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Appointed by the Court upon  
Recommendation by CCAP

SUPREME COURT  
**FILED**

AUG 13 2010

Frederick K. Ohlrich 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 )  
\_\_\_\_\_ )

**Request for Judicial Notice**

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

***Exhibit 1***

Assembly Bill No. 14 (2009-2010 3rd Ex. Sess. ["Assembly Bill 14"]), as introduced January 5, 2009.  
[[http://leginfo.ca.gov/pub/09-10/bill/asm/ab\\_0001-0050/abx3\\_14\\_bill\\_20090105\\_introduced.pdf](http://leginfo.ca.gov/pub/09-10/bill/asm/ab_0001-0050/abx3_14_bill_20090105_introduced.pdf)]

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CLERK SUPREME COURT

***Exhibit 2***

Assembly Bill 14, Bill History (Oct. 26, 2009), p. 1. [[http://leginfo.ca.gov/pub/09-10/bill/asm/ab\\_0001-0050/abx3\\_14\\_bill\\_20091026\\_history.html](http://leginfo.ca.gov/pub/09-10/bill/asm/ab_0001-0050/abx3_14_bill_20091026_history.html)]

***Exhibit 3***

Assembly Bill 14, as amended August 20, 2009, § 318, pp. 319-321. [[http://leginfo.ca.gov/pub/09-10/bill/asm/ab\\_0001-0050/abx3\\_14\\_bill\\_20090820\\_amended\\_sen\\_v96.pdf](http://leginfo.ca.gov/pub/09-10/bill/asm/ab_0001-0050/abx3_14_bill_20090820_amended_sen_v96.pdf)]

***Exhibit 4***

Assembly Bill 14, as amended August 20, 2009, p. 1. [[http://leginfo.ca.gov/pub/09-10/bill/asm/ab\\_0001-0050/abx3\\_14\\_bill\\_20090820\\_amended\\_sen\\_v96.pdf](http://leginfo.ca.gov/pub/09-10/bill/asm/ab_0001-0050/abx3_14_bill_20090820_amended_sen_v96.pdf)].)

***Exhibit 5***

Senate Rules Committee, Office of Senate Floor Analyses, Senate 3d reading analysis of Assembly Bill 14, as amended August 20, 2010. [[http://leginfo.ca.gov/pub/09-10/bill/asm/ab\\_0001-0050/abx3\\_14\\_cfa\\_20090820\\_101800\\_sen\\_floor.html](http://leginfo.ca.gov/pub/09-10/bill/asm/ab_0001-0050/abx3_14_cfa_20090820_101800_sen_floor.html)]

***Exhibit 6***

Senate Rules Committee, Office of Senate Floor Analyses, Assembly 3d reading analysis of Assembly Bill 14, as amended August 20, 2010. [[http://leginfo.ca.gov/pub/09-10/bill/asm/ab\\_0001-0050/abx3\\_14\\_cfa\\_20090820\\_110733\\_sen\\_floor.html](http://leginfo.ca.gov/pub/09-10/bill/asm/ab_0001-0050/abx3_14_cfa_20090820_110733_sen_floor.html)]

***Exhibit 7***

Senate Rules Committee, Office of Senate Floor Analyses, Senate 3d reading analysis of Senate Bill No. 1487 (2009-2010 Reg. Sess.) as introduced March 9, 2010. [[http://leginfo.ca.gov/pub/09-10/bill/sen/sb\\_1451-1500/sb\\_1487\\_cfa\\_20100427\\_100638\\_sen\\_floor.html](http://leginfo.ca.gov/pub/09-10/bill/sen/sb_1451-1500/sb_1487_cfa_20100427_100638_sen_floor.html)]

***Exhibit 8***

Assembly Committee on Public Safety, Assembly 3d reading analysis of Senate Bill No. 1487 (2009-2010 Reg. Sess.) as introduced March 9, 2010. [[http://leginfo.ca.gov/pub/09-10/bill/sen/sb\\_1451-1500/sb\\_1487\\_cfa\\_20100621\\_101219\\_asm\\_comm.html](http://leginfo.ca.gov/pub/09-10/bill/sen/sb_1451-1500/sb_1487_cfa_20100621_101219_asm_comm.html)].)

