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Presentence Custody Time Credit under California Penal Code Section 2900.5

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Presentence Custody Time Credit Under California Penal Code Section 2900.5

The purpose of this comment is to briefly survey the constitutional basis for California Penal Code section 2900.5,[1] designed to give defendants who have received felony convictions credit for their presentence custody time, and to review recent California decisions that have interpreted the meaning and coverage of this section. Consideration will also be given to the interrelationship between the California statute and its federal counterpart, 18 U.S.C. § 3568,[2] stressing those areas where problems of potential double credits have arisen and how these problems have been resolved.

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1. Cal. Penal Code § 2900.5 (West 1972):

(a) In all felony convictions, either by plea or by verdict, when the defendant has been in custody in any city, county, or city and county jail, all days of custody of the defendant from the date of arrest to the date on which the serving of the sentence imposed commences, including days served as a condition of probation in compliance with a court order, shall be credited upon his sentence, or credited to any fine which may be imposed, at the rate of not less than twenty dollars ($20) per day, or more, in the discretion of the court imposing the sentence. If the total number of days in custody exceeds the number of days of the sentence to be imposed, the entire sentence shall be deemed to have been served. In any case where the court has imposed both a prison sentence and a fine, any days to be credited to the defendant shall first be applied to the sentence imposed, and thereafter such remaining days, if any, shall be applied to the fine.

(b) For the purposes of this section, credit shall be given only where the custody to be credited is attributable to charges arising from the same criminal act or acts for which the defendant has been convicted.

(c) This section shall be applicable only to those persons who are delivered into the custody of the Director of Corrections on or after the effective date of this section.

2. 18 U.S.C. § 3568 (1966):

The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which such person is received at the penitentiary, reformatory, or jail for service of such sentence. The Attorney General shall give any such person credit toward service of his sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed. As used in this section, the term 'offense' means any criminal offense, other than an offense triable by courtmartial, military commission, provost court, or other military tribunal, which is in

RATIONALE FOR PENAL CODE SECTION 2900.5

Prior to 1972, presentence jail time was not required to be credited to the sentence eventually imposed upon a convicted defendant in California.[3] However, beginning in the mid-1960's, a trend became apparent in federal statutes and case law, as well as in California case law, which indicated that the time for presentence jail time credit had arrived. Among the significant events that prompted the passage of Cal. Penal Code § 2900.5 in 1971[4] were the *Bail Reform Act of 1966*[5] and the growing application of equal protection principles to sentences served primarily by the indigent, the implicit recognition that presentence custody time is "punishment,"[6] the new sentencing standards advocated by the American Bar Association[7] and the *Civil Rights Act.*[8]

In 1966, when the *Bail Reform Act*[9] became effective, amending 18 U.S.C. § 3568 to specifically give a defendant credit for ". . . any days spent in custody in connection with the offense or acts for which sentence was imposed . . . ,"[10] concern begin to grow on the federal level whether defendants in state courts enjoyed a similar right.[11]

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violation of an Act of Congress and is triable in any court established by Act of Congress.

If any such person shall be committed to a jail or other place of detention to await transportation to the place at which his sentence is to be served, his sentence shall commence to run from the date on which he is received at such jail or other place of detention.

No sentence shall prescribe any other method of computing the term.

3. People v. Anderson, 44 Cal. App. 3d 723, 729, 118 Cal. Rptr. 918, 922 (1975). *See also* People v. Rose, 41 Cal. App. 2d 445, 446, 106 P.2d 930, 931 (1940) and People v. Trippell, 20 Cal. App. 2d 386, 390, 67 P.2d 111, 113 (1937).

4. *See* People v. Anderson, 44 Cal. App. 3d 723, 118 Cal. Rptr. 918 (1975). The legislature provided that presentence jail time credit was to be effective prospectively only, beginning March 4, 1972.

5. Pub. L. 89-465 s.4.

6. *See* Jones v. Wittenberg, 323 F. Supp. 93 (N.D. Ohio 1971) and *In re* Young, 32 Cal. App. 3d 68, 107 Cal. Rptr. 915 (1973).

