

## RESOLUTION 06-11-2017

### DIGEST

#### Prisoners: Credit for Good Behavior

Amends Penal Code Section 4019 to credit two days for every one day of time served.

### RESOLUTION COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Penal Code Section 4019 to credit two days for every one day of time served. This resolution should be approved in principle because the current scheme is not equitable in its distribution and treatment of inmates, and is often confusing.

Determining credits for time served under Penal Code section 4019 can result in strange and inconsistent outcomes. Under the current system, inmates sentenced between one and three days serve their complete time in custody. However, an inmate sentenced to four days in custody only serves two days because good time credits allow the inmate to be released earlier. This system creates a perverse incentive for defendants to request a four or five-day sentence as opposed to a three-day sentence.

The current language also poses issues for defendants who are released from custody prior to reaching the four-day mark who are then picked back up for other potential violations (e.g. violation of probation terms). This creates confusion as to how time credits will be added together. If the defendant spends one day in custody on the first detention and three on the next, it is unclear whether the combined days equal four days for the purpose of this statute.

An attorney may not know the total time an inmate is entitled to because of confusion about the definition of confinement. Determining the how much time was served is often difficult because the current statutory language is unclear on how to determine the impact of a new violation prior to sentencing. Questions might arise, for example, regarding whether confinement is determined by the total time an inmate was in custody prior to sentencing or if it is broken up into discrete time periods based on how long the inmate was in custody prior to being released.

In addition, under the current language, it is not clear if a violation between terms of confinement impacts the calculation. Stripping the “four for two” language, as is proposed in the resolution, and replacing it with the more straightforward approach that for each day served on good behavior, a second day of credit will be granted (2 for 1), is a simpler calculation than what currently exists, will not result in perverse outcomes, and is less likely to result in math errors.

## TEXT OF RESOLUTION

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 4019 to read as follows:

1 § 4019

2 (a) The provisions of this section shall apply in all of the following cases:

3 (1) When a prisoner is confined in or committed to a county jail, industrial farm, or road  
4 camp, or any city jail, industrial farm, or road camp, including all days of custody from the date  
5 of arrest to the date on which the serving of the sentence commences, under a judgment of  
6 imprisonment, or a fine and imprisonment until the fine is paid in a criminal action or  
7 proceeding.

8 (2) When a prisoner is confined in or committed to the county jail, industrial farm, or  
9 road camp or any city jail, industrial farm, or road camp as a condition of probation after  
10 suspension of imposition of a sentence or suspension of execution of sentence, in a criminal  
11 action or proceeding.

12 (3) When a prisoner is confined in or committed to the county jail, industrial farm, or  
13 road camp or any city jail, industrial farm, or road camp for a definite period of time for  
14 contempt pursuant to a proceeding, other than a criminal action or proceeding.

15 (4) When a prisoner is confined in a county jail, industrial farm, or road camp, or a city  
16 jail, industrial farm, or road camp following arrest and prior to the imposition of sentence for a  
17 felony conviction.

18 (5) When a prisoner is confined in a county jail, industrial farm, or road camp, or a city  
19 jail, industrial farm, or road camp as part of custodial sanction imposed following a violation of  
20 postrelease community supervision or parole.

21 (6) When a prisoner is confined in a county jail, industrial farm, or road camp, or a city  
22 jail, industrial farm, or road camp as a result of a sentence imposed pursuant to subdivision (h) of  
23 Section 1170.

24 (7) When a prisoner participates in a program pursuant to Section 1203.016 or Section  
25 4024.2. Except for prisoners who have already been deemed eligible to receive credits for  
26 participation in a program pursuant to Section 1203.016 prior to January 1, 2015, this paragraph  
27 shall apply prospectively.

28 (b) Subject to the provisions of subdivision (d), for each ~~four-day~~ period in which a  
29 prisoner is confined in or committed to a facility as specified in this section, one day shall be  
30 deducted from his or her period of confinement for each day served unless it appears by the  
31 record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff,  
32 chief of police, or superintendent of an industrial farm or road camp.

33 (c) For each ~~four-day~~ period in which a prisoner is confined in or committed to a facility  
34 as specified in this section, one day shall be deducted from his or her period of confinement for  
35 each day served unless it appears by the record that the prisoner has not satisfactorily complied  
36 with the reasonable rules and regulations established by the sheriff, chief of police, or  
37 superintendent of an industrial farm or road camp.

38 (d) This section does not require the sheriff, chief of police, or superintendent of an  
39 industrial farm or road camp to assign labor to a prisoner if it appears from the record that the  
40 prisoner has refused to satisfactorily perform labor as assigned or that the prisoner has not

41 satisfactorily complied with the reasonable rules and regulations of the sheriff, chief of police, or  
42 superintendent of any industrial farm or road camp.

43 ~~(e) A deduction shall not be made under this section unless the person is committed for a~~  
44 ~~period of four days or longer.~~

45 ~~(f) It is the intent of the Legislature that if all days are earned under this section, a term of~~  
46 ~~four days will be deemed to have been served for every two days spent in actual custody.~~

47 ~~(eg)~~ The changes in this section as enacted by the act that added this subdivision shall  
48 apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a  
49 crime committed on or after the effective date of that act.

50 ~~(fh)~~ The changes to this section enacted by the act that added this subdivision shall apply  
51 prospectively and shall apply to prisoners who are confined to a county jail, city jail, industrial  
52 farm, or road camp for a crime committed on or after ~~October 1, 2011~~. Any days earned by a  
53 prisoner prior to ~~October 1, 2011~~, shall be calculated at the rate required by the prior law.

54 ~~(gi)~~ This section shall not apply, and no credits may be earned, for periods of flash  
55 incarceration imposed pursuant to Section 3000.08 or 3454.

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

**PROPONENT:** Sacramento County Bar Association

### **STATEMENT OF REASONS**

The Problem: Currently, Penal Code section 4019 is interpreted differently within and among jurisdictions across California. It is not unusual for a criminal defendant to serve numerous distinct “periods” of incarceration before being sentenced. Sometimes, the “periods” are blocked together before good time/work time calculations are made. Sometimes they are not, resulting in multiple “periods” that may fall below the four day minimum. Although there is case law that seems to suggest that the “period” should include all non-contiguous separate times served in a case, litigating the issue will not help those impacted as they will have already served the additional, unnecessary days by the time the issue is resolved.

Additionally, there doesn’t seem to be any rational basis for having “four for two” credits instead of the simpler “two for one” system proposed in this resolution.

The Solution: This resolution seeks to amend Penal Code Section 4019 to simplify and clarify the law for criminal defendants, representatives of penal institutions, attorneys, and judges. It would also bring the statute in line with case law that interprets it.

Changing credits from “four for two” to “two for one” would ensure that all criminal defendants get credit for the time they have served, accruing one day of good time/work time credit for every one day actually served.

### **IMPACT STATEMENT**

This resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**

None known.

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