*Points and Authorities*

The principal issue on review is whether Penal Code section 4019, as amended by Senate Bill No. 18 (Stats. 2009-2010, 3d Ex. Sess.), is retroactive pursuant to *In re Estrada* (1965) 65 Cal.2d 740. According to that decision, the Penal Code section 3's presumption of prospective application "is to be applied only after, considering all pertinent factors, it is determined that it is impossible to ascertain the legislative intent." (*In re Estrada, supra*, 63 Cal.2d at p. 746.) Before invoking this presumption, this Court can and should review applicable legislative history for indicia of legislative intent. The legislative materials cited above are properly considered by this Court in that inquiry. (*Evid. Code*, §§ 452, 459; Cal. Rules of Court, rules 8.252(a), 8.520(g); *Jevne v. Superior Court* (2005) 35 Cal.4th 935, 948 ["In determining legislative intent, we may also consider a senate floor analysis."]; *People v. Benson* (1998) 18 Cal.4th 24, 34, fn. 6 ["In determining legislative intent, we may consider bill analyses prepared by the staff of legislative committees."]; *Hutnick v. U.S. Fidelity & Guaranty Co.* (1988) 47 Cal.3d 456, 465, fn. 7 ["it is well established that reports of legislative committees and commissions are part of a statute's legislative history and may be considered when the meaning of a statute is uncertain."].)

As appellant's answer brief on the merits will explain, Senate Bill 18 was based in part on Assembly Bill No. 14 which, like Senate Bill 18, was introduced as a shell bill in response to the Governor's December 2009 Proclamation of Fiscal Emergency. (Exh. 1, p. 1.) Although this bill died in the Assembly following extensive Senate amendments in August 2010 (Exh. 2, p. 2), many of its provisions were transferred to Senate Bill 18. Specifically, Assembly Bill 14's proposed amendment of section 4019 was adopted verbatim in Senate Bill 18. (Compare Sen. Bill 18, § 50, with Exh. 3, pp. 319-321.) Assembly Bill 14

was ultimately carried by Assemblymember Arambula. The principal coauthor was Senator Ducheny, who also authored Senate Bill 18. (Exh. 4, p. 1.)

Unlike Senate Bill 18, which was passed without any meaningful committee report, the third reading analyses prepared for the Senate and Assembly floor votes on Assembly Bill 14 shed light on the purpose of the amendment. Both analyses summarize the changes to credit earning statutes as follows:

This bill makes the following changes:

1. Property Crime Thresholds . . . .
2. Inmate Credit Reform. Establishes: (a) *consistent day-for-day credit earning status for offenders currently eligible for earning day-for-day credit in both jail and prison*; (b) authorizes the department to award enhanced credits (up to six weeks) for the completion of rehabilitation, education, and vocation programs in prison; (c) authorizes the department to extend existing enhanced credits for fire camp inmates (two days for one day) to inmates waiting to be transferred to a fire camp [and] (d) *provides for day to day credits for inmates serving jail terms*. Results in \$42 million in savings.

[¶] . . . .

[¶] . . . .

(Exh. 5, at pp. 1-2, italics added, Exh. 6, at pp. 1-2,.)

These bill analyses identified two reasons for the increase in jail credits: the first is consistency of credits between offenders in prison and offenders in jail. The second is financial: a savings of \$42 million, presumably based on shortened stays in prison due to increases in presentence credit awards.

There is no mention, as respondent has surmised (Resp. Brief on Merits, p. 11-14), of any intent to tie the credit increase to improving prisoner behavior.

Increasing jail credits to make them *consistent* with prison credits reflects a belief that the prior method of calculating conduct credits was *inconsistent*. Read in this context, legislation increasing jail custody credits to match prison credits is an expression of the view that the prior method of calculating conduct credits was too severe, thus bringing the amendment to section 4019 well within the presumption of *In re Estrada*.

This conclusion finds additional support in Senate Committee and Floor analyses of Senate Bill No. 1487, the urgency legislation designed to restore the credit earning regime that existed prior to the amendment of section 4019. With respect to the credit increases for jail inmates enacted in Senate Bill 18, the third reading Senate Floor Analysis of Bill 1487 explains: “For many years, county jail inmates have been able to earn enough credits to reduce their jail sentence by up to one-third. *SB3X 18 increased these jail credits to make them consistent with the credit rules for state prison inmates* and, except for serious and violent offenders, increased these credits to up to one-half the jail inmate’s sentence. [¶] While the credit changes for county jail inmates included in *SB3X 18 were enacted for sound reasons of parity and consistency*, it has been brought to our attention that these changes will have the unintended effect of undercutting the community corrections effort launched by SB 678.” (Exh. 7, at pp. 2-3, italics added.) The Assembly Committee analysis is to the same effect. (Exh. 8, pp. 4-5.)

Appellant submits Exhibits 1 through 8 are proper subjects of judicial notice by this Court. Should respondent oppose the motion on the ground the exhibits are not persuasive of the points urged, appellant would reply that such a determination is one to be made on the merits after the motion is granted.

Dated: August 12, 2010.

