

# CREDIT FOR TIME SERVED

## I. DEFINITIONS

### a. Access to Freedom

- i. Whether the defendant could secure his/her freedom but for the restraints placed in the case under investigation.

### b. Attributable

- i. When the custody being served is caused by the offense under investigation.
- ii. A single period of confinement may or may not be attributable to more than one offense.

### c. Conduct Credits

- i. Also referred to as good-time credits.
- ii. Additional credit given for good behavior and/or performing assigned labor.

### d. Custody

- i. Deprivation of liberty pursuant to legal authority.
- ii. For purposes of credit, “custody” is to be broadly defined.<sup>1</sup>
- iii. The courts generally focus on such factors as the extent freedom of movement is restricted, regulations governing visitation, rules regarding personal appearance, and the rigidity of the program’s daily schedule. While no hard and fast rule can be derived from the cases, the concept of custody generally connotes a facility rather than a home. It includes some aspect of regulation of behavior. It also includes supervision in a structured life style.<sup>2</sup>
- iv. The custodial and restrictive nature of the facility determines what constitutes custody.<sup>3</sup>

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<sup>1</sup> *People v. Reinertson* (1986) 178 Cal.App.3d 320

<sup>2</sup> *Id.*

<sup>3</sup> *People v. Mord* (1988) 197 Cal.App.3d 1090

e. Actual Days

- i. Also referred to as custody credits.
- ii. The number of actual days the defendant spent in custody.

f. Post-Sentence Credits

- i. Credits earned after sentencing.

g. Pre-Sentence Credits

- i. Credits earned before sentencing.

h. Rule of Strict Causation

- i. A period of time previously credited against a sentence for unrelated cases is not attributable to a case that results in a later sentence, unless it is demonstrated that the defendant would not have been in custody but for the case resulting in the later sentence.<sup>4</sup>
- ii. In other words, the defendant has the burden to show that the case at issue was the cause of the incarceration, and but for this case, he would have been free from incarceration.<sup>5</sup>

## II. PURPOSE

- a. To encourage good behavior.<sup>6</sup>
- b. To discourage bad behavior.

“Since the purpose of good behavior credits is to act as an incentive for inmates not to misbehave, the Legislature intended that the sheriff not have to blind himself to the severity or frequency of the misconduct in determining the appropriate sanction.”<sup>7</sup>

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<sup>4</sup> *In re Joyner* (1989) 48 Cal.3d 487

<sup>5</sup> The mere assertion the defendant would have been granted bail in the second case is not sufficient. (*People v. Huff* (1990) 223 Cal.App.3d 1100; *People v. Odum* (1989) 211 Cal.App.3d 907.)

<sup>6</sup> *People v. Sage* (1980) 26 Cal.3d 498

<sup>7</sup> *People v. Johnson* (1981) 120 Cal.App.3d 808, 813

### III. AUTHORITY

#### a. U.S. Supreme Court

- i. Conduct credits are an important liberty interest of inmates.<sup>8</sup>
- ii. Denial of credit for pre-sentence custody results in a wealth-based discrimination against indigents who cannot afford bail.<sup>9</sup>
  1. This decision was widely understood to require that states grant credit for time served in custody before commitment.<sup>10</sup>

#### b. Statutes

- i. 2900.5 PC grants credit for pre-sentence custody in California.
- ii. 2933.1 PC authorizes conduct credits at a rate of 15% for time served in custody for violent felonies enumerated in 667.5(c) PC.
- iii. 2933.2 PC denies conduct credits for offenders convicted of murder.<sup>11</sup>
- iv. 4019 PC authorizes conduct credits for time served in custody.

#### c. Case Law

- i. The sentencing court is responsible for calculating the number of days the defendant has been in custody before sentencing and for reflecting the total credits allowed on the abstract of judgment.<sup>12</sup>
- ii. It is the responsibility of the California Department of Corrections to calculate post-sentence conduct credits.<sup>13</sup>

#### d. Rules of Court

- i. Judicial Council Rule 4.411.5(a)(11) requires the probation officer to provide detailed information in the investigation report regarding pre-sentence actual days and conduct credits.
- ii. Judicial Council Rule 4.472 requires the court to record the defendant's credit for time served at the time of sentencing.

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<sup>8</sup> *Wolff v. McDonnell* (1974) 418 U.S. 539

<sup>9</sup> *Williams v. Illinois* (1970) 399 U.S. 235

<sup>10</sup> See *In re Banks* (1979) 88 Cal.App.3d 864, 867

<sup>11</sup> This includes probation grants. (*People v. Moon* (2011) 193 Cal.App.4th 1246.)

<sup>12</sup> 2900.5(d) PC; *People v. Tinker* (2013) 212 Cal.App. 4th 1502; *People v. Black* (2009) 176 Cal.App.4th 145, 154

<sup>13</sup> 2900.5(e) PC; *People v. Buckhalter* (2001) 26 Cal.4th 20

## IV. PRE-SENTENCE CREDIT COMPUTATION

### 1. STEP ONE: DETERMINE ACTUAL DAYS IN CUSTODY

#### a. Determine Whether Defendant Was in Custody

The following settings constitute custody:

- i. Jail<sup>14</sup>
- ii. Work Release Program<sup>15</sup>
- iii. Electronic Monitoring<sup>16</sup>
- iv. Residential Treatment Program
  1. Qualifies as custody if:
    - a. Court-ordered as a condition of release (own recognizance).<sup>17</sup>
    - b. Court-ordered or directed by probation.<sup>18</sup>
    - c. Court-ordered as a condition of probation under 1210.1 PC.<sup>19</sup>
    - d. Treatment program is custodial (e.g., RSAT)<sup>20</sup>
  2. Does not qualify as custody:
    - a. Voluntary residential treatment<sup>21</sup>
    - b. Outpatient treatment<sup>22</sup>
- v. State Hospital pursuant to 1368 PC<sup>23</sup>

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<sup>14</sup> 2900.5(a) PC; under *People v. Ravaux* (2006) 142 Cal.App.4th 914, time spent in police custody (detention) before the defendant is booked into a custodial facility does not qualify as custody.

<sup>15</sup> 4024.3(a) PC

<sup>16</sup> 2900.5(f) PC

<sup>17</sup> *People v. Mobley* (1983) 139 Cal.App.3d 320

<sup>18</sup> 2900.5(a) PC; see *People v. Darnell* (1990) 224 Cal. App. 3d 806

<sup>19</sup> *People v. Davenport* (2007) 148 Cal.App.4th 240

<sup>20</sup> *People v. Palazuelos* (1986) 180 Cal.App.3d 962

<sup>21</sup> *People v. Tafoya* (1987) 194 Cal.App.3d Supp. 1

<sup>22</sup> *People v. Ambrose* (1992) 7 Cal.App.4th 1917; *People v. Schnaible* (1985) 165 Cal.App.3d 275

<sup>23</sup> Applies to inpatient and outpatient state hospital time. (*People v. Bryant* (2009) 174 Cal.App.4th 175; *People v. Cowsar* (1974) 40 Cal.App.3d 578.)