7. *See* AMERICAN BAR ASSOCIATION PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO SENTENCING ALTERNATIVES AND PROCEDURES, Special Committee on Minimum Standards for the Administration of Criminal Justice, (Approved Draft, 1968).

8. 42 U.S.C. § 1983 (1871).

9. Pub. L. 89-465 s.4.

10. 18 U.S.C. § 3568 (1966).

11. *See, e.g.*, 41 U. Cinc. L. Rev. 823, 828-35 (1972), which analyzes the Constitutional guarantees of equal protection and due process, as well as the bans on double jeopardy and cruel and unusual punishment, and poses the question whether Williams v. Illinois, 399 U.S. 325 (1970) and Tate v. Short, 401 U.S. 395 (1971) create a Constitutional right to presentence credit without reference to any state or federal statute. *See also* 34 Ohio St. L.J.

In 1970, using the Equal Protection Clause of the Fourteenth Amendment as its basis, the United States Supreme Court in *Williams v. Illinois*[12] hinted strongly that such a right existed. An indigent had received the maximum prison term of one year under an Illinois statute plus fine and court costs. Because he could not pay the fine, he was required to be confined 101 days beyond the maximum statutory period. Holding that a state statute which permits both imprisonment and the imposition of a fine cannot be parlayed into a longer term of imprisonment than is fixed by statute, the court left room for a broader reading of the decision when it stated ". . . the Equal Protection Clause of the Fourteenth Amendment requires that the statutory ceiling placed on imprisonment for any substantive offense be the same for all defendants irrespective of their economic status."[13]

In *In re Antazo*,[14] decided only two months after *Williams* and based on similar facts, the California Supreme Court, though citing the *Williams* rationale with approval, went beyond its holding by stating:

> . . . [California] Penal Code sections 1205 and 1203.1 may not be applied in such a way as to foreclose to the indigent offender *the opportunity to obtain his freedom* which is implicit in a sentence or probation order providing for payment of a fine.[15] [Emphasis added.]

Basing its decision on the attitude of the "contumacious offender" rather than the status of an "indigent offender," the California Court held the offender's indigency is not to be dispositive, but that ". . . an indigent who would pay his fine if he could, must be given an option comparable to an offender who is not indigent."[16] By so holding, the full impact of the Equal Protection Clause was judi-

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586 (1973), which points out the increasing instances where the federal courts are willing to interfere with state court processes to insure that defendants in state court proceedings are given their Constitutionally mandated sentence credits.

12. 399 U.S. 235 (1970).

13. *Id.* at 244.

14. *In re* Antazo, 3 Cal. 3d 100, 473 P.2d 999, 89 Cal. Rptr. 255 (1970).

15. *Id.* at 116, 473 P.2d at 1009, 89 Cal. Rptr. at 265. *See also* Cal. Penal Code § 1205 (West Supp. 1975), which deals with the imposition of fines with or without imprisonment, and Cal. Penal Code § 1203.1 (West 1972), which deals with the conditions for the imposition of probation.

16. *Id.* at 116, 473 P.2d at 1009, 89 Cal. Rptr. at 265.

cially applied to sentences in California that are based solely on indigency.

The federal courts were also the first to implicitly recognize that presentence incarceration is in fact "punishment." In *Jones v. Wittenberg*,[17] an action brought by state jail inmates, the plaintiff inmates who had not yet been sentenced alleged they were denied equal protection since they received the same treatment as that meted out to the inmates who had already been sentenced.