Respectfully submitted,

*Mark J Shusted*

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

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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 August 12, 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 August 12, 2010, in Granite Bay, California.



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Mark J. Shusted

**Exhibit 1**

**ASSEMBLY BILL**

**No. 14**

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**Introduced by Assembly Member Evans**

January 5, 2009

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An act relating to the Budget Act of 2008.

LEGISLATIVE COUNSEL'S DIGEST

AB 14, as introduced, Evans. Budget Act of 2008.

This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2008.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 19, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 19, 2008, pursuant to the California Constitution.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

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

- 1 SECTION 1. It is the intent of the Legislature to enact statutory
- 2 changes relating to the Budget Act of 2008.
- 3 SEC. 2. This act addresses the fiscal emergency declared by
- 4 the Governor by proclamation on December 19, 2008, pursuant

**AB 14**

— 2 —

- 1 to subdivision (f) of Section 10 of Article IV of the California
- 2 Constitution.

O

**Exhibit 2**

## COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 14 (3rd Ex. Sess.)

AUTHOR : Arambula

TOPIC : Corrections.

### TYPE OF BILL :

Inactive

Non-Urgency

Non-Appropriations

Majority Vote Required

State-Mandated Local Program

Fiscal

Non-Tax Levy

### BILL HISTORY

2009

Oct. 26 Died Concurrence pending.

Aug. 20 In Assembly. Concurrence in Senate amendments pending.

Aug. 20 Read third time and amended. Senate Rule 29.3 suspended. (Ayes 23. Noes 15.) Re-referred to Com. on B. & F.R. (Ayes 23. Noes 14.) From committee: Do pass. (Ayes 22. Noes 15.) (August 20). Ordered to third reading. Read third time, passed, and to Assembly. (Ayes 21. Noes 19.)

Feb. 14 Senate Rule 29.3 suspended. (Ayes 23. Noes 13. Page 24.) Re-referred to Com. on B. & F.R. From committee: Amend, and do pass as amended. (Ayes 23. Noes 13. Page 25.) (February 14). Ordered returned to third reading. Read third time, amended, and returned to third reading. (Page 25.).

Jan. 26 Withdrawn from committee. Ordered placed on second reading file. Read second time. To third reading.

Jan. 12 In Senate. Read first time. To Com. on RLS. for assignment.

Jan. 12 Withdrawn from committee. Ordered placed on third reading file. Read third time, passed, and to Senate. (Ayes 48. Noes 0. Page 35.)

Jan. 8 Re-referred to Com. on RULES.

Jan. 7 Referred to Com. on RULES. From committee chair, with author's amendments: Amend, and re-refer to Com. on RULES. Read second time and amended.

Jan. 6 From printer.

Jan. 5 Read first time. To print.

**Exhibit 3**

1 *close supervision and monitoring, dedicated calendars,*  
2 *nonadversarial proceedings, frequent drug and alcohol testing,*  
3 *and close collaboration between the respective entities involved*  
4 *to improve the parolee's likelihood of success on parole.*

5 (2) *The Judicial Council, in collaboration with the department,*  
6 *shall design and perform an evaluation of the program that will*  
7 *assess its effectiveness in reducing recidivism among parolees and*  
8 *reducing parole revocations.*

9 (3) *The Judicial Council, in collaboration with the department,*  
10 *shall submit a final report of the findings from its evaluation of*  
11 *the program to the Legislature and the Governor no later than 3*  
12 *years after the establishment of a reentry court pursuant to this*  
13 *section.*

14 *SEC. 318. Section 4019 of the Penal Code is amended to read:*

15 4019. (a) The provisions of this section shall apply in all of  
16 the following cases:

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

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

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

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

36 ~~(b) Subject~~

37 (b) (1) *Except as provided in Section 2933.1 and paragraph*  
38 *(2), subject to the provisions of subdivision (d), for each ~~six-day~~*  
39 *four-day period in which a prisoner is confined in or committed*  
40 *to a facility as specified in this section, one day shall be deducted*

1 from his or her period of confinement unless it appears by the  
2 record that the prisoner has refused to satisfactorily perform labor  
3 as assigned by the sheriff, chief of police, or superintendent of an  
4 industrial farm or road camp.