- vi. Diagnostic Evaluation pursuant to 1203.03 PC<sup>24</sup>
- vii. Juvenile Detention Facility<sup>25</sup>

b. Rules for Computation

- i. Defendant will receive one full day of credit for one day of custody.<sup>26</sup>
- ii. Defendant will receive pre-sentence actual days for partial days.
  - 1. Defendant is entitled to credit for each day of custody, including the first day and the date of sentencing.<sup>27</sup>
  - 2. Defendant will receive one day of credit for any full day in custody and for any portion of a day in custody.<sup>28</sup>
- iii. Custody does not need to be continuous, and separate periods of custody are to be added together.<sup>29</sup>
- iv. Custody must be attributable to the case at issue.<sup>30</sup>
- v. If defendant has multiple cases:
  - 1. Defendant is entitled to pre-sentence actual days in each case where concurrent sentences are imposed at the same time for unrelated crimes, provided he is not also in post-sentence custody for another crime.<sup>31</sup>

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<sup>24</sup> 1203.03(g) PC; applies even when the defendant is serving a sentence on another case during the time of the diagnostic study. (*People v. Gibbs* (1991) 228 Cal.App.3d 420; *People v. Engquist* (1990) 218 Cal.App.3d 228.)

<sup>25</sup> 2900.5(a) PC

<sup>26</sup> *In re Jackson* (1986) 182 Cal.App.3d 439

<sup>27</sup> *People v. Bravo* (1990) 219 Cal.App.3d 729; *People v. Fugate* (1990) 219 Cal.App.3d 1408

<sup>28</sup> *In re Jackson*, fn. 26, supra.

<sup>29</sup> *People v. Culp* (2002) 100 Cal.App.4th 1278

<sup>30</sup> 2900.5(b) PC; *People v. Brown* (1980) 107 Cal.App.3d 858, 863 analyzed the meaning of the phrase “attributable to proceedings related to the same conduct for which the defendant has been convicted” as follows: “‘What is the reason or cause of the defendant’s confinement?’ Why is the defendant confined? The answer where defendant is already under prison sentence while he awaits a trial in another matter is that defendant is confined because under prior sentence, not because he has been charged with a new offense. ... The answer where defendant is serving county jail time as a condition of probation is the same as where he is under prison sentence. ... If defendant is neither serving probation time nor serving a prison sentence, then the proceedings causing that custody must be determined and credit applied against the sentence in that proceeding. Several separate judicial proceedings may be pending against the defendant simultaneously creating a dual basis for custody and credit would then be appropriately applied against each of those matters unless consecutive sentences are imposed.”

<sup>31</sup> *People v. Kunath* (2012) 203 Cal.App.4th 906; *People v. Jacobs* (2013) 220 Cal.App.4th 220

2. Defendant is not entitled to overlapping pre-sentence actual days where consecutive sentences are imposed for unrelated crimes.<sup>32</sup>

c. Method of Computation

- i. If defendant has multiple cases, work on one case at a time.
- ii. Determine the arrest and release dates from available sources.
  1. Sheriff's jail records<sup>33</sup>
  2. Court case print
  3. Crime report
  4. CII printout
  5. Defendant
- iii. Determine which custody periods are attributable to the case in issue.
  1. Any custody time served before the offense in the case in issue was committed does not apply.
  2. Sources to determine attributability of custody time served after the offense was committed:
    - a. Court case print
    - b. Sheriff's jail records
- iv. Use your favorite tool to compute the actual days spent in custody for each period of custody.
  1. Excel spreadsheet<sup>34</sup>
  2. Date-To-Date calculator, available at [www.timeanddate.com](http://www.timeanddate.com)<sup>35</sup>
  3. Apps

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<sup>32</sup> "Credit shall be given only once for a single period of custody attributable to multiple offenses for which a consecutive sentence is imposed." (2900.5(b) PC.) (See *People v. Brown*, supra, at p. 863.)

<sup>33</sup> E.g., Jail Information Management System (JIMS), Sheriff's Data Warehouse, public jail inmate locator, etc.

<sup>34</sup> E.g., CTS Calculator 8.4

<sup>35</sup> Make sure to check "include end date in calculation" to include the date of arrest.

- 4. Julian calendar (for manual calculations)
- v. Add the computed actual days for each custody period together.
  - 1. The result is the defendant's pre-sentence actual days in the case in issue.
- vi. Repeat steps (i.) to (v.) for each additional case to determine the actual days for each case.

d. Review Problems

i. Basic

1. On 1 \_\_\_\_\_, law enforcement officers arrested \_\_\_\_\_ for a violation of 496d(a) PC and booked him into county jail. On \_\_\_\_\_, the district attorney's office filed charges in count 1: 496d(a) PC. On \_\_\_\_\_, \_\_\_\_\_ pled guilty to the charges in count 1. His attorney asked you to calculate his actual days in custody.

2. \_\_\_\_\_ was arrested on \_\_\_\_\_ for a violation of 187(a) PC (1st Degree), which he allegedly committed on \_\_\_\_\_. \_\_\_\_\_ is currently in custody. His JIMS printout shows the following:

<u>BOOKING #</u>	<u>ARREST</u>	<u>RELEASE</u>	<u>CODE</u>
	01/17/2017		

Today is January 30, 2018.

What are \_\_\_\_\_ actual days in custody?

3. On \_\_\_\_\_, law enforcement officers arrested \_\_\_\_\_ for a violation of 10851(a) VC and booked her into county jail. The district attorney's office filed charges in count 1: 10851(a) VC, and the matter was set for arraignment for \_\_\_\_\_. On the day of arraignment, a felony settlement conference was set for \_\_\_\_\_. On \_\_\_\_\_, \_\_\_\_\_ was federally released. She appeared in court on \_\_\_\_\_ and pled guilty to her charges in count 1. The judge asked you to calculate actual days in custody.

ii. Complex

1. On \_\_\_\_\_, law enforcement officers arrested \_\_\_\_\_ for a violation of 211 PC and booked him into county jail. On \_\_\_\_\_, the district attorney's office filed charges in count 1: 211 PC. On \_\_\_\_\_, at arraignment, \_\_\_\_\_ was released on supervised O.R., and a felony settlement conference was set for \_\_\_\_\_. On \_\_\_\_\_, \_\_\_\_\_ failed to appear, and the judge issued a bench warrant. On \_\_\_\_\_, \_\_\_\_\_ was arrested and appeared in court on \_\_\_\_\_. He remained in custody until \_\_\_\_\_, when he pled guilty to the charges in count 1. What are \_\_\_\_\_ actual days in custody?

