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Appointed by the Court upon
Recommendation by CCAP

SUPREME COURT
FILED

NOV 10 2010

Frederick K. Ohrich Clerk

Deputy

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA) No. S181963
Plaintiff and Respondent)
v.)
JAMES LEE BROWN III)
Defendant and Appellant)
_____)

Defendant's Second Request for Judicial Notice

Appellant James Lee Brown III requests judicial notice of the following legislative materials:

Exhibit A

Senate Bill No. 76 (Stats. 2010, ch. 426.)

Exhibit B

Senate No. 1487 (2010 Reg. Sess., as introduced Mar. 9, 2010.)

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Points and Authorities

The items of which defendant requests judicial notice are proper subjects of judicial notice. (Evid. Code, §§ 451, 452, 459; *Kaufman & Broad Communities, Inc. v. Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 31.)

Dated: November 8, 2010.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Shusted'.

Mark J. Shusted, Esq.
Attorney for James Lee Brown III

Law Offices of Mark J. Shusted, Esq.
P.O. Box 2825
Granite Bay, California 95746-2825

***People v. Brown* No. S181963**
Court of Appeal, Third Appellate District, No. C056510

DECLARATION OF SERVICE


I, Mark J. Shusted, say: I am over 18 years of age and not a party to the subject action. I am employed in the County of Placer, California, with a business address of P.O. Box 2825, Granite Bay, California 95746. I served a true and correct copy of the document herein presented for filing, on each addressee listed below, by placing the copy in a separate envelope for each addressee, sealing the envelope, affixing the proper First Class Mail postage thereto, and depositing same in the United States Mail at Granite Bay, California, on November 8, 2010. The addressees are:

Sandra Uribe, Esq.
Central California Appellate Program
Suite 301
2407 J Street
Sacramento, CA 95816

Meredith A. Strong, Esq.
Office of the Attorney General
110 West A Street, Suite 1100
P.O. Box 85266
San Diego, CA 92101

Mr. James L. Brown III
139 South Mesa
Susanville, CA 96120

I declare under penalty of perjury that the foregoing is true and correct.
Executed on November 8, 2010, in Granite Bay, California.



Mark J. Shusted

Exhibit A

Senate Bill No. 76

CHAPTER 426

An act to amend Sections 2933 and 4019 of the Penal Code, relating to inmates, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2010. Filed with
Secretary of State September 28, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 76, Committee on Public Safety. Committee on Public Safety: Inmates: incentive credits.

Existing law provides time credit for work performance and good behavior to prisoners confined to a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp. Specifically, except regarding certain prisoners who are limited to 15% credit against sentenced time, existing law provides that a term of 4 days will be deemed to have been served for every 2 days spent in actual custody in one of these facilities, except that a term of 6 days will be deemed to have been served for every 4 days in actual custody for prisoners required to register as sex offenders, prisoners committed for a serious felony, or prisoners with a prior conviction for a serious or violent felony.

This bill would instead provide that prisoners sentenced to state prison for whom the sentence is executed, except for those required to register as sex offenders, committed for a serious felony, or with a previous conviction for a serious or violent felony, who are confined in a city or county jail, industrial farm, or road camp, from the date of arrest until state prison credits are applicable, shall have one day deducted from his or her period of confinement for every day the prisoner served in a city or county jail, industrial farm, or road camp. The bill would provide that a prisoner sentenced to state prison who is confined in a city or county jail, industrial farm, or road camp may not receive the day-for-day credit if it appears by the record that the prisoner refused to satisfactorily perform labor or failed to satisfactorily comply with rules and regulations, as specified. The bill would provide that, for prisoners otherwise in a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp for a crime committed on or after the effective date of this bill, except those subject to the 15% limitation on credits noted above, a term of 6 days will be deemed to have been served for every 4 days spent in actual custody. Because this bill would change the punishment for crimes, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 2933 of the Penal Code is amended to read:

2933. (a) It is the intent of the Legislature that persons convicted of a crime and sentenced to the state prison under Section 1170 serve the entire sentence imposed by the court, except for a reduction in the time served in the custody of the Secretary of the Department of Corrections and Rehabilitation pursuant to this section and Section 2933.05.