5 *(2) If the prisoner is required to register as a sex offender*  
6 *pursuant to Chapter 5.5 (commencing with Section 290), was*  
7 *committed for a serious felony, as defined in Section 1192.7, or*  
8 *has a prior conviction for a serious felony, as defined in Section*  
9 *1192.7, or a violent felony, as defined in Section 667.5, subject to*  
10 *the provisions of subdivision (d), for each six-day period in which*  
11 *the prisoner is confined in or committed to a facility as specified*  
12 *in this section, one day shall be deducted from his or her period*  
13 *of confinement unless it appears by the record that the prisoner*  
14 *has refused to satisfactorily perform labor as assigned by the*  
15 *sheriff, chief of police, or superintendent of an industrial farm or*  
16 *road camp.*

17 ~~(e) For~~

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

26 *(2) If the prisoner is required to register as a sex offender*  
27 *pursuant to Chapter 5.5 (commencing with Section 290), was*  
28 *committed for a serious felony, as defined in Section 1192.7, or*  
29 *has a prior conviction for a serious felony, as defined in Section*  
30 *1192.7, or a violent felony, as defined in Section 667.5, for each*  
31 *six-day period in which the prisoner is confined in or committed*  
32 *to a facility as specified in this section, one day shall be deducted*  
33 *from his or her period of confinement unless is appears by the*  
34 *record that the prisoner has not satisfactorily complied with the*  
35 *reasonable rules and regulations established by the sheriff, chief*  
36 *of police, or superintendent of an industrial farm or road camp.*

37 (d) Nothing in this section shall be construed to require the  
38 sheriff, chief of police, or superintendent of an industrial farm or  
39 road camp to assign labor to a prisoner if it appears from the record  
40 that the prisoner has refused to satisfactorily perform labor as

1 assigned or that the prisoner has not satisfactorily complied with  
2 the reasonable rules and regulations of the sheriff, chief of police,  
3 or superintendent of any industrial farm or road camp.

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

8 (f) It is the intent of the Legislature that if all days are earned  
9 under this section, a term of ~~six~~ *four* days will be deemed to have  
10 been served for every ~~four~~ *two* days spent in actual custody, *except*  
11 *that a term of six days will be deemed to have been served for*  
12 *every four days spent in actual custody for persons described in*  
13 *paragraph (2) of subdivision (b) or (c).*

14 *SEC. 319. Section 4532 of the Penal Code is amended to read:*

15 4532. (a) (1) Every prisoner arrested and booked for, charged  
16 with, or convicted of a misdemeanor, and every person committed  
17 under the terms of Section 5654, 5656, or 5677 of the Welfare and  
18 Institutions Code as an inebriate, who is confined in any county  
19 or city jail, prison, industrial farm, or industrial road camp, is  
20 engaged on any county road or other county work, is in the lawful  
21 custody of any officer or person, is employed or continuing in his  
22 or her regular educational program or authorized to secure  
23 employment or education away from the place of confinement,  
24 pursuant to the Cobey Work Furlough Law (Section 1208), is  
25 authorized for temporary release for family emergencies or for  
26 purposes preparatory to his or her return to the community pursuant  
27 to Section 4018.6, or is a participant in a home detention program  
28 pursuant to Section 1203.016; *or an alternative custody program*  
29 *as provided in Section 1170.05* and who thereafter escapes or  
30 attempts to escape from the county or city jail, prison, industrial  
31 farm, or industrial road camp or from the custody of the officer or  
32 person in charge of him or her while engaged in or going to or  
33 returning from the county work or from the custody of any officer  
34 or person in whose lawful custody he or she is, or from the place  
35 of confinement in a home detention program pursuant to Section  
36 1203.016; *or an alternative custody program as provided in Section*  
37 *1170.05* is guilty of a felony and, if the escape or attempt to escape  
38 was not by force or violence, is punishable by imprisonment in  
39 the state prison for a determinate term of one year and one day, or  
40 in a county jail not exceeding one year.