2. \_\_\_\_\_, in custody for 459 PC (2nd Degree) in case \_\_\_\_\_, has the following JIMS printout:

<u>BOOKING #</u>	<u>ARREST</u>	<u>RELEASE</u>	<u>CODE</u>
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The offense in \_\_\_\_\_ occurred on \_\_\_\_\_ does not have any other cases. Today is 09/14/2017.

What are \_\_\_\_\_ actual days in custody?

3. \_\_\_\_\_, in custody for 211 PC in case \_\_\_\_\_, has the following JIMS printout:

<u>BOOKING #</u>	<u>ARREST</u>	<u>RELEASE</u>	<u>CODE</u>
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The offense in \_\_\_\_\_ occurred on \_\_\_\_\_. attorney told you \_\_\_\_\_ spent some time in the state hospital. Today is 01/30/2018.

What are \_\_\_\_\_ actual days in custody?

iii. Nightmare

1. committed a violation of 459 PC (2nd Degree), was arrested on , and case was filed. On , she was federally released. On 1 , she was arrested for a violation of 23153(a) VC in County and was booked into county jail. While awaiting a disposition in her County DUI matter, a bench warrant was issued in Riverside court on in . County issued a warrant hold for the Riverside warrant on . remained in County custody until , when her DUI was dismissed. County transported her back to Riverside on the outstanding warrant. Her JIMS printout is as follows:

<u>BOOKING #</u>	<u>ARREST</u>	<u>RELEASE</u>	<u>CODE</u>
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Today is 01/30/2018.

What are actual days in custody in ?

2. On , was convicted of two counts of 10851(a) VC and one count of 11377(a) H&S, committed on . He was granted 36 months formal probation with 180 days of custody, 176 days to be served through the Work Release Program. On , his Work Release Program was terminated, after having served 10 actual days. On appeared in court, and his Work Release Program was reinstated and modified to electronic monitoring. served 9 actual days in the electronic monitoring program before he was terminated. On , the court issued a warrant based on failing to appear for a violation of probation. On was arrested. JIMS shows:

<u>BOOKING #</u>	<u>ARREST</u>	<u>RELEASE</u>	<u>CODE</u>
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Today is 01/30/2018.

attorney would like to know total actual days in custody in this matter.

3. On 1 \_\_\_\_\_, \_\_\_\_\_ was convicted of two counts of 459 PC (2nd Degree), one count of 594(a) PC, and one count of 11377(a) H&S. The offense occurred on \_\_\_\_\_. She was granted 36 months formal probation with 180 days of custody, 135 days to be served through the Work Release Program. \_\_\_\_\_ failed to appear on commencement day of her Work Release Program and never checked in with Probation. The court issued a warrant, which led to \_\_\_\_\_ arrest on \_\_\_\_\_. \_\_\_\_\_ lawyer, \_\_\_\_\_, is providing paperwork from Drugfree Recovery Center, a recognized and well-established residential treatment program, which shows \_\_\_\_\_ entered the program on \_\_\_\_\_. She has been there since her arrest. \_\_\_\_\_ is adamant \_\_\_\_\_ is entitled to actual days for the program.

JIMS printout shows:

<u>BOOKING #</u>	<u>ARREST</u>	<u>RELEASE</u>	<u>CODE</u>
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Today is 01/30/2018.

What are \_\_\_\_\_ actual days in custody?

## 2. STEP TWO: DETERMINE CONDUCT CREDITS

### a. Determine Custody Time that Qualifies for Conduct Credits

The following settings qualify for pre-sentence conduct credits:

- i. Jail<sup>36</sup>
- ii. Work Release Program<sup>37</sup>
- iii. Electronic Monitoring<sup>38</sup>
- iv. Residential Treatment Program
  1. Qualifies for conduct credits if:
    - a. Court-ordered as a condition of release (own recognizance).<sup>39</sup>
    - b. Treatment program is custodial (e.g., RSAT)<sup>40</sup>
  2. Does not qualify for conduct credits:
    - a. Voluntary residential treatment<sup>41</sup>
    - b. Outpatient treatment<sup>42</sup>
- v. State Hospital pursuant to 1368 PC
  1. Qualifies for conduct credits if the defendant is serving time in the state hospital for determining competency.<sup>43</sup>
  2. Does not qualify for conduct credits if the defendant is serving time in the state hospital for treatment (i.e., to restore competency).<sup>44</sup>

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<sup>36</sup> 4019(a) PC

<sup>37</sup> 4019(a)(7) PC; applies retrospectively since January 1, 2015.

<sup>38</sup> *Id.*

<sup>39</sup> *People v. Mobley* (1983) 139 Cal.App.3d 320

<sup>40</sup> *People v. Palazuelos* (1986) 180 Cal.App.3d 962

<sup>41</sup> *People v. Tafoya* (1987) 194 Cal.App.3d Supp. 1

<sup>42</sup> *People v. Ambrose* (1992) 7 Cal.App.4th 1917; *People v. Schnaible* (1985) 165 Cal.App.3d 275

<sup>43</sup> *People v. Waterman* (1986) 42 Cal.3d 565

<sup>44</sup> *People v. Callahan* (2006) 144 Cal.App.4th 678, 686-687; *People v. Buckhalter* (2001) 26 Cal.4th 20, fn. 6

- vi. Diagnostic evaluation pursuant to 1203.03 PC<sup>45</sup>
- vii. Juvenile Offenders
  - 1. Minors prosecuted under juvenile law are not entitled to conduct credit.<sup>46</sup>
  - 2. A minor committed to DJJ on a juvenile commitment does not receive conduct credit.<sup>47</sup>
  - 3. Minors committed to state prison do receive conduct credit.<sup>48</sup>
  - 4. Minors committed to DJJ for a 707.2 WIC evaluation before state prison sentences do receive conduct credit.<sup>49</sup>

b. Determine the Appropriate Formula<sup>50</sup>

- i. 4019 PC (Traditional Formula)
  - 1. Applies to crimes and violations of probation sentenced before January 25, 2010, to the extent that custody time was served before that date.
  - 2. Six days are deemed to have been served for every four days in actual custody.<sup>51</sup>
  - 3. Conduct credit will only be earned if the defendant is committed to custody for at least six days.<sup>52</sup>
  - 4. Algorithm for Traditional Formula (33%)

x = actual days  
 y = conduct credits  
 z = total credits

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<sup>45</sup> 1203.03(g) PC; *People v. Gibbs* (1991) 228 Cal.App.3d 420; *People v. Goodson* (1990) 226 Cal.App.3d 277; *People v. Engquist* (1990) 218 Cal.App.3d 228; *People v. Duran* (1983) 147 Cal.App.3d 1186

<sup>46</sup> *People v. Linear* (1988) 203 Cal.App.3d 508

<sup>47</sup> *Id.*

<sup>48</sup> *People v. Twine* (1982) 135 Cal.App.3d 59

<sup>49</sup> *People v. Garcia* (1987) 195 Cal.App.3d 191

<sup>50</sup> Various legislative changes to 4019 PC spawned four different formulas for the calculation of conduct credits, all of which are still in effect for their respective dates of applicability. In *People v. Brown* (2012) 54 Cal.4th 314, the California Supreme Court ruled the conduct credit changes are to be applied prospectively. Thus, the defendant is to receive conduct credit based on the law effective when the offense was committed.

