

**RESOLUTION 02-12-2008**

**DIGEST**

Criminal Fines: Increase in Credit Per Day of Custody

Amends Penal Code section 2900.5 to change the rate of credit for incarceration against criminal fines.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 2900.5 to change the rate of credit for incarceration against criminal fines. This resolution should be approved in principle because it represents a reasonable increase in the credit to account for inflation.

A criminal defendant may choose or be ordered to serve jail time in lieu of paying a criminal crime. Current law credits a fine being “paid off” pay serving jail time at the rate of thirty dollars per day, and this statute would increase the credit to ninety-six dollars per day. The thirty dollar per day credit was established 32 years ago, and has never been increased. According to a Consumer Price Index Calculator available at the website of the Federal Reserve Bank of Minneapolis, \$30.00 in 1976 is worth approximately \$113.67 today.

**TEXT OF RESOLUTION**

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 2900.5 to read as follows:

- 1 §2900.5
- 2 (a) In all felony and misdemeanor convictions, either by plea or by verdict, when
- 3 the defendant has been in custody, including, but not limited to, any time spent in a jail,
- 4 camp, work furlough facility, halfway house, rehabilitation facility, hospital, prison,
- 5 juvenile detention facility, or similar residential institution, all days of custody of the
- 6 defendant, including days served as a condition of probation in compliance with a court
- 7 order, and including days credited to the period of confinement pursuant to Section 4019,
- 8 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
- 10 be imposed, at the rate of not less than ~~thirty dollars (\$30)~~ ninety-six dollars (\$96) per day,
- 11 or more, in the discretion of the court imposing the sentence. If the total number of days in
- 12 custody exceeds the number of days of the term of imprisonment to be imposed, the entire
- 13 term of imprisonment shall be deemed to have been served. In any case where the court
- 14 has imposed both a prison or jail term of imprisonment and a fine, any days to be credited
- 15 to the defendant shall first be applied to the term of imprisonment imposed, and thereafter
- 16 the remaining days, if any, shall be applied to the fine on a proportional basis, including,
- 17 but not limited to, base fines and restitution fines.

18 (b) For the purposes of this section, credit shall be given only where the custody to  
19 be credited is attributable to proceedings related to the same conduct for which the  
20 defendant has been convicted. Credit shall be given only once for a single period of  
21 custody attributable to 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  
24 imposing or suspending the imposition of any sentence, and also includes any term of  
25 imprisonment, including any period of imprisonment prior to release on parole and any  
26 period of imprisonment and parole, prior to discharge, whether established or fixed by  
27 statute, by any court, or by any duly authorized administrative agency.

28 (d) It shall be the duty of the court imposing the sentence to determine the date or  
29 dates of any admission to, and release from, custody prior to sentencing and the total  
30 number of days to be credited pursuant to this section. The total number of days to be  
31 credited shall be contained in 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  
33 credit provided for in this section for the period between the date of sentencing and the  
34 date the person 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  
37 home detention program in lieu of imprisonment in a county jail, and the statute under  
38 which the defendant is sentenced requires a mandatory minimum period of time in jail, the  
39 time spent in these facilities or programs shall qualify as mandatory time in jail.

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

43 (h) This section shall become operative on January 1, 1999.

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

**PROPONENT:** Los Angeles County Bar Association

**STATEMENT OF REASONS:**

Existing Law: A criminal defendant may either choose or be ordered to serve jail time in lieu of paying a criminal fine. The statute presently converts the fine to jail time at the rate of not less than \$30 per day or more in the discretion of the court.

This Resolution: Increases the fine to jail conversion to not less than \$96 per day or more in the discretion of the court.

The Problem: The \$30 fine-to-jail figure was adopted in 1976, and has never been changed. The CPI has gone up at least 350% over the intervening years (actually, it is probably closer to 370%). That means that \$30 in 1976 is worth at least \$105 today. Another way of looking at it is that the minimum wage in California in 1976 was \$2.50/hr. That means that \$30 was equivalent to working 12 hours at minimum wage. The minimum wage in California is now \$8/hr. 12 hours of work at minimum wage is now worth \$96.

Fines and add-ons, particularly the penalty assessment, have increased astronomically since 1976. In 1976 the penalty assessment added 25% to a fine. The Legislature thus intended in 1976 that a base fine of \$120, which would then be \$150 with the 25% penalty assessment, would be fully satisfied by 5 days in custody at \$30/day. However, the penalty assessment is now 240% (an increase of almost 1,000%). That same \$120 fine would now total \$408, and would take 14 days to fully satisfy at \$30/day, almost three times longer.

It hardly makes sense that the Legislature actually intended in 1976 that prisoners in the future should be subjected to what is effectively an ever-decreasing financial credit for time in custody, or should have to spend three times longer in custody to satisfy the same fine. By every measure, it is clear that to adhere to the intention of the Legislature a substantially larger credit than \$30/day should be given. It is therefore a lot fairer, and in accordance with the intent of the Legislature in 1976, that a defendant now be given credit for \$96.

**IMPACT STATEMENT:**

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

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