**Exhibit 4**

AMENDED IN SENATE AUGUST 20, 2009  
AMENDED IN SENATE FEBRUARY 14, 2009  
AMENDED IN ASSEMBLY JANUARY 7, 2009

CALIFORNIA LEGISLATURE—2009—10 THIRD EXTRAORDINARY SESSION

**ASSEMBLY BILL**

**No. 14**

**Introduced by Assembly Member Evans Arambula**  
*(Principal coauthor: Senator Ducheny)*

January 5, 2009

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~~An act to amend Sections 15819.40, 15819.402, 15819.403, 15819.404, 15819.41, 15819.412, 15819.414, 15819.417, 15820.903, 15820.911, and 15820.913 of, and to add Sections 15820.904 and 15820.914 to, the Government Code, to amend Section 7021 of the Penal Code, and to amend Sections 1970, 1971, 1972, 1973, and 1975 of, and to add Section 1977 to, the Welfare and Institutions Code, relating to correctional facilities, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately. An act to amend Sections 7027.3, 14491, 17550.19, and 21653 of the Business and Professions Code, to amend Section 25541 of the Corporations Code, to amend Section 5305 of the Financial Code, to amend Sections 11105, 11150.6, 11153, 11162.5, 11162.6, 11350, 11351, 11351.5, 11352, 11352.1, 11353, 11353.1, 11353.4, 11353.5, 11353.6, 11353.7, 11354, 11355, 11356.5, 11357, 11358, 11359, 11360, 11361, 11363, 11364.7, 11366, 11366.5, 11366.6, 11366.7, 11366.8, 11368, 11370, 11370.1, 11370.2, 11370.4, 11370.6, 11370.9, 11371, 11371.1, 11372, 11374, 11374.5, 11375, 11377, 11378, 11378.5, 11379, 11379.2, 11379.5, 11379.6, 11379.7, 11379.8, 11379.9, 11380, 11380.1, 11380.7, 11382, 11383, 11383.5, 11383.6, 11383.7, 11390, 11391, 11536, and 11550, of the Health and Safety Code, to amend Section 11880 of the Insurance Code, to amend Section 421 of the Military and Veterans~~

## **Exhibit 5**

BILL ANALYSIS

SENATE RULES COMMITTEE	AB 14XXX
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520 Fax: (916)	
327-4478	

THIRD READING

Bill No: AB 14XXX  
Author: Arambula (I)  
Amended: 8/20/09 in Senate  
Vote: 21

PRIOR VOTES NOT RELEVANT

SUBJECT: Budget Act of 2009: Public Safety

SOURCE: Author

DIGEST: Senate Floor Amendments of 8/20/09 delete the prior version of the bill which made changes related to implementation of AB 900 (Solorio), Chapter 7, Statutes of 2007, relative to the use of lease-revenue bonds for construction of additional prisons and jail beds. This bill now makes changes related to public safety necessary to implement the Budget Revisions of the 2009 Budget.

ANALYSIS: This bill makes the following changes:

1. Property Crime Thresholds. Increases the value threshold for various property crimes to reflect inflation since 1982 and increases the \$400 threshold for grand theft to \$2,500. Results in \$34 million in savings.
2. Inmate Credit Reform. Establishes: (a) consistent day-for-day credit earning status for offenders currently eligible for earning day-for-day credit in both jail and prison; (b) authorizes the department to award enhanced

CONTINUED

credits (up to six weeks) for the completion of rehabilitation, education, and vocation programs in prison; (c) authorizes the department to extend existing enhanced credits for fire camp inmates (two days for one day) to inmates waiting to be transferred to a fire camp; (d) provides for day to day credits for inmates serving jail terms. Results in \$42 million in savings.

3. Sentence Changes. Three property crimes punishable by either a prison term or a jail term will be changed to misdemeanors: petty theft with prior, writing bad checks, and receiving stolen property. Results in \$100 million in savings.

4. Parole Changes. Low and moderate risk parolees with non-serious, non-violent and non-sex offenses will not be subject to parole revocation. Serious offenders will be eligible for early parole discharge based upon successful completion of drug treatment. Results in \$188 million in savings.

5. Parole Re-Entry Courts. CDCR will establish the Parole Accountability Program. As part of the program CDCR will use a parole violation decision-making instrument to determine the most appropriate parole sanctions for a parole violator. Parole violators with a history of substance abuse or mental illness may be referred to a re-entry court. The court will work with the assistance of parole agents to determine the appropriate conditions of parole. Results in \$10 million in savings.

6. Alternative Custody. The Secretary of CDCR will be given authority to order home detention with electronic monitoring of individuals with less than 12 months to serve on their prison terms. This custody alternative will also be available to inmates over age 60 and those who are permanently medically incapacitated regardless of the length of their sentence. Results in \$120.5 million in savings.

7. Probation Enhancement. County probation will receive a portion of CDCR savings for improving outcomes so felony probationers who would otherwise be sent to prison remain under the jurisdiction of the counties. Probation will

CONTINUED

use these funds for additional officers and evidence-based programs. Results in \$30 million in savings.

8. Sentencing Commission. Establishes a sentencing commission in California. The commission will establish sentencing guidelines by July 1, 2012. The guidelines will go into effect January 1, 2013 unless rejected by The Legislature and Governor. The Commission membership will include law enforcement, academic experts on criminal justice, representatives of the judiciary and defense counsel. All voting member appointments other than those from the judiciary are gubernatorial, subject to Senate confirmation.

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

RJG:nl 8/20/09 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

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

## **Exhibit 6**

CONCURRENCE IN SENATE AMENDMENTS

AB 14 X3 (Arambula)

As Amended August 18, 2009

Majority vote

-----  
|ASSEMBLY: | | (January 12, | SENATE: | | (August 20, | |  
| | | 2009) | | | 2009) | |  
-----

(vote not relevant)

(vote not available)

Original Committee Reference: RLS.