<sup>51</sup> *People v. Dieck* (2009) 46 Cal.4th 934

<sup>52</sup> *Id.*

$$y = 2 \left( \downarrow \frac{x}{4} \right)$$

$$z = x + y$$

- a. Divide actual days by 4, round down to the nearest whole number, multiply by 2 = conduct credits
  - b. Conduct credits will always be an even number.
  - c. Add the actual days and the conduct credits to obtain the defendant's total credit for time served.
- ii. 4019 PC (Enhanced Formula)
1. Applies to crimes or violations of probation sentenced before January 25, 2010, to the extent that custody time was served after that date, and to crimes and violations of probation committed between January 25, 2010 and September 27, 2010.
  2. Four days are deemed to have been served for every two days in actual custody.
  3. Conduct credit will only be earned if the defendant is committed to custody for at least four days.
  4. Exclusions
    - a. Offenders with a current or prior conviction of serious and/or violent felonies<sup>53</sup>
    - b. 290 registrants
  5. Algorithm for Enhanced Formula (50%)

x = actual days  
y = conduct credits  
z = total credits

$$y = 2 \left( \downarrow \frac{x}{2} \right)$$

$$z = x + y$$

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<sup>53</sup> Under *People v. Lara* (2012) 54 Cal.4th 896, the prior conviction need not be pled and proven.

- a. Divide actual days by 2, round down to the nearest whole number, multiply by 2 = conduct credits
  - b. Conduct credits will always be an even number.
  - c. Add the actual days and the conduct credits to obtain the defendant's total credit for time served.
- iii. 4019 PC (Reverted Formula)
1. Reverts to the traditional formula.<sup>54</sup>
  2. Applies to crimes and violations of probation committed between September 28, 2010 and September 30, 2011.
  3. Amended the Penal Code to include Section 2933(e).<sup>55</sup>
- iv. 4019 PC (Current Formula)
1. The current language of 4019 PC is effective since October 1, 2011.<sup>56</sup>
  2. Applies to crimes and violations of probation committed on or after October 1, 2011.
  3. Four days are deemed to have been served for every two days in actual custody.<sup>57</sup>
  4. Conduct credit will only be earned if the defendant is committed to custody for at least four days.<sup>58</sup>
  5. Exclusions
    - a. Offenders whose current conviction is a violent felony under 667.5(c) PC and who are sentenced to state prison are not eligible to earn conduct credits under 4019 PC.<sup>59</sup>

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<sup>54</sup> See "4019 PC (Traditional Formula)," *supra*, page 13.

<sup>55</sup> See "2933(e) PC," *infra*, page 18.

<sup>56</sup> In 2011, Governor Edmund G. Brown Jr. signed Assembly Bill 109, historic legislation aimed at reducing prison overcrowding, costs, and recidivism. Implementation of the 2011 Realignment Legislation began October 1, 2011.

<sup>57</sup> This includes one day of conduct credit under 4019(b) PC, in addition to one day of conduct credit under 4019(c) PC, for a total of two days of conduct credit for every four days in actual custody.

<sup>58</sup> 4019(e) PC; in *People v. Whitaker* (2015) 238 Cal.App.4th 1354, 1361, the court held a defendant must "...serve two days of actual custody in order to be entitled to two days of credit for his conduct."

<sup>59</sup> 2933.1(c) PC; under *In re Mitchell* (2000) 81 Cal.App.4th 653, the limitation does not apply to conspiracy to commit an enumerated violent felony.

- b. Offenders whose current conviction falls under 187 PC are not eligible to earn conduct credits.<sup>60</sup>
- c. Offenders with at least two priors for a specified felony and whose current conviction is a specified felony are not eligible to earn conduct credits.<sup>61</sup>

6. Algorithm for the Current Formula (50%)

x = actual days  
y = conduct credits  
z = total credits

$$y = 2 \left( \downarrow \frac{x}{2} \right)$$

$$z = x + y$$

- a. Divide actual days by 2, round down to the nearest whole number, multiply by 2 = conduct credits<sup>62</sup>
- b. Conduct credits will always be an even number.
- c. Add the actual days and the conduct credits to obtain the defendant's total credit for time served.

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<sup>60</sup> 2933.2(a) PC; see fn. 64, *infra*.

<sup>61</sup> 2933.5 PC; see "2933.5 PC," *infra*, page 19.

<sup>62</sup> *People v. Whitaker*, *supra*; *In re Marquez* (2003) 30 Cal.4th 14

v. 2933.1 PC

1. Effective since September 21, 1994.
2. A defendant convicted of a violent felony listed in 667.5(c) PC and sentenced to state prison may not accrue more than 15% of credit.<sup>63</sup>
3. The credit limitation applies:
  - a. Even where not all charged offenses are violent felonies<sup>64</sup>
  - b. Even where the defendant is convicted of non-violent and violent felonies and punishment for the violent felonies is stayed<sup>65</sup>
  - c. Even where punishment for an enhancement giving rise to a violent felony is stricken (e.g., 245(a)(1) PC/12022.7(a) PC).<sup>66</sup>
  - d. To non-violent crimes if a defendant is in custody for both violent and non-violent offenses and sentenced to consecutive terms<sup>67</sup>
  - e. To non-violent crimes if a defendant is in custody for both violent and non-violent offenses and sentenced to concurrent terms<sup>68</sup>
4. The credit limitation does not apply:
  - a. Where a defendant is granted probation for a violent felony; however, when the defendant subsequently violates probation and is sentenced to state prison, his conduct credits are recalculated at 15%.<sup>69</sup>
  - b. To conspiracy to commit a listed violent felony<sup>70</sup>

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<sup>63</sup> 2933.1(a) PC; under 2933.1(c) PC, this limitation also applies to pre-sentence conduct credits under 4019 PC

<sup>64</sup> In *People v. Duran* (1998) 67 Cal.App.4th 267, the court held that 2933.1 PC applies to the offender rather than the offense, and thus limits violent felons' conduct credits irrespective of whether all charged offenses come within 667.5(c) PC.

<sup>65</sup> In *re Pope* (2010) 50 Cal.4th 777; applies retroactively

<sup>66</sup> In *re Pacheco* (2007) 155 Cal.App.4th 1439

<sup>67</sup> *People v. Baker* (2006) 144 Cal.App.4th 1320

<sup>68</sup> *People v. Nunez* (2008) 167 Cal.App.4th 761

<sup>69</sup> In *re Carr* (1998) 65 Cal.App.4th 1525

<sup>70</sup> In *re Mitchell*, fn. 59, supra.

