureau of Labor Statistics website, \$30.00 in 1976 is worth approximately \$122.73 in today’s dollars. At the time the law was enacted, \$30.00 was equivalent to working 12 hours at a minimum wage job. The minimum wage in California is currently \$8.00 per hour and there is legislation pending before the California Legislature to raise that amount. Thus, \$100 per day credit would be equivalent to working approximately 12 hours in today’s market. Therefore, an increase in the credit for time served is reasonable.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend Penal Code section 1205 and section 2900.5 to read as follows:

- 1 §1205
- 2 (a) A judgment that the defendant pay a fine, with or without other punishment, may also
- 3 direct that he or she be imprisoned until the fine is satisfied and may further direct that the
- 4 imprisonment begin at and continue after the expiration of any imprisonment imposed as a part
- 5 of the punishment or of any other imprisonment to which the defendant may have been

6 sentenced. The judgment shall specify the term of imprisonment for nonpayment of the fine,
7 which shall not be more than one day for each ~~thirty dollars (\$30)~~ hundred dollars (\$100) of the
8 fine, nor exceed the term for which the defendant may be sentenced to imprisonment for the
9 offense of which he or she has been convicted. A defendant held in custody for nonpayment of a
10 fine shall be entitled to credit on the fine for each day he or she is held in custody, at the rate
11 specified in the judgment. When the defendant has been convicted of a misdemeanor, a judgment
12 that the defendant pay a fine may also direct that he or she pay the fine within a limited time or
13 in installments on specified dates, and that in default of payment as stipulated he or she be
14 imprisoned in the discretion of the court either until the defaulted installment is satisfied or until
15 the fine is satisfied in full; but unless the direction is given in the judgment, the fine shall be
16 payable.

17 (b) Except as otherwise provided in case of fines imposed, as a condition of probation,
18 the defendant shall pay the fine to the clerk of the court, or to the judge if there is no clerk, unless
19 the defendant is taken into custody for nonpayment of the fine, in which event payments made
20 while he or she is in custody shall be made to the officer who holds the defendant in custody, and
21 all amounts paid shall be paid over by the officer to the court that rendered the judgment. The
22 clerk shall report to the court every default in payment of a fine or any part of that fine, or if
23 there is no clerk, the court shall take notice of the default. If time has been given for payment of
24 a fine or it has been made payable in installments, the court shall, upon any default in payment,
25 immediately order the arrest of the defendant and order him or her to show cause why he or she
26 should not be imprisoned until the fine or installment is satisfied in full. If the fine or installment
27 is payable forthwith and it is not paid, the court shall, without further proceedings, immediately
28 commit the defendant to the custody of the proper officer to be held in custody until the fine or
29 installment is satisfied in full.

30 (c) This section applies to any violation of any of the codes or statutes of this state
31 punishable by a fine or by a fine and imprisonment.

32 (d) Nothing in this section shall be construed to prohibit the clerk of the court, or the
33 judge if there is no clerk, from turning these accounts over to another county department or a
34 collecting agency for processing and collection.

35 (e) The defendant shall pay to the clerk of the court or the collecting agency a fee for the
36 processing of installment accounts. This fee shall equal the administrative and clerical costs, as
37 determined by the board of supervisors, or by the court, depending on which entity administers
38 the account. The defendant shall pay to the clerk of the court or the collecting agency the fee
39 established for the processing of the accounts receivable that are not to be paid in installments.
40 The fee shall equal the administrative and clerical costs, as determined by the board of
41 supervisors, or by the court, depending on which entity administers the account, except that the
42 fee shall not exceed thirty dollars (\$30).

43 (f) This section shall not apply to restitution fines and restitution orders.