(b) For every six months of continuous incarceration, a prisoner shall be awarded credit reductions from his or her term of confinement of six months. A lesser amount of credit based on this ratio shall be awarded for any lesser period of continuous incarceration. Credit should be awarded pursuant to regulations adopted by the secretary. Prisoners who are denied the opportunity to earn credits pursuant to subdivision (a) of Section 2932 shall be awarded no credit reduction pursuant to this section. Under no circumstances shall any prisoner receive more than six months' credit reduction for any six-month period under this section.

(c) Credit is a privilege, not a right. Credit must be earned and may be forfeited pursuant to the provisions of Section 2932. Except as provided in subdivision (a) of Section 2932, every eligible prisoner shall have a reasonable opportunity to participate.

(d) Under regulations adopted by the Department of Corrections and Rehabilitation, which shall require a period of not more than one year free of disciplinary infractions, credit which has been previously forfeited may be restored by the secretary. The regulations shall provide for separate classifications of serious disciplinary infractions as they relate to restoration of credits, the time period required before forfeited credits or a portion thereof may be restored, and the percentage of forfeited credits that may be restored for these time periods. For credits forfeited as specified in paragraph (1) of subdivision (a) of Section 2932, the Department of Corrections and Rehabilitation may provide that up to 180 days of lost credit shall not be restored and up to 90 days of credit shall not be restored for a forfeiture resulting from conspiracy or attempts to commit one of those acts. No credits may be restored if they were forfeited for a serious disciplinary infraction in which the victim died or was permanently disabled. Upon application of the prisoner and following completion of the required time period free of disciplinary offenses, forfeited credits eligible for restoration under the regulations for disciplinary offenses other than serious disciplinary infractions punishable by a credit loss of more than 90 days shall be restored unless, at a hearing, it is found that the prisoner refused to accept or failed to perform in a credit qualifying assignment, or extraordinary circumstances

are present that require that credits not be restored. "Extraordinary circumstances" shall be defined in the regulations adopted by the secretary. However, in any case in which credit was forfeited for a serious disciplinary infraction punishable by a credit loss of more than 90 days, restoration of credit shall be at the discretion of the secretary.

The prisoner may appeal the finding through the Department of Corrections and Rehabilitation's review procedure, which shall include a review by an individual independent of the institution who has supervisory authority over the institution.

(e) (1) Notwithstanding Section 4019 and subject to the limitations of this subdivision, a prisoner sentenced to the state prison under Section 1170 for whom the sentence is executed shall have one day deducted from his or her period of confinement for every day he or she served in a county jail, city jail, industrial farm, or road camp from the date of arrest until state prison credits pursuant to this article are applicable to the prisoner.

(2) A prisoner may not receive the credit specified in paragraph (1) if it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by, or has not satisfactorily complied with the reasonable rules and regulations established by, the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(3) Section 4019, and not this subdivision, shall apply if the prisoner is required to register as a sex offender, pursuant to Chapter 5.5 (commencing with Section 290), was committed for a serious felony, as defined in Section 1192.7, or has a prior conviction for a serious felony, as defined in Section 1192.7, or a violent felony, as defined in Section 667.5.

(f) The provisions of subdivision (d) shall also apply in cases of credit forfeited under Section 2931 for offenses and serious disciplinary infractions occurring on or after January 1, 1983.

SEC. 2. Section 4019 of the Penal Code is amended to read:

4019. (a) The provisions of this section shall apply in all of the following cases:

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

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

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

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

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

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

(d) Nothing in this section shall be construed to require the sheriff, chief of police, or superintendent of an industrial farm or road camp to assign labor to a prisoner if it appears from the record that the prisoner has refused to satisfactorily perform labor as assigned or that the prisoner has not satisfactorily complied with the reasonable rules and regulations of the sheriff, chief of police, or superintendent of any industrial farm or road camp.