5. Algorithm (15%)

x = actual days  
y = conduct credits  
z = total credits

$$y = .15(\downarrow x)$$

$$z = x + y$$

- a. Multiply actual days by .15, round down to the nearest whole number.
  - b. Conduct credits will be either even or odd.
  - c. Add the actual days and the conduct credits to obtain the defendant's total credit for time served.
- vi. 2933(e) PC (Day for Day)
1. Effective from September 28, 2010 to September 30, 2011.
    - a. Applies to crimes committed during that time period.
    - b. Applies to violations of probation based on underlying crimes committed between that time period.
    - c. Only applies to offenders sentenced to state prison.
  2. For every day of actual time in custody, the defendant receives one day of conduct credit.
  3. Conduct credits can be either an even or an odd number.
- vii. 2933.2 PC
1. Effective since June 3, 1998.
  2. Prohibits accruing any conduct credit against a sentence for murder.<sup>71</sup>
  3. This applies:

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<sup>71</sup> A person convicted of murder, as defined in 187 PC, "shall not accrue any credit" based on prison custody under 2933 PC or 2933.05 PC. (2933.2(a) PC.) In addition, no credit is allowed based on time spent in local custody under 4019 PC. (2933.2(c) PC.) (See *People v. Herrera* (2001) 88 Cal.App.4th 1353.)

- a. Even when a defendant convicted of murder is granted probation.<sup>72</sup>
- b. Even if punishment for the murder charge is stayed under 654 PC.<sup>73</sup>
- c. Even where murder is only one of multiple counts involving other crimes.<sup>74</sup>

4. Algorithm (0%)

$$z = x + 0$$

- a. Actual days plus 0 equals total credit for time served.

viii. 2933.5 PC

1. A defendant convicted of a specified felony offense with two or more prior prison terms served for specified offenses is prohibited from accruing conduct credit.<sup>75</sup>
2. The priors need not be pled and proven.<sup>76</sup>
3. The Department of Corrections and Rehabilitation determines whether 2933.5 PC applies.<sup>77</sup>

4. Algorithm (0%)

- a. Calculate conduct credits by appropriately applying one of the previous formulas, and indicate the defendant is entitled to conduct credits unless statutorily ineligible pursuant to 2933.5 PC.

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<sup>72</sup> *People v. Moon*, fn. 10, supra.

<sup>73</sup> *People v. Duff* (2010) 50 Cal.4th 787

<sup>74</sup> *People v. Wheeler* (2003) 105 Cal.App.4th 1423

<sup>75</sup> The specified felonies are murder (187, 189 PC); voluntary manslaughter (192(a) PC); mayhem (203 PC); aggravated mayhem (205 PC); kidnaping (207, 209, 209.5 PC); assault with vitriol, corrosive acid, or caustic chemical (244 PC); rape as defined in 261(a)(2) or (a)(6) PC or spousal rape as defined in 262(a)(1) or (a)(4) PC; forcible sodomy (286(c) PC); sodomy in concert (286(d) PC); lewd or lascivious acts on a child under age 14 (288(b) PC); forcible oral copulation (288a(c) PC); continuous sexual abuse of a child (288.5 PC); sexual penetration (289(a) PC); exploding a destructive device or explosive with intent to injure (18740 PC) or murder (18745 PC), or resulting in great bodily injury or mayhem (18750 PC); and any felony in which the defendant personally inflicted great bodily injury (12022.53 or 12022.7 PC). (2933.5(a)(2) PC.)

<sup>76</sup> *People v. Goodloe* (1995) 37 Cal.App.4th 485

<sup>77</sup> *Id.*; consequently, the sentencing court should award pre-sentence credits and make a note in the abstract of judgment that they apply, unless CDCR finds the defendant does not qualify for pre-sentence credits under 2933.5 PC.

c. Review Problems

i. Basic

1. \_\_\_\_\_ was arrested and booked into county jail on \_\_\_\_\_ and pled guilty on \_\_\_\_\_ to one count of 487(a) PC. He was released from county jail on \_\_\_\_\_.

Determine \_\_\_\_\_ total credit for time served.

2. \_\_\_\_\_ was booked into county jail on \_\_\_\_\_ and posted bail the next day. She pled guilty to one misdemeanor count of 148(a) PC and will be sentenced to three days of custody. \_\_\_\_\_ attorney asked you for her current credit for time served.

3. \_\_\_\_\_ was convicted of 664/215 PC and 2800.2 VC. The offense occurred on \_\_\_\_\_, the day \_\_\_\_\_ was arrested and booked into county jail. He has been in custody ever since.

\_\_\_\_\_ will be sentenced to state prison. Today is 01/30/2018.

What is \_\_\_\_\_ credit for time served?

4. \_\_\_\_\_ entered into a plea agreement, in which she pled guilty to 23152(b) and 14601(a) VC in exchange for a three-year grant of formal probation with 180 days of custody, to be served through the Work Release Program. The offense occurred on \_\_\_\_\_.
- \_\_\_\_\_ JIMS records show:

<u>BOOKING #</u>	<u>ARREST</u>	<u>RELEASE</u>	<u>CODE</u>
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Today is \_\_\_\_\_, the day of sentencing.

\_\_\_\_\_ attorney wants to know how much time \_\_\_\_\_ has left to serve in the Work Release Program.

5. \_\_\_\_\_ pled guilty to one count of 211 PC and is in court for sentencing. He was arrested and booked into county jail on \_\_\_\_\_.

\_\_\_\_\_ will be sentenced to state prison. Today is \_\_\_\_\_.

What is \_\_\_\_\_ credit for time served?





6.            was convicted of 459 PC (2nd Degree) and 11550(a) H&S, which occurred on            was federally released a few times while her case was pending disposition. She was also found incompetent to stand trial and was sent to state hospital a couple of times to restore competency. JIMS reveals:

<u>BOOKING #</u>	<u>ARREST</u>	<u>RELEASE</u>	<u>CODE</u>
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Today is 01/30/2018.

The matter was referred to the Probation Department for a credit for time served report.

7.            was arrested on            for 245(a)(1) PC. On           , he pled guilty to 245(a)(1) PC and admitted an enhancement for 12022.7(a) PC; the punishment for the enhancement was stayed.            will be sentenced to state prison.

What is            credit for time served?

8.            was arrested on            and charged in            with one count of 422 PC. On           , while in custody, he assaulted another inmate with a shank and was charged in            with one count of 245(a)(4) PC with an enhancement of 12022.7(a) PC. On           ,            was caught manufacturing pruno in jail and was charged with 4573 PC.            is deemed the principal case, and the GBI enhancement was dismissed.            is to be sentenced to state prison, consecutively. Calculate his credits for each case.

iii. Nightmare

1.            was arrested on            for a violation of 211 PC. On            , she was granted 36 months formal probation with 180 days of custody, 108 days to be served through electronic monitoring. On            , she admitted a violation of probation for failing to enroll in electronic monitoring, and the court sentenced her to an additional 30 days of custody. She enrolled in the electronic monitoring program on            , but was discharged on            . On            , she admitted another violation of probation, and electronic monitoring was reinstated with an additional 60 days. After completing 35 actual days in the program,            ran out of money and surrendered to serve the remaining time straight on            . Unfortunately, on            was arrested and charged in case            with one count of 422 PC and one count of 11377(a) H&S. She posted bail on            in this matter. On 1            , the district attorney's office alleged a violation of probation in case            for the new law violation, and            was remanded into custody on            for the violation of probation. She will be sentenced to state prison in            , concurrent with            . JIMS shows:

<u>BOOKING #</u>	<u>ARREST</u>	<u>RELEASE</u>	<u>CODE</u>
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Today is 12/28/2016.