SUMMARY: Makes statutory changes necessary to implement changes to the 2009-10 Budget Act.

The Senate amendments delete the Assembly version of this bill, and instead:

- 1) Property Crime Thresholds - Increase the value threshold for various property crimes to reflect inflation since 1982 and increases the \$400 threshold for grand theft to \$2,500. Results in \$34 million in savings.
- 2) Inmate Credit Reform - Establish: a) consistent day-for-day credit earning status for offenders currently eligible for earning day-for-day credit in both jail and prison; b) authorizes the department to award enhanced credits (up to six weeks) for the completion of rehabilitation, education, and vocation programs in prison; c) authorizes the department to extend existing enhanced credits for fire camp inmates (two days for one day) to inmates waiting to be transferred to a fire camp; and, d) provides for day for day credits for inmates serving jail terms. Results in \$42 million in savings.
- 3) Sentence Changes - Three crimes punishable by either a prison term or a jail term will be changed to misdemeanors. These include petty theft with prior, writing bad checks, and receiving stolen property. Results in \$100 million in savings.
- 4) Parole Changes - Low and moderate risk offenders with non-serious, non-violent and non-sex offenses will not be subject to parole revocation. Results in \$178 million in

savings.

5) Parole Re-Entry Courts - California Department of Corrections and Rehabilitation (CDCR) will establish the Parole Accountability Program. As part of the program CDCR will use a parole violation decision-making instrument to determine the most appropriate parole sanctions for a parole violator. Parole violators with a history of substance abuse or mental illness may be referred to a re-entry court. The court will work with the assistance of parole agents to determine the appropriate conditions of parole. Results in \$10 million in savings.

6) Alternative Custody - The Secretary of CDCR will be given authority to order home detention with electronic monitoring of individuals, who meet specified criteria, with less than 12 months to serve on their prison terms. This custody alternative will also be available to inmates over age 60 and those who are permanently medically incapacitated regardless of the length of their sentence. Results in \$120.5 million in savings.

7) Probation Enhancement - County probation will receive a portion of CDCR savings for improving outcomes so felony probationers who would otherwise be sent to prison remain under the jurisdiction of the counties. Probation will use these funds for additional officers and evidence-based programs. Results in \$30 million in savings.

8) Public Safety Commission - Establishes a California Public Safety Commission. The commission will establish sentencing guidelines by July 1, 2012. The guidelines will go into effect January 1, 2013 unless rejected by the Legislature and Governor. The Commission membership will include law enforcement, academic experts on criminal justice, and representatives of the judiciary and defense counsel. All voting member appointments other than those from the judiciary are gubernatorial, subject to Senate confirmation.

Analysis Prepared by : Joe Stephenshaw / BUDGET / (916) 319-2099

## **Exhibit 7**

BILL ANALYSIS

SENATE RULES COMMITTEE	SB 1487
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520 Fax: (916)	
327-4478	

THIRD READING

Bill No: SB 1487  
Author: Senate Public Safety Committee  
Amended: As introduced  
Vote: 27 - Urgency

SENATE PUBLIC SAFETY COMMITTEE: 7-0, 4/13/10  
AYES: Leno, Cogdill, Cedillo, Hancock, Huff, Steinberg,  
Wright

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: County jail custody credits

SOURCE: Chief Probation Officers of California  
California State Sheriffs Association

DIGEST: This bill revises the amount of sentencing credits that county jail inmates may earn to a maximum of one-third of their sentence.

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 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

CONTINUED

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 repeals the increase in credits made available to some county jail inmates in SBX3 18 (2009) and return the credits available to those inmates to a maximum of one-third of their sentence.

Prior Legislation

SBX3 18 (Ducheny), Chapter 28, Statutes of 2009, which passed the Senate on 9/11/09 (21-16).

SB 678 (Leno & Benoit), Chapter 608, Statutes of 2009, which passed the Senate on 5/18/09 (33-0).

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

SUPPORT: (Verified 4/26/10)

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

ARGUMENTS IN SUPPORT: According to the Senate Public Safety Committee, last year SB 678 was enacted in an effort to create incentives for counties to increase community corrections programs and improve the success rate of offenders placed on felony probation. This was done in recognition of the fact that every success on probation means less crime being committed, fewer victims, and one less inmate in state prison. Part of that community corrections model involves judges utilizing county jail time as intermediate sanctions for minor probation violations as opposed to sending every offender to state prison.

Last year the Legislature also passed SB3X 18, which enacted a number of prison reforms. Incidental to one of those reforms, credits for prison inmates, were changes to credits for jail inmates. For many years, county jail inmates have been able to earn enough credits to reduce

their jail sentence by up to one-third. SB3X 18 increased these jail credits to make them consistent with the credit rules for state prison inmates and, except for serious and violent offenders, increased these credits to up to one-half the jail inmate's sentence.