(e) No deduction may be made under this section unless the person is committed for a period of six days or longer.

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

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

SEC. 3. The Legislature intends that nothing in this act shall affect Section 59 of Chapter 28 of the Third Extraordinary Session of the Statutes of 2009, and that this act be construed in a manner consistent with that section.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for local custody credits in a manner consistent with historic practices and policies of local law enforcement officials as soon as possible, it is necessary that this act take effect immediately.

O

Exhibit B

**Introduced by Committee on Public Safety (Senators Leno (Chair),
Cedillo, Cogdill, Hancock, Huff, Steinberg, and Wright)**

March 9, 2010

An act to amend Sections 2933 and 4019 of the Penal Code, relating to inmates, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1487, as introduced, Committee on Public Safety. Inmates: incentive credits.

Existing law provides time credit for work performance and good behavior to prisoners confined to a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp. Specifically, except regarding certain prisoners who are limited to 15% credit against sentenced time, existing law provides that a term of 4 days will be deemed to have been served for every 2 days spent in actual custody in one of these facilities, except that a term of 6 days will be deemed to have been served for every 4 days in actual custody for prisoners required to register as sex offenders, prisoners committed for a serious felony, or prisoners with a prior conviction for a serious or violent felony.

This bill would instead provide that prisoners sentenced to state prison for whom the sentence is executed, except for those required to register as sex offenders, committed for a serious felony, or with a previous conviction for a serious or violent felony, who are confined in a city or county jail, industrial farm, or road camp, from the date of arrest until state prison credits are applicable, shall have one day deducted from his or her period of confinement for every day the prisoner served in a city or county jail, industrial farm, or road camp. The bill would provide that a prisoner sentenced to state prison who is confined in a city or

county jail, industrial farm, or road camp may not receive the day for day credit if it appears by the record that the prisoner refused to satisfactorily perform labor or failed to satisfactorily comply with rules and regulations, as specified. The bill would provide that, for prisoners otherwise in a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp for a crime committed on or after the effective date of this bill, except those subject to the 15% limitation on credits noted above, a term of 6 days will be deemed to have been served for every 4 days spent in actual custody. Because this bill would change the punishment for crimes, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2933 of the Penal Code is amended to
2 read:

3 2933. (a) It is the intent of the Legislature that persons
4 convicted of a crime and sentenced to the state prison under Section
5 1170 serve the entire sentence imposed by the court, except for a
6 reduction in the time served in the custody of the Secretary of the
7 Department of Corrections and Rehabilitation pursuant to this
8 section and Section 2933.05.

9 (b) For every six months of continuous incarceration, a prisoner
10 shall be awarded credit reductions from his or her term of
11 confinement of six months. A lesser amount of credit based on
12 this ratio shall be awarded for any lesser period of continuous
13 incarceration. Credit should be awarded pursuant to regulations
14 adopted by the secretary. Prisoners who are denied the opportunity
15 to earn credits pursuant to subdivision (a) of Section 2932 shall
16 be awarded no credit reduction pursuant to this section. Under no

1 circumstances shall any prisoner receive more than six months'
2 credit reduction for any six-month period under this section.

3 (c) Credit is a privilege, not a right. Credit must be earned and
4 may be forfeited pursuant to the provisions of Section 2932. Except
5 as provided in subdivision (a) of Section 2932, every eligible
6 prisoner shall have a reasonable opportunity to participate.