What is Deanna's credit for time served in            ?

What is Deanna's credit for time served in            ?

### 3. STEP THREE: DETERMINE CREDIT ISSUES

#### a. Dual Credits

##### i. General Rule

1. Dual credit issues are only relevant in concurrent sentences because credit can only be given once in consecutive sentences.<sup>78</sup>
2. A defendant who is a sentenced prisoner on an unrelated charge is not entitled to dual credit.<sup>79</sup>
3. The defendant has the burden of proof to show he/she is entitled to a period of pre-sentence actual days. To meet this burden, defendant must show that the case at issue was the cause of the incarceration, and but for this case, he/she would have been free from incarceration.<sup>80</sup>

##### ii. Probation Violations

1. Absent a showing that custody is related to the probation case, a defendant is not entitled to the time spent in custody on an unrelated case.<sup>81</sup>
2. A defendant is entitled to credit when remanded on a violation of probation.<sup>82</sup>

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<sup>78</sup> 2900.5(b) PC

<sup>79</sup> *In re Rojas* (1979) 23 Cal.3d.152 [While serving a prison sentence for a first degree manslaughter conviction, defendant was charged with an unrelated murder. He was transported back to local custody and was subsequently convicted of a new crime. When sentenced, the court denied credit for the time spent in local custody pending the outcome of the trial and ultimate conviction].

<sup>80</sup> *In re Joyner* (1989) 48 Cal.3d 487 [Defendant committed grand theft and robbery, but left California before he could be arrested. He was arrested in Florida for offenses he committed there and was held in custody on a hold for the California warrant. He pled guilty to the offenses committed in Florida and received pre-sentence credit for the time served from his arrest to the date of sentencing in his Florida case. California extradited defendant, and he pled guilty to robbery. He was sentenced to state prison, to be served concurrently with the Florida case, but he was denied the credit for time served in Florida prior to his extradition. The court ruled he was not entitled to dual conduct credit, applying the strict causation test. The case was indistinguishable from *In re Rojas*, as defendant was a sentenced prisoner and therefore not entitled to dual credit. The time in custody in Florida was attributable to the Florida case only]. There must be a causal connection between the case and the custody status.

<sup>81</sup> *People v. Blunt* (1986) 186 Cal.App.3d 1594 [While on felony probation for a drug offense in San Bernardino County, defendant was arrested in Los Angeles County on a new drug charge. He was placed on probation and ordered to serve 270 days of custody in county jail. The San Bernardino probation violation included the new offense, a separate misdemeanor conviction, and other technical violations. The San Bernardino Court sentenced the defendant to state prison on the original charge and denied credit for any time spent in Los Angeles County prior to the date the warrant for the violation of probation was served, i.e., the date he lost access to freedom as a result of the violation of probation matter].

<sup>82</sup> *People v. Huff* (1990) 223 Cal.App.3d 1100

3. Absent a showing of strict causation, a defendant is not entitled to dual credit until the date a warrant previously issued is served, a trial court remands the defendant into custody, or the probation officer books the defendant for a violation of probation. Until that time, a defendant would not have lost access to freedom based on the probation violation and would not be entitled to credit for time served.

iii. Parole Revocations

1. The *Joyner* strict causation test applies to determine whether credit should be granted.
2. In order for a defendant to receive conduct credit for time spent in state prison as a result of a parole violation, the basis for the violation must be solely attributable to the new law violation. If it is only partially attributable to the new law violation, the defendant is not entitled to credit.<sup>83</sup>
  - a. To determine this, parole authorities must be contacted to determine the basis of the parole violation.
  - b. If it is determined that the sole basis of the parole violation was the new case, the defendant is entitled to receive credit against his sentence. Defendant would also be entitled to conduct credit because parole revocation time is not “prison time” or part of the prison sentence.
3. A defendant is not entitled to time spent in custody prior to the sentencing date on the new case, unless he/she can show that but for the new case he/she would have been free from incarceration.<sup>84</sup>

b. Pre-Sentence Credits on Consecutive Cases

- i. When a defendant is sentenced to consecutive terms on multiple cases, pre-sentence credits can only be awarded once.<sup>85</sup>

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<sup>83</sup> *In re Nickles* (1991) 231 Cal.App.3d 415 [Defendant’s entitlement to dual credits must meet the strict causation test in *Joyner*].

<sup>84</sup> *People v. Bruner* (1995) 9 Cal.4th 1178 [Defendant absconded from parole, and a warrant was issued. The violation was for absconding, theft, and a positive drug test. When he was arrested on the warrant, he was found in possession of cocaine, and new charges were filed. While serving one year in custody for the parole violation, he was sentenced to prison for the new case, to be served concurrently. Defendant argued he should receive credit for the time served in the new case, starting from the time of his arrest on the parole violation. The court disagreed].

<sup>85</sup> *People v. Adrian* (1987) 191 Cal.App.3d 868

- ii. In situations where two cases are pending with overlapping pre-sentence credit, the court must apply the credit to one case or the other, but not both.<sup>86</sup>
- iii. If one of the cases is “no bail,” credit is to be given to that case.<sup>87</sup>
- iv. If bail is set in both matters, the credit for the overlapping time should be awarded to the first case sentenced, with no credit applied to the second case.<sup>88</sup>

c. Escapes

- i. An escapee from prison is not entitled to credits from the time spent in custody after apprehension, until he/she is available to return to state custody. A prisoner in custody of another state is not available to return to the custody of the state, until the other jurisdiction is willing to release him/her to California.<sup>89</sup>
- ii. A defendant fighting extradition to California is not entitled to actual days for any time spent in another state towards his underlying state prison sentence.

d. Loss of Pre-Sentence Credits

i. Denial of Credits

- 1. The sheriff is not authorized to deduct pre-sentence conduct credits for inmates.

