

**ORIGINAL**

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SUPREME COURT  
FILED

DEC 20 2010

Frederick K. Ohlrich Clerk  
  
Deputy

**In the Supreme Court of the State of California**

**THE PEOPLE OF THE STATE OF CALIFORNIA,**

Plaintiff and Respondent,

v.

**JAMES LEE BROWN,**

Defendant and Appellant.

Case No. S181963

Appellate District  
Third, Case No.  
C056510

RECEIVED

DEC 20 2010

**RESPONDENT'S MOTION FOR JUDICIAL NOTICE**

TO THE HONORABLE CHIEF JUSTICE RONALD GEORGE CLERK SUPREME COURT  
AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

Respondent respectfully moves this Court, pursuant to Evidence Code sections 452 and 459 and California Rules of Court, rules 22 and

29.1( g), to take judicial notice of the relevant legislative history of the 2010 amendment to Penal Code section 4019.

These relevant documents, which are appended to this motion, include the following: The Senate Floor Analyses, third reading analysis of Senate Bill No. 76 (2009-2010 Reg. Sess.) from August 25, 2010 (Ex. A), and the Assembly Floor Analyses, second reading analysis of Senate Bill No. 76 (2009-2010 Reg. Sess.) from August 20, 2010 (Ex. B).

Exhibits A and B were printed and copied from the State of California Legislative Council website ([www.leginfo.ca.gov](http://www.leginfo.ca.gov)). (See Declaration of Meredith A. Strong in Support of Motion for Judicial Notice.)

Each of the attached exhibits is the proper subject of judicial notice under Evidence Code section 452. Subdivision (c) of that provision provides that judicial notice may be taken of “Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.”

Pursuant to this authority, it is appropriate to take judicial notice of senate and assembly analyses such as Exhibits A and B. (*People v. Snyder* (2000) 22 Cal.4th 304, 309 [judicial notice of senate committee analysis]; *People v. Ledesma* ( 1997) 16 Cal.4th 90, 98 [judicial notice of assembly bill analysis]; *Jevne v. Superior Court* (2005) 35 Cal.4th 935, 948 [“In determining legislative intent, we may also consider a senate floor analysis.”].)

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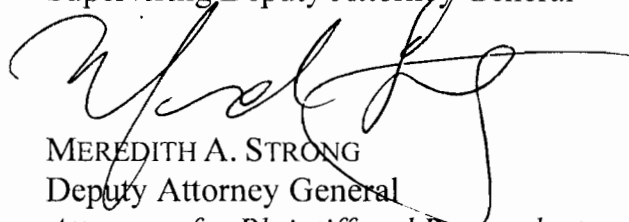
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**CONCLUSION**

For the reasons stated above, respondent respectfully requests that this Court take judicial notice of the documents attached in Exhibits A and B.

Dated: December 17 2010      Respectfully submitted,

EDMUND G. BROWN JR.  
Attorney General of California  
DANE R. GILLETTE  
Chief Assistant Attorney General  
GARY W. SCHONS  
Senior Assistant Attorney General  
STEVEN T. OETTING  
Supervising Deputy Attorney General



MEREDITH A. STRONG  
Deputy Attorney General  
*Attorneys for Plaintiff and Respondent  
General Fund - Legal/Case Work*

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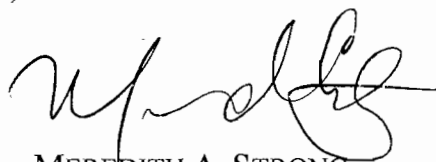
DECLARATION OF MEREDITH A. STRONG IN SUPPORT OF  
RESPONDENT'S MOTION FOR JUDICIAL NOTICE

I, Meredith A. Strong, declare as follows:

1. I am a deputy attorney general for the State of California and the primary attorney responsible for the appeal in this case.

2. I am informed and believe that Exhibits A and B, which are attached to Respondent's Motion for Judicial Notice, were printed directly from the Legislative Counsel website. Specifically, these materials were listed as representative of the Senate Floor analysis and the Assembly Floor analysis for Senate Bill 76 (2009-2010 Regular Session).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 17th day of December, 2010, at San Diego, California.



MEREDITH A. STRONG  
Deputy Attorney General

# EXHIBIT A

BILL ANALYSIS

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|SENATE RULES COMMITTEE | SB 76|
|Office of Senate Floor Analyses | |
|1020 N Street, Suite 524 | |
|(916) 651-1520 Fax: (916) | |
|327-4478 | |
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UNFINISHED BUSINESS

Bill No: SB 76  
 Author: Senate Public Safety Committee  
 Amended: 8/20/10  
 Vote: 27 - Urgency

PRIOR SENATE VOTES NOT RELEVANT

ASSEMBLY FLOOR : 75-1, 8/23/10 - See last page for vote

SUBJECT : Inmates: incentive credits

SOURCE : Chief Probation Officers of California  
California State Sheriffs Association

DIGEST : Assembly Amendments delete the prior version of the bill relating to the Budget Act of 2009. This bill now reduces good-time/work-time credits from one-half to one-third for persons convicted of misdemeanors while confined in a county jail.