7 (d) Under regulations adopted by the Department of Corrections
8 and Rehabilitation, which shall require a period of not more than
9 one year free of disciplinary infractions, credit which has been
10 previously forfeited may be restored by the secretary. The
11 regulations shall provide for separate classifications of serious
12 disciplinary infractions as they relate to restoration of credits, the
13 time period required before forfeited credits or a portion thereof
14 may be restored, and the percentage of forfeited credits that may
15 be restored for these time periods. For credits forfeited as specified
16 in paragraph (1) of subdivision (a) of Section 2932, the Department
17 of Corrections and Rehabilitation may provide that up to 180 days
18 of lost credit shall not be restored and up to 90 days of credit shall
19 not be restored for a forfeiture resulting from conspiracy or
20 attempts to commit one of those acts. No credits may be restored
21 if they were forfeited for a serious disciplinary infraction in which
22 the victim died or was permanently disabled. Upon application of
23 the prisoner and following completion of the required time period
24 free of disciplinary offenses, forfeited credits eligible for restoration
25 under the regulations for disciplinary offenses other than serious
26 disciplinary infractions punishable by a credit loss of more than
27 90 days shall be restored unless, at a hearing, it is found that the
28 prisoner refused to accept or failed to perform in a credit qualifying
29 assignment, or extraordinary circumstances are present that require
30 that credits not be restored. "Extraordinary circumstances" shall
31 be defined in the regulations adopted by the secretary. However,
32 in any case in which credit was forfeited for a serious disciplinary
33 infraction punishable by a credit loss of more than 90 days,
34 restoration of credit shall be at the discretion of the secretary.

35 The prisoner may appeal the finding through the Department of
36 Corrections and Rehabilitation's review procedure, which shall
37 include a review by an individual independent of the institution
38 who has supervisory authority over the institution.

39 ~~(e) A prisoner sentenced to the state prison under Section 1170~~
40 ~~shall receive one day of credit for every day served in a county~~

1 jail, city jail, industrial farm, or road camp after the date he or she
2 was sentenced to the state prison as specified in subdivision (f) of
3 Section 4019.

4 (e) (1) Notwithstanding Section 4019 and subject to the
5 limitations of this subdivision, a prisoner sentenced to the state
6 prison under Section 1170 for whom the sentence is executed shall
7 have one day deducted from his or her period of confinement for
8 every day he or she served in a county jail, city jail, industrial
9 farm, or road camp from the date of arrest until state prison credits
10 pursuant to this article are applicable to the prisoner.

11 (2) A prisoner may not receive the credit specified in paragraph
12 (1) if it appears by the record that the prisoner has refused to
13 satisfactorily perform labor as assigned by, or has not satisfactorily
14 complied with the reasonable rules and regulations established
15 by, the sheriff, chief of police, or superintendent of an industrial
16 farm or road camp.

17 (3) Section 4019, and not this subdivision, shall apply if the
18 prisoner is required to register as a sex offender, pursuant to
19 Chapter 5.5 (commencing with Section 290), was committed for
20 a serious felony, as defined in Section 1192.7, or has a prior
21 conviction for a serious felony, as defined in Section 1192.7, or a
22 violent felony, as defined in Section 667.5.

23 (f) The provisions of subdivision (d) shall also apply in cases
24 of credit forfeited under Section 2931 for offenses and serious
25 disciplinary infractions occurring on or after January 1, 1983.

26 SEC. 2. Section 4019 of the Penal Code is amended to read:

27 4019. (a) The provisions of this section shall apply in all of
28 the following cases:

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

35 (2) When a prisoner is confined in or committed to the county
36 jail, industrial farm, or road camp or any city jail, industrial farm,
37 or road camp as a condition of probation after suspension of
38 imposition of a sentence or suspension of execution of sentence,
39 in a criminal action or proceeding.

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

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

9 (b) ~~(1) Except as provided in Section 2933.1 and paragraph~~
10 ~~(2), subject~~ *Subject* to the provisions of subdivision (d), for each
11 ~~four-day six-day~~ period in which a prisoner is confined in or
12 committed to a facility as specified in this section, one day shall
13 be deducted from his or her period of confinement unless it appears
14 by the record that the prisoner has refused to satisfactorily perform
15 labor as assigned by the sheriff, chief of police, or superintendent
16 of an industrial farm or road camp.

