

RESOLUTION 06-02-2014 (as amended)

DIGEST

Criminal Fines: Credit for Time Spent Incarcerated

Amends Penal Code sections 1205 and 2900.5 to increase the rate of credit for incarceration against criminal fines from a minimum of \$30.00 per day to \$125.00 per day.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Identical to Resolution 09-02-2013, which was approved in principle. 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 a minimum of \$30.00 per day to \$125.00 per day. This resolution should be approved in principle because it represents a reasonable increase in the credit to allow for inflation.

A criminal defendant may choose or be ordered to serve jail time in lieu of paying a criminal fine, or be allowed to credit time spent incarcerated against the payment of a fine. The rate of credit was set in 1976 at a minimum of \$30.00 per day of incarceration, and there has been no subsequent adjustment for inflation. It is agreed by practitioners that in most counties the “minimum” has since become the “actual” amount credited.

The failure to adjust the rate of credit for more than 40 years hurts poor defendants more than better-off defendants, because they are less likely to be able to post bail, will spend more time incarcerated awaiting a hearing, and their credit for time incarcerated has not kept pace with inflation of fines. It also increases jail overcrowding, because some people cannot pay their fines and must serve time in jail to satisfy their judgment. Thirty dollars (\$30.00) in 1976 had the same buying power as one hundred and twenty-five dollars (\$125.00) in 2014, according to the Bureau of Labor Statistics. This resolution will adjust for the inflation that has occurred since 1976.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to add amend Penal Code sections 1205 and 2900.5 to read as follows:

§ 1205

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

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

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

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

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

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

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

43
44 § 2900.5

45 (a) In all felony and misdemeanor convictions, either by plea or by verdict, when the
46 defendant has been in custody, including, but not limited to, any time spent in a jail, camp, work
47 furlough facility, halfway house, rehabilitation facility, hospital, prison, juvenile detention
48 facility, or similar residential institution, all days of custody of the defendant, including days
49 served as a condition of probation in compliance with a court order, credited to the period of
50 confinement pursuant to Section 4019, and days served in home detention pursuant to Section
51 1203.018, shall be credited upon his or her term of imprisonment, or credited to any fine,
52 including, but not limited to, base fines, on a proportional basis, that may be imposed, at the rate
53 of not less than ~~thirty dollars (\$30)~~ one hundred twenty-five dollars (\$125.00) per day, or more,
54 in the discretion of the court imposing the sentence.

55 (b) For the purposes of this section, credit shall be given only where the custody to be
56 credited is attributable to proceedings related to the same conduct for which the defendant has
57 been convicted. Credit shall be given only once for a single period of custody attributable to

58 multiple offenses for which a consecutive sentence is imposed.

59 (c) For the purposes of this section, “term of imprisonment” includes any period of
60 imprisonment imposed as a condition of probation or otherwise ordered by a court in imposing
61 or suspending the imposition of any sentence, and also includes any term of imprisonment,
62 including any period of imprisonment prior to release on parole and any period of imprisonment
63 and parole, prior to discharge, whether established or fixed by statute, by any court, or by any
64 duly authorized administrative agency.

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

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

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

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

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Current penal code sections 1205(a) and 2900.5(a) set the amount of “fine money” a defendant gets for each day of credit he has served in jail. The statute sets a “minimum” of \$30 for each day served. In other words, if a defendant serves four days in jail after his arrest for drunk driving, comes to his arraignment and is offered a fine in lieu of jail time (i.e., \$1200) he gets “credit” of \$120 (4 days jail x \$30 a day = \$120).

The problem is that the “minimum” has become the ONLY amount credited to the fine by judges. In addition, the “minimum” was set back when the statute was originally written (forty years ago) and hasn’t been adjusted for inflation (for example at \$30 a day, each defendant is receiving credit of about \$1.25 for each hour they spent in jail). Additionally, fine amounts have substantially increased while the amount credited to fines by jail custody time has remained flat. Poor defendants are disproportionately impacted by this since they do not have the money to post bail, and they accumulate more excess days of jail time than someone who can afford to post bail.

The Solution: This resolution would revise the language of §§ 1205 and 2900.5 to reflect a new “minimum” of \$125, taking into account the costs of inflation as well as the increase in fine amounts since the statute was originally enacted.

LEGISLATIVE HISTORY

Not known.

IMPACT STATEMENT

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

AUTHOR AND/OR PERMANENT CONTACT: Robin Bernstein-Lev, Los Angeles County Public Defender's Office, 320 W. Temple Street, Suite 590, Los Angeles, CA 90012; (213) 893-2545; rbernstein-lev@pubdef.lacounty.gov

RESPONSIBLE FLOOR DELEGATE: Jeanmarie Warren