This bill is very similar to SB 1487 (Senate Public Safety Committee) which was held under submission this year in the Senate Appropriations Committee.

ANALYSIS : 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 percent credit against sentenced time, existing law provides that a  
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term of four days will be deemed to have been served for every two days spent in actual custody in one of these facilities, except that a term of six days will be deemed to have been served for every four 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 instead provides 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/her period of confinement for every day the prisoner served in a city or county jail, industrial farm, or road camp. This bill provides 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. This bill provides 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 percent limitation on credits noted above, a term of six days will be deemed to have been served for every four days spent in actual custody. Because this bill changes the punishment for crimes, it imposes a state-mandated local program.

Comments

According to the author:

"This bill restores the jail inmate credits that existed before the enactment of the prison reform bill passed last year.

"Incidental to one of the prison reforms in SBx3 18 from last year - credits for prison inmates - were changes to credits for jail inmates. For many years, county jail

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inmates could earn enough credits to reduce their jail sentence by up to one-third. SB 18x increased these jail credits to make them consistent with the credit rules for state prison inmates.

"After SBx3 18 went into effect, we learned that its jail credit changes would have the unintended effect of undercutting the community corrections effort launched by a bill I co-authored last year with our former colleague, Senator Benoit, SB 678.

"Part of that community corrections model involves judges using county jail time as an intermediate sanction short of prison. By reducing available jail time, judges could be faced with an inadequate custodial alternative to state prison. The last thing we want to do is fast-track offenders out of community corrections into prison.

"This bill addresses this concern by restoring the credits available for jail inmates under the law prior to the enactment of SBx3 18. This bill does not affect the prison inmate credit reforms enacted by SBx3 18."

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: Yes

According to the Assembly Appropriations Committee analysis:

1. Moderate annual General Fund (GF) costs, potentially in excess of several hundred thousand dollars, to the extent:
  - A. Increasing county jail overcrowding increases the need for new jail construction and the attendant costs of bond debt. For example, there is approximately \$600 million remaining in the AB 900 (Solario), Chapter 7, Statutes of 2007, authority for county jail construction. To the extent this authority is used, there will be state GF costs to pay off the bond. For example, at approximately \$115,000 per bed, the cost of paying off 1,000 additional new jail bed would be approximately \$230 million or \$7.5 million per year.

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- B. This bill reduces state/local options by adding to the existing county jail overcrowding, which makes it more difficult to divert lower security state offenders to the local level. For example, the Governor estimated his proposal to establish a local block grant to help offset the costs of transferring approximately 11,000 state inmates (average daily population) with less than three years to serve to local control would save approximately \$244 million. Increasing the local jail population does not make such restructuring easier.

2. Moderate non-reimbursable local incarceration costs, potentially in the low millions of dollars to the extent county jail inmates serve additional time as a result of reduced credits. Every additional 100 months served costs approximately \$240,000. Because of overcrowding, thousands of county inmates are released early so the impact of reducing credits is not as severe as it would be otherwise.

SUPPORT : (Verified 8/25/10)

Chief Probation Officers of California (co-source)  
California State Sheriffs' Association (co-source)  
California District Attorneys Association

ASSEMBLY FLOOR :

AYES: Adams, Anderson, Arambula, Bass, Beall, Bill  
Berryhill, Tom Berryhill, Block, Blumenfield, Bradford,  
Brownley, Buchanan, Caballero, Charles Calderon, Carter,  
Chesbro, Conway, Cook, Coto, Davis, De La Torre, De Leon,  
DeVore, Eng, Evans, Feuer, Fletcher, Fong, Fuentes,  
Fuller, Gaines, Galgiani, Garrick, Gatto, Gilmore,  
Hagman, Hall, Harkey, Hayashi, Hernandez, Hill, Huber,  
Huffman, Jeffries, Jones, Knight, Lieu, Logue, Bonnie  
Lowenthal, Ma, Mendoza, Miller, Monning, Nestande,  
Niello, Nielsen, Norby, V. Manuel Perez, Portantino,  
Ruskin, Salas, Saldana, Silva, Skinner, Smyth, Solorio,  
Audra Strickland, Swanson, Torlakson, Torres, Torrico,  
Tran, Villines, Yamada, John A. Perez  
NOES: Ammiano

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Page

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NO VOTE RECORDED: Furutani, Nava, Vacancy, Vacancy

RJG:mw 8/25/10 Senate Floor Analyses

SUPPORT/OPPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

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# EXHIBIT B

BILL ANALYSIS

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Page 1

SENATE THIRD READING  
SB 76 (Committee on Public Safety)  
As Amended August 20, 2010  
2/3 vote. Urgency

SENATE VOTE : Vote not relevant

SUMMARY : Reduces good-time/work-time credits from one-half to one-third for persons convicted of misdemeanors while confined in a county jail. Specifically, this bill :