17 ~~(2) If the prisoner is required to register as a sex offender~~
18 ~~pursuant to Chapter 5.5 (commencing with Section 290), was~~
19 ~~committed for a serious felony, as defined in Section 1192.7, or~~
20 ~~has a prior conviction for a serious felony, as defined in Section~~
21 ~~1192.7, or a violent felony, as defined in Section 667.5, subject to~~
22 ~~the provisions of subdivision (d), for each six-day period in which~~
23 ~~the prisoner is confined in or committed to a facility as specified~~
24 ~~in this section, one day shall be deducted from his or her period~~
25 ~~of confinement unless it appears by the record that the prisoner~~
26 ~~has refused to satisfactorily perform labor as assigned by the~~
27 ~~sheriff, chief of police, or superintendent of an industrial farm or~~
28 ~~road camp.~~

29 (c) ~~(1) Except as provided in Section 2933.1 and paragraph (2),~~
30 ~~for~~ *For* each ~~four-day six-day~~ period in which a prisoner is confined
31 in or committed to a facility as specified in this section, one day
32 shall be deducted from his or her period of confinement unless it
33 appears by the record that the prisoner has not satisfactorily
34 complied with the reasonable rules and regulations established by
35 the sheriff, chief of police, or superintendent of an industrial farm
36 or road camp.

37 ~~(2) If the prisoner is required to register as a sex offender~~
38 ~~pursuant to Chapter 5.5 (commencing with Section 290), was~~
39 ~~committed for a serious felony, as defined in Section 1192.7, or~~
40 ~~has a prior conviction for a serious felony, as defined in Section~~

1 ~~1192.7, or a violent felony, as defined in Section 667.5, for each~~
2 ~~six-day period in which the prisoner is confined in or committed~~
3 ~~to a facility as specified in this section, one day shall be deducted~~
4 ~~from his or her period of confinement unless it appears by the~~
5 ~~record that the prisoner has not satisfactorily complied with the~~
6 ~~reasonable rules and regulations established by the sheriff, chief~~
7 ~~of police, or superintendent of an industrial farm or road camp.~~

8 (d) Nothing in this section shall be construed to require the
9 sheriff, chief of police, or superintendent of an industrial farm or
10 road camp to assign labor to a prisoner if it appears from the record
11 that the prisoner has refused to satisfactorily perform labor as
12 assigned or that the prisoner has not satisfactorily complied with
13 the reasonable rules and regulations of the sheriff, chief of police,
14 or superintendent of any industrial farm or road camp.

15 (e) No deduction may be made under this section unless the
16 person is committed for a period of ~~four~~ six days or longer, ~~or six~~
17 ~~days or longer for persons described in paragraph (2) of subdivision~~
18 ~~(b) or (c).~~

19 (f) It is the intent of the Legislature that if all days are earned
20 under this section, a term of ~~four~~ six days will be deemed to have
21 been served for every ~~two~~ four days spent in actual custody, ~~except~~
22 ~~that a term of six days will be deemed to have been served for~~
23 ~~every four days spent in actual custody for persons described in~~
24 ~~paragraph (2) of subdivision (b) or (c).~~

25 (g) *The changes in this section as enacted by the act that added*
26 *this subdivision shall apply to prisoners who are confined to a*
27 *county jail, city jail, industrial farm, or road camp for a crime*
28 *committed on or after the effective date of that act.*

29 SEC. 3. The Legislature intends that nothing in this act shall
30 affect Section 59 of Chapter 28 of the Third Extraordinary Session
31 of the Statutes of 2009, and that this act be construed in a manner
32 consistent with that section.

33 SEC. 4. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

3 SEC. 5. This act is an urgency statute necessary for the
4 immediate preservation of the public peace, health, or safety within
5 the meaning of Article IV of the Constitution and shall go into
6 immediate effect. The facts constituting the necessity are:

7 In order to provide for local custody credits in a manner
8 consistent with historic practices and policies of local law
9 enforcement officials as soon as possible, it is necessary that this
10 act take effect immediately.