While the credit changes for county jail inmates included in SB3X 18 were enacted for sound reasons of parity and consistency, it has been brought to our attention that these changes will have the unintended effect of undercutting the community corrections effort launched by SB 678. In order for the community corrections model to work, local jail time has to be sufficiently available as a sanction for probation violations as to constitute an adequate alternative to state prison. By reducing the number of days an offender may be sentenced to county jail to 180, in many circumstances this reduced local sanction could present judges with an inadequate alternative to a state prison commitment, and could therefore undermine the effort to improve public safety outcomes among felony probationers. This bill addresses this concern by restoring the credits available for jail inmates under the law prior to the enactment of SB3X 18. This bill does not affect the prison inmate credit reforms enacted by SB3X 18.

RJG:nl 4/26/10 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

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

## **Exhibit 8**

BILL ANALYSIS

SB 1487

Page 1

Date of Hearing: June 22, 2010

Counsel: Milena Nelson

ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
Tom Ammiano, Chair

SB 1487 (Committee on Public Safety) - As Introduced: March 9, 2010

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,
  - 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.

EXISTING LAW:

- 1) States that specified prisoners of a city or county jail, industrial farm, or road camp shall receive a deduction of one day from his or her period of confinement for each four 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 [Penal Code Section 4019(b)(1) and (c)(1)]:
  - 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,

- d) Following arrest and prior to the imposition of sentence for a felony conviction. [Penal Code Section 4019(a).]
- 2) States that prisoners who are required to register as a sex offender or has a current or prior conviction for a serious or violent felony who are detained in a city or county jail, industrial farm, or road camp shall receive a deduction of one day 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 rules 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 [Penal Code Section 4019(b)(2) and (c)(2)]:
- 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,
  - d) Following arrest and prior to the imposition of sentence for a felony conviction. [Penal Code Section 4019(a).]
- 3) Specifies that no deduction shall be made unless the person is committed for a period of four days or longer, or a period of six days or longer if the person is required to register as a sex offender or has a current or prior conviction for a serious or violent felony, as specified. [Penal Code Section 4019(e).]
- 4) Allows for credits towards sentence to be earned, as specified. [Penal Code Section 2933(a).]
- 5) Provides that for every six months of continuous incarceration, a prisoner shall be awarded credit reduction of six months towards his or her confinement, unless prohibited

from earning credits by another section of law. The maximum credits earned under this section is six months. [Penal Code Section 2933(b).]

- 6) Specifies that credits are a privilege, not a right, but every eligible prisoner shall have the opportunity to participate in the credit program. [Penal Code Section 2933(c).]
- 7) Provides that credits lost may be restored after one year free of disciplinary infractions, under regulations adopted by the California Department of Corrections and Rehabilitation. A deduction of 180 days will be made from the restored credits for the commission of a serious felony, as specified, or 90 days for conspiracy to commit a serious felony, as specified. Credits may not be restored if the forfeiture resulted from causing permanent disability or killing of another. Upon application, a qualified prisoner's credits will be restored, unless the forfeiture was for more than 90 days, if at a hearing evidence is found that the prisoner refused to accept or failed to perform in a credit qualifying assignment, or in extraordinary circumstances. Otherwise, restoration of credits are at the discretion of the Secretary. [Penal Code Section 2933(d).]
- 8) Allows prisoners serving their sentences in county jail, city jail, industrial farm, or work camp to receive one day of credit for each day served. [Penal Code Section 2933(e).]

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: 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.”

2) Proportionality of Credits to Nature of the Crime Committed:

Under this bill's proposed changes, an inmate in a city or county jail, industrial farm or road camp sentenced to state prison, but waiting to be transferred to prison, would receive a one-day credit for each day served unless he or she is required to register as a sex offender or has a current or previous conviction for a serious or violent felony. These inmates are serving time for convictions of felonies which require incarceration for a period longer than one year. However, an inmate who was sentenced to a city or county jail, industrial farm or road camp, would receive two-day credit for every six days served. These inmates are serving time for convictions of misdemeanors or less serious felonies requiring incarceration for less than one year.

This incongruence in the manner in which inmates can earn sentence credits has two ramifications. First, it creates the odd situation where two people, serving the in the same facility, earn sentence credits at different rates. Second, the inmate earning more credits was convicted of a more serious crime, a felony, than the inmate earning less credits, who was convicted of a misdemeanor.