- 1) Specifies that a prisoner sentenced to state prison shall receive a one-day credit for each day served in a city or county jail, industrial farm, or road camp unless the record shows that the prisoner refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp, or did not satisfactorily comply with the rule and regulations of that jail, farm or road camp.
- 2) Specifies that a prisoner sentenced to state prison shall not receive day-for-day credit while confined in a city or county jail, industrial farm, or road camp if he or she is required to register as a sex offender, as specified, or has a conviction for a serious or violent felony, as specified.
- 3) States that specified prisoners of a city or county jail, industrial farm, or road camp shall receive a deduction of two days from his or her period of confinement for each six days he or she is confined unless he or she has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp, or did not satisfactorily comply with the rule and regulations of that jail, farm or road camp. Specified prisoners include those confined to any city or county jail, industrial farm, or road camp:
  - a) Under a judgment of imprisonment, or a fine and imprisonment until the fine is paid in a criminal action or proceeding;
  - b) As a condition of probation under suspension of imposition of a sentence or suspension of execution of sentence, in a criminal action or proceeding;
  - c) For a definite period of time for contempt pursuant to a proceeding, other than a criminal action or proceeding; or,

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- d) Following arrest and prior to the imposition of sentence for a felony conviction.
- 4) Specifies that no deduction may be made unless the specified prisoner is committed for six days or longer.
- 5) Specifies that changes in the way credit is awarded is prospective, and shall only apply to those confined for a crime committed after the effective date of this act.
- 6) States that changes made to the manner in which credits are awarded shall not affect the modifications made to the credit awarding system in the previous year.

FISCAL EFFECT : According to the Assembly Appropriations Committee analysis:

- 1) Moderate annual General Fund (GF) costs, potentially in excess of several hundred thousand dollars, to the extent:
  - a) Increasing county jail overcrowding increases the need for new jail construction and the attendant costs of bond debt. For example, there is about \$600 million remaining in the AB 900 (Solario), Chapter 7, Statutes of 2007, authority for county jail construction. To the extent this authority is used, there will be state GF costs to pay off the bond. For example, at about \$115,000 per bed, the cost of paying off 1,000 additional new jail bed would be about \$230 million or \$7.5 million per year; and,
  - b) This bill reduces state/local options by adding to the existing county jail overcrowding, which makes it more difficult to divert lower security state offenders to the local level. For example, the Governor estimated his proposal to establish a local block grant to help offset the costs of transferring about 11,000 state inmates (average

daily population) with less than three years to serve to local control would save about \$244 million. Increasing the local jail population does not make such restructuring easier.

2) Moderate non-reimbursable local incarceration costs, potentially in the low millions of dollars to the extent county jail inmates serve additional time as a result of reduced credits. Every additional 100 months served costs about \$240,000. Because of

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overcrowding, thousands of county inmates are released early so the impact of reducing credits is not as severe as it would be otherwise.

COMMENTS : According to the author, "This bill restores the jail inmate credits that existed before the enactment of the prison reform bill passed last year.

"Incidental to one of the prison reforms in SBx3 18 from last year - credits for prison inmates - were changes to credits for jail inmates. For many years, county jail inmates could earn enough credits to reduce their jail sentence by up to one-third. SB 18x increased these jail credits to make them consistent with the credit rules for state prison inmates.

"After SBx3 18 went into effect, we learned that its jail credit changes would have the unintended effect of undercutting the community corrections effort launched by a bill I co-authored last year with our former colleague, Senator Benoit, SB 678.

"Part of that community corrections model involves judges using county jail time as an intermediate sanction short of prison. By reducing available jail time, judges could be faced with an inadequate custodial alternative to state prison. The last thing we want to do is fast-track offenders out of community corrections into prison.

"This bill addresses this concern by restoring the credits available for jail inmates under the law prior to the enactment of SBx3 18. This bill does not affect the prison inmate credit reforms enacted by SBx3 18."

Please see the policy committee for a full discussion of this bill.

Analysis Prepared by : Milena Nelson / PUB. S. / (916) 319-3744  
FN: 0006452

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: *People v. Brown*  
No.: **S181963**

I declare: I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On December 17, 2010, I served the attached **RESPONDENT'S MOTION FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

**MARK J SHUSTED**  
**ATTORNEY AT LAW**  
**P O BOX 2825**  
**GRANITE BAY CA 95746-2825**  
*Attorney for Defendant & Appellant*  
*(2 Copies)*

**CLERK OF THE COURT**  
**FOR HON STEPHEN D BRADBURY**  
**LASSEN COUNTY SUPERIOR COURT**  
**220 S LASSEN ST # 6**  
**SUSANVILLE CA 96130-4390**

**THIRD APPELLATE DISTRICT**  
**CALIFORNIA COURT OF APPEAL**  
**621 CAPITOL MALL 10TH FLR**  
**SACRAMENTO CA 95814**

**ROBERT M. BURNS**  
**LASSEN CO DISTRICT ATTORNEY**  
**220 S LASSEN ST STE 8**  
**SUSANVILLE CA 96130**

**CENTRAL CALIFORNIA APPELLATE**  
**PROGRAM**  
**2407 J ST STE 301**  
**SACRAMENTO CA 95816**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 17, 2010, at San Diego, California.

\_\_\_\_\_  
STEPHEN MCGEE  
Declarant

\_\_\_\_\_  
  
Signature