1 §2900.5

2 (a) In all felony and misdemeanor convictions, either by plea or by verdict, when the
3 defendant has been in custody, including, but not limited to, any time spent in a jail, camp, work
4 furlough facility, halfway house, rehabilitation facility, hospital, prison, juvenile detention
5 facility, or similar residential institution, all days of custody of the defendant, including days
6 served as a condition of probation in compliance with a court order, credited to the period of
7 confinement pursuant to Section 4019, and days served in home detention pursuant to Section

8 1203.018, shall be credited upon his or her term of imprisonment, or credited to any fine on a
9 proportional basis, including, but not limited to, base fines and restitution fines, which may be
10 imposed, at the rate of not less than ~~thirty dollars (\$30)~~ hundred dollars (\$100) per day, or more,
11 in the discretion of the court imposing the sentence. If the total number of days in custody
12 exceeds the number of days of the term of imprisonment to be imposed, the entire term of
13 imprisonment shall be deemed to have been served. In any case where the court has imposed
14 both a prison or jail term of imprisonment and a fine, any days to be credited to the defendant
15 shall first be applied to the term of imprisonment imposed, and thereafter the remaining days, if
16 any, shall be applied to the fine on a proportional basis, including, but not limited to, base fines
17 and restitution fines.

18 (b) For the purposes of this section, credit shall be given only where the custody to be
19 credited is attributable to proceedings related to the same conduct for which the defendant has
20 been convicted. Credit shall be given only once for a single period of custody attributable to
21 multiple offenses for which a consecutive sentence is imposed.

22 (c) For the purposes of this section, "term of imprisonment" includes any period of
23 imprisonment imposed as a condition of probation or otherwise ordered by a court in imposing
24 or suspending the imposition of any sentence, and also includes any term of imprisonment,
25 including any period of imprisonment prior to release on parole and any period of imprisonment
26 and parole, prior to discharge, whether established or fixed by statute, by any court, or by any
27 duly authorized administrative agency.

28 (d) It shall be the duty of the court imposing the sentence to determine the date or dates of
29 any admission to, and release from, custody prior to sentencing and the total number of days to
30 be credited pursuant to this section. The total number of days to be credited shall be contained in
31 the abstract of judgment provided for in Section 1213.

32 (e) It shall be the duty of any agency to which a person is committed to apply the credit
33 provided for in this section for the period between the date of sentencing and the date the person
34 is delivered to the agency.

35 (f) If a defendant serves time in a camp, work furlough facility, halfway house,
36 rehabilitation facility, hospital, juvenile detention facility, similar residential facility, or home
37 detention program pursuant to Section 1203.016, 1203.017, or 1203.018, in lieu of imprisonment
38 in a county jail, and the statute under which the defendant is sentenced requires a mandatory
39 minimum period of time in jail, the time spent in these facilities or programs shall qualify
40 as mandatory time in jail.

41 (g) Notwithstanding any other provision of this code as it pertains to the sentencing of
42 convicted offenders, nothing in this section is to be construed as authorizing the sentencing of
43 convicted offenders to any of the facilities or programs mentioned herein.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Monterey County Bar Association

STATEMENT OF REASONS

The Problem: The minimum amount of money to be imposed per day to satisfy a fine in Penal Code Section 1205, and the minimum credit to be given for time in jail under Penal Code section 2900.5, has not been changed since 1976. In inflation adjusted dollars, that is equivalent to about

\$120 today. In counties which give only minimum credit, people are spending four times the amount of time in jail believed reasonable in 1976. This disproportion sentence is needlessly increasing the county jail population at a time where AB109's Realignment has brought undue population pressure on our local jails, where such bed space should be reserved for those serving more serious offenses instead of just paying off their fines.

This Solution: Changing the minimum amount per day in Penal Code section 1205 (a) and section 2900.5 (a) to \$100 would keep up with inflation since the amount was last adjusted in the 1970s. The Legislature has recently raised threshold amounts throughout the penal code to reflect this inflationary affect, like Penal Code section 487 (a) which now requires the theft of \$950 or more to be considered grand theft. While some courts are already assessing this amount, because the \$30 a day is just a minimum, achieving a standard amount throughout the state would ensure an even and just application of law among all the jurisdictions. Raising the amount will also ensure that those defendants who choose to do jail time to pay off their fines receive a proportion sentence properly adjusted for inflation, but do not needlessly take up jail space from those defendants who should be incarcerated for much more serious crimes under AB109's Realignment scheme.

LEGISLATIVE HISTORY

Not known

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

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