“Conduct credits for presentence custody are credited to the defendant’s term of imprisonment ‘in the discretion of the court imposing the sentence.’ (Pen.Code, § 2900.5, subd. (a).) It is the duty of the sentencing court to determine ‘the total number of days to be credited ...’ for presentence custody.”<sup>90</sup>

- 2. The sheriff may provide the sentencing court with information, records, and recommendations regarding the propriety of awarding credits.<sup>91</sup>

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<sup>86</sup> *People v. Huff* (1990) 223 Cal.App.3d 1100

<sup>87</sup> *Id.*

<sup>88</sup> *People v. Lathrop* (1993) 13 Cal.App.4th 1401

<sup>89</sup> 2900(c)(2) PC

<sup>90</sup> *People v. Duesler* (1988) 203 Cal.App.3d 273, 276

<sup>91</sup> 4019(c) PC; *People v. Sage* (1980) 26 Cal.3d 498

3. The sheriff or the People have the burden to show that a defendant is not entitled to conduct credits under 4019 PC.<sup>92</sup>
4. If the trial court seeks to deny these credits, there are certain procedural safeguards that must be applied:<sup>93</sup>
  - i. Advance notice of the claimed violation of prison or jail rules (often satisfied by the probation report);
  - ii. an opportunity to rebut the findings of the jail violations; and
  - iii. the opportunity to present any mitigating factors.

ii. Waiver of Credits

1. A defendant may expressly waive entitlement to credits.<sup>94</sup>
2. These waivers are called *Johnson* waivers.<sup>95</sup>
3. The waiver must be made knowingly and intelligently.
4. The waiver applies to any future use of such credits, should probation ultimately be terminated and a state prison sentence imposed.<sup>96</sup>

e. Stipulation of Pre-Sentence Credits

- i. A plea bargain that purports to authorize the court to exercise a power it does not have is unlawful and may not be enforced.<sup>97</sup>
- ii. The defendant's remedy is to withdraw the plea.<sup>98</sup>

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<sup>92</sup> *People v. Johnson* (1981) 120 Cal.App.3d 808; *People v. Duesler* (1988) 203 Cal.App.3d 273

<sup>93</sup> *In re Walrath* (1980) 106 Cal.App.3d 426

<sup>94</sup> *People v. Johnson* (1978) 82 Cal.App.3d 183

<sup>95</sup> In *People v. Johnson* (2002) 28 Cal.4th 1050, the California Supreme Court, approving Court of Appeal cases to the same effect (e.g., *People v. Johnson* (1978) 82 Cal.App.3d 183), held that a defendant may expressly waive entitlement to credits for time served, and that probation may be conditioned on the waiver.

<sup>96</sup> *People v. Arnold* (2004) 33 Cal.4th 294

<sup>97</sup> *In re Williams* (2000) 83 Cal.App.4th 936 [Plea bargain gave defendant credits he was not entitled to because he was convicted of escape].

<sup>98</sup> *Id.*

f. Post-Sentence Credits

- i. It is not the function of the trial court to calculate prison worktime credits on a prior sentence, but the administrative responsibility of the Department of Corrections and Rehabilitation.<sup>99</sup>
- ii. A defendant serving a state prison sentence and is remanded for resentencing retains post-sentence status for credit accrual purposes.<sup>100</sup>
- iii. If a defendant's case is a complete reversal of the conviction, which then results in a new conviction of the same case, the defendant will receive conduct credits under 4019 PC for the original pre-sentence dates and from the time of reversal until the new sentencing. However, the time between the first sentencing and the reversal will still only receive conduct credit according to post-sentence status.<sup>101</sup>

g. Review Problems

i. Basic

- 1. \_\_\_\_\_ was arrested on \_\_\_\_\_ and granted formal probation for 459 PC (1st Degree) with 365 days of custody. Upon his release from custody, he failed to check in with Probation. On \_\_\_\_\_, he was arrested in \_\_\_\_\_ County for a violation of 10851 VC and a violation of probation. He was released in \_\_\_\_\_ County on \_\_\_\_\_, after pleading guilty in the new case. On \_\_\_\_\_, his probation officer in Riverside alleged a violation of probation for failing to report and failing to obey all laws, as a result of his new case in \_\_\_\_\_. The recommendation is state prison.

BOOKING #      ARREST                      RELEASE                      CODE

What is \_\_\_\_\_ credit for time served?

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<sup>99</sup> *People v. McCutcheon* (1986) 187 Cal.App.3d 552

<sup>100</sup> *People v. Buckhalter* (2001) 26 Cal.4th 20

<sup>101</sup> *In re Martinez* (2003) 30 Cal.4th 29

2. is on calendar today for sentencing in three matters. Case occurred on , and will be sentenced for a violation of 422 PC to the low term of 16 months in state prison. Case occurred on , and will be sentenced for a violation of 10851(a) VC to 1/3 the middle term of 8 months, consecutive to any other matter. Case occurred on , and will be sentenced for a violation of 459 PC (2nd Degree) to 1/3 the middle term of 8 months, consecutive to any other matter.

BOOKING #      ARREST                      RELEASE                      CODE

What is credit for time served in each case?

ii. Complex

1. On , was arrested for violations of 245(a)(1) PC and 11378 H&S. The district attorney's offer was a grant of formal probation with the condition to complete the Residential Substance Abuse Treatment (RSAT) program. On , accepted the district attorney's offer and pled guilty. He took a Johnson Waiver to enter the RSAT program, waiving all of his credits to date. On , he was terminated from the RSAT program due to unacceptable behavior. He returned to court, admitted a violation of probation, and was ordered to complete a residential substance abuse program. was released to a representative of the Public Defender's office on and entered the House of Miracles. On , he left the House of Miracles voluntarily. On , he failed to appear in court for a violation of probation, and a warrant was issued. On 8, he was arrested on the warrant.

BOOKING #      ARREST                      RELEASE                      CODE

2. was arrested on and subsequently convicted on of count 1: 187(a) PC (2nd Degree) and count 2: 273ab PC. As to count 2, was sentenced to 25 years to life in state prison. As to count 1, was sentenced to 15 years to life, but punishment was stayed pursuant to 654 PC. The matter was referred to the probation officer for credit for time served.

3. [redacted] was arrested for 459 PC (1st Degree) on [redacted]. On [redacted], he pled guilty and was granted 36 months formal probation with 69 days of custody and credit for time served of 35 actual + 34 days pursuant to 4019 PC. On [redacted], [redacted] was arrested for 10851 VC. He was arraigned in a timely manner, and the case was continued numerous times until the charges were dismissed on [redacted]. However, on [redacted], probation was revoked based on the new case, and the defendant was remanded without bail on the probation violation. On [redacted], [redacted] was found in violation and sentenced to state prison.

What is [redacted] credit for time served?

4. On [redacted] [redacted] was arrested for burglary charges in Riverside County. On [redacted], she was placed on three years formal probation for 459 PC (First Degree) and ordered to serve 301 days of jail with credit for 151 actual + 150 days pursuant to 4019 PC. On [redacted], [redacted] probation was revoked, following her conviction for another burglary in [redacted] County, and a bench warrant was issued. In [redacted] County, [redacted] was sentenced to three years in state prison. The Riverside warrant was served on [redacted]. On [redacted], [redacted] was found in violation of probation in Riverside and sentenced to state prison.