3) Overcrowding in Jails: Like the state prison system, many counties are under federal court orders to reduce the number of inmates within the system. Over the past 30 years, the American Civil Liberties Union (ACLU) has filed several lawsuits to force counties to reduce the number of people incarcerated in the jail system. For example, Los Angeles

County jails are the subject of on-going litigation, particularly the Men's Central Jail. In a recently release report on the status of the Men's Central Jail, the ACLU stated that many of the on-going issues within the Men's Central Jail are created by or exacerbated by overcrowding. According to the ACLU, one of the most significant problems is “the apparent culture of violence and retaliation that persists in the jail, a culture fueled by severe overcrowding and understaffing . . . . In an aging and decrepit facility, this culture leaves vulnerable those most susceptible to violence and victimization-like prisoners with mental illness, for example-and it is the community if Los Angeles that pays the price, both in terms of taxpayer dollars to fund a jail system housing constant re-offenders and in terms of the societal costs absorbed by releasing back into the community men who have not been prepared to successfully re-enter society.” (American Civil Liberties Union, Annual Report on Conditions Inside Men's Central Jail, 2008-2009.) This bill may exacerbate the current over-crowding crisis in county jails as many inmates would earn less credits than they can under current law.

4) Governor's Proposal to Shift More Inmates to Jails will

Exacerbate Overcrowding: Despite the current over-crowding crisis in many California jails, Governor Schwarzenegger has proposed shifting the responsibility for incarceration of inmates convicted of specified non-serious, non-violent, non-sex offenses to county and city jails. The Governor's proposal is designed to both save the state money by reducing state prison costs and reducing the current over-crowding crisis in the state prison system. If the Governor's proposal and this bill are both successful, the current jail over-crowding crisis will be greatly increased.

5) Argument in Support: According to Taxpayers for Improving Public Safety, this bill “will clarify the number of days for good time credit both a prison and county jail inmate may receive. The importance of this legislation is self-evident, both because of current prison and jail overcrowding and inconsistencies in the manner in which good time credits are awarded to inmates. Because legislation and the current State financial difficulties have overwhelmed both County jails and State prisons, and as a result, rehabilitation programs have realistically disappeared, the only reward system for positive

inmate behavior available to Warden's and Sheriff's is good time credits. The inconsistent implementation of good time credits will be resolved by this legislation.”

6) Argument in Opposition: According to the California Public Defenders Association, “SB 1487 seeks to repeal the increase in credits made available to some county jail inmates under SBx3 18 (2009). The prison reform bill passed by the Legislature in 2009 and signed into law by Governor Schwarzenegger acknowledged the staggering prison and jail overcrowding crisis and attempted to enact modest reforms to reduce the server overcrowding in prisons and jails. Of the state prison bound people in custody, all are housed in local county and city jails prior to sentencing. Under SB 1487, individuals who actually receive a prison sentence will continue to receive additional [Penal Code Section] 4019 credits whereas AB 1487 would deny individuals who have earned a probationary sentence from receiving the same 4019 credits enacted by SBx3 18.

“Approximately 70 percent of individuals housed in county jails are there on a pre-conviction basis? The days in jail do not determine whether a person will succeed on probation- rather it is the upfront combination of incentives, individual assessments to determine the correct needs of the individual, and the connection to those actual services and program that will make the difference.”

7) Related Legislation:

- a) SBx3 18 (Ducheny), Chapter 28, Statutes of 2009, provides that certain prisoners earn one credit for each day served in state prisons or in other institutions while awaiting transfer to a state prison. SBx3 18 also authorizes up to six weeks of additional credit upon the completion of specified programs, and expands the existing program for extra time credits for inmate firefighters. SBx3 18 also revises the time credits for inmate of city or county jails.
- b) AB 2392 (Torrico) would have limited state prison inmates' day-to-day sentence credits to inmates actively participating, or willing to participate, in work, education, or substance abuse programs rather than from the time of sentence to state prison. AB 2392 was never heard

by this Committee.

- c) AB 1395 (Torrico) awards a one-day credit for each day served in a city or county jail, industrial farm or road camp for those inmates sentenced to state prison. AB 1395 would award one day credit for ever six days confined to a city or county jail, industrial farm or road camp. AB 1395 is pending hearing by the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Sheriffs' Association (Sponsor)  
Association for Los Angeles Deputy Sheriffs  
California District Attorneys Association  
California Probation, Parole, and Correctional Association  
Chief Probation Officers of California  
Crime Victims United  
Los Angeles County Probation Officers Union  
Los Angeles County Sheriff's Department  
Los Angeles Police Protective League  
Peace Officers Research Association of California  
Riverside Sheriffs' Association  
Taxpayers for Improving Public Safety

Opposition

California Attorneys for Criminal Justice  
California Public Defenders Association

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