What is [redacted] credit for time served?

iii. Nightmare

1. [redacted] was arrested on [redacted] for 487(a) PC (Grand Theft). On [redacted], he was convicted and placed on 36 months formal probation with 180 days of custody. On [redacted], while on a work detail outside the jail facility, he walked away. On [redacted], [redacted] was arrested on a warrant for his escape. He resisted extradition and remained [redacted] until 0 [redacted], when he returned to California. On that date, he pled guilty to 4532(b)(1) PC and admitted a violation of probation in the grand theft case. He was sentenced to two years of prison in the grand theft case and 16 months for the escape case.

The matter was referred to the probation officer for credit for time served.

2. On \_\_\_\_\_, an arrest warrant was issued in California for \_\_\_\_\_ for 211 PC. On \_\_\_\_\_, \_\_\_\_\_ was arrested in \_\_\_\_\_ for crimes committed in \_\_\_\_\_, and on that date, a hold was placed on \_\_\_\_\_ at California's request. \_\_\_\_\_ pled guilty to a \_\_\_\_\_ burglary on \_\_\_\_\_, and she was sentenced to three years in prison with credit for 66 actual pre-sentence custody days. \_\_\_\_\_ was then extradited to California, and on \_\_\_\_\_, she was sentenced to prison for five years, concurrent to the \_\_\_\_\_ case.

The matter was referred to the probation officer for credit for time served.

3. On \_\_\_\_\_, \_\_\_\_\_ was arrested for 459 PC (1st Degree). On \_\_\_\_\_, he pled guilty as charged, was placed on 36 months formal probation, and ordered to serve 365 days in jail. On \_\_\_\_\_, \_\_\_\_\_ was released on electronic monitoring and remained in the program until \_\_\_\_\_. He wore an electronic bracelet, was allowed to go to work each day, report to his probation officer, and then be at home the rest of the time. On \_\_\_\_\_, \_\_\_\_\_ probation was violated for failure to report and moving without notifying his probation officer. On \_\_\_\_\_, \_\_\_\_\_ was arrested on the warrant and on \_\_\_\_\_, he admitted the violation of probation and was sentenced to state prison for two years.

The matter was referred to the probation officer for calculation of credit for time served.

4. \_\_\_\_\_ was arrested for possession of cocaine on \_\_\_\_\_ and released on bail on \_\_\_\_\_. On \_\_\_\_\_, she pled guilty to count 1: 11350 H&S and admitted one prior strike pursuant to 667(c) & (e) PC. She was sentenced to state prison.

The matter was referred to the probation officer for calculation of credit for time served.

5. On 0 , was arrested in Riverside for 182(a)(1) PC/266h & 266i PC (Conspiracy to Commit Pimping & Pandering), 266h PC (Pimping), and 150 counts of 186.10(a) PC (Money Laundering in Excess of \$5,000 and More Than One Transaction of Monetary Instruments Exceeding \$25,000.00). In his financial offenses, an enhancement for 186.10(c)(1)(D) PC (Money Laundering in Excess of \$2.5 Million). posted bail on . On , he was remanded into custody and again posted bail on . On , was arrested by federal agents and served time in a federal prison until for an unrelated federal conviction. During his federal prison time, he was transported to county jail in Riverside on to address his charges in the Riverside case. He posted bail on . On 1 , was convicted of his charges in Riverside and was remanded into custody on . On , he was sentenced to state prison, but was not actually transported from local custody to prison until . On , sentence was reversed after a remittitur from the court of appeal. had already been serving time in state prison and served in fire camp from until . He was released from prison on and is currently out of custody. His matter is before the court for re-sentencing.

On , the court referred the matter to the probation officer for a detailed credit for time served report, including post-sentence credits.

## V. MANDATORY SUPERVISION CALCULATIONS

- a. During the period of mandatory supervision, unless in actual custody related to the sentence imposed by the court, a defendant is entitled to only actual days against the term of imprisonment imposed by the court.<sup>102</sup>
- b. Any time period which is suspended because a person has absconded shall not be credited toward the period of supervision.<sup>103</sup>
- c. Revocation [of mandatory supervision or PRCS] shall serve to toll the running of the period of supervision.<sup>104</sup>
- d. A defendant is always entitled to actual days and conduct credits under 4019 PC against any sentence imposed by the court for a violation.
- e. Steps for calculating remaining time on mandatory supervision:
  - i. Determine the defendant's total time (in days) to be served on mandatory supervision.
  - ii. Determine when mandatory supervision commenced.
    1. Mandatory supervision begins upon release from custody.<sup>105</sup>
  - iii. Determine if and when mandatory supervision was revoked.
    1. For each day a defendant served time on active mandatory supervision, subtract one day from the total sentence.
  - iv. Determine if and when a defendant served time in county jail while mandatory supervision was revoked.
    1. Defendant is entitled to 4019 PC conduct credits for custody time in county jail.
    2. Subtract actual days and conduct credits from the total sentence.
  - v. After subtracting active mandatory supervision time and custody time (including conduct credits), the result yields the time left on mandatory supervision.

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<sup>102</sup> 1170(h)(5)(B)(i) PC

<sup>103</sup> *Id.*

<sup>104</sup> 1203.2(a) PC

<sup>105</sup> 1170(h)(5)(B)(ii) PC

f. Review Problems

1. On \_\_\_\_\_, \_\_\_\_\_ was sentenced to four years pursuant to 1170(h) PC, two years to be served in custody and two years to be served on mandatory supervision. His credit for time served was 182 actual days + 182 days pursuant to 4019 PC. On \_\_\_\_\_, \_\_\_\_\_ was released from county jail and commenced mandatory supervision. On \_\_\_\_\_, he was arrested for a new case, and mandatory supervision was revoked.

Today is \_\_\_\_\_. How much time does \_\_\_\_\_ owe on mandatory supervision?

2. On \_\_\_\_\_, \_\_\_\_\_ was sentenced to two years pursuant to 1170(h) PC, one year to be served in custody and one year to be served on mandatory supervision. Her credit for time served was 85 actual days + 84 days pursuant to 4019 PC. On \_\_\_\_\_, \_\_\_\_\_ was released from county jail and commenced mandatory supervision. On \_\_\_\_\_, \_\_\_\_\_ was arrested for a new misdemeanor case, admitted a violation of mandatory supervision, and was ordered to serve 60 days of custody in county jail. She was federally released on \_\_\_\_\_. On \_\_\_\_\_, mandatory supervision was revoked, and the court issued a warrant for \_\_\_\_\_. She was arrested on \_\_\_\_\_, admitted another violation of mandatory supervision, and was ordered to serve 90 days of custody in county jail. She was federally released on \_\_\_\_\_. On \_\_\_\_\_, \_\_\_\_\_ was arrested, and mandatory supervision was revoked.

Today is \_\_\_\_\_. How much time does \_\_\_\_\_ owe on mandatory supervision?