Quoting from Blackstone that the purpose of holding a prisoner in custody in lieu of bail ". . . is only for safe custody, and not for punishment . . . ," the court stated that "[f]or centuries, under our law, punishment before conviction has been forbidden."[18] Yet, in holding for the plaintiffs, the court also recognized that it is a denial of equal protection if those detained are ". . . subjected to any hardship except those absolutely requisite for the purpose of confinement only, and they retain all the rights of an ordinary citizen except the right to go and come as they please. . . ."[19] The court, however, was careful not to conclude that "confinement only" equals, at least to some degree, "punishment." As a matter of fact, regardless of what one may call it, presentence jail time is punishment. Clearly the California Legislature recognized that confinement before sentencing is punishment, since in Cal. Penal Code § 2900.5(a)[20] it provided credit for ". . . *all days of custody* of the defendant from the date of arrest to the date on which the serving of the sentence imposed commences. . . ."[21] [Emphasis added.]

A third basis for the California statute was set out in the 1967 tentative draft of the *American Bar Association Standards of Criminal Justice Relating to Sentencing Alternatives and Procedures*.[22] Section 3.6 states:

> (a) Credit against the maximum term and any minimum term should be given to a defendant for all time spent in custody as a result of the criminal charge for which a prison sentence is imposed or as a result of the conduct on which such charge is based. This should specifically include credit for time spent in custody prior

17. Jones v. Wittenberg, 323 F. Supp. 93 (N.D. Ohio 1971).
18. *Id.* at 100.
19. *Id.*
20. Cal. Penal Code § 2900.5(a) (West 1972). For complete text *see, supra* note 1.
21. *Id.*
22. AMERICAN BAR ASSOCIATION PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO SENTENCING ALTERNATIVES AND PROCEDURES, Special Committee on Minimum Standards for the Administration of Criminal Justice, (Approved Draft, 1968).

> to trial, during trial, pending sentence, pending the resolution of an appeal, and prior to arrival at the institution to which the defendant has been committed.[23]

Though Cal. Penal Code § 2900.5(a) does not enumerate specific credits in the same manner, nevertheless, in view of the California statute's concise statement that the defendant be credited for ". . . all days of custody . . . from the date of arrest to the date on which the serving of the sentence imposed commences . . . ,"[24] it would seem that the statute covers all the enumerated instances set out in the *American Bar Association Standards* and may even be broader.

Finally, Cal. Penal Code § 2900.5 was probably prompted in part by the *Civil Rights Act* of 1871,[25] which provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.[26]

In 1971 in *Royster v. McGinnis*[27] the United States District Court for the Southern District of New York, taking jurisdiction under 28 U.S.C. § 1343(3),[28] recognized that a substantial Constitutional question was raised when a state statute denied prisoners with indeterminate sentences good time credit for the period of their presentence incarceration in a county jail, and held that such a statute resulted in the ". . . deprivation of rights secured by the Fourteenth Amendment . . ." and as such was unconstitutional.[29] Certainly

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23. *Id.* at 186-87.
24. Cal. Penal Code § 2900.5(a) (West 1972).
25. 42 U.S.C. § 1983 (1871).
26. *Id.*
27. Royster v. McGinnis, 332 F. Supp. 973 (S.D. New York 1971), *rev'd*, 410 U.S. 263 (1973).
28. 28 U.S.C. § 1343 (1957):
The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: . . . (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.
29. 332 F. Supp. at 979 (S.D. New York 1971). Note: Though this deci-

the same rationale could be applied to a state that had no statute prohibiting such a result, as was the case in California prior to 1972.

Application of Penal Code Section 2900.5

Even after the California Legislature enacted Penal Code § 2900.5, the courts were unable to apply its provisions to the question of presentence custody credit until guidelines had been formulated on the technical application of the statute in three important areas.

a. The first question which had to be decided was which body possessed the authority to grant credit under Cal. Penal Code § 2900.5(a). In *People v. Yarbrough*,[30] the Court of Appeal, considering a manslaughter conviction, answered the question by stating:

> [I]t is for the Adult Authority and not the trial court, to grant the 'credit' therein provided. It is administratively convenient for the judgment to contain the data necessary for the Authority to perform its statutory duty, so that the Authority need not engage in its own search of the trial court records. But, if the judgment contains a statement adequate for the purpose, it is not material that it do so in any particular words.[31]

b. The second area concerned the question of what constitutes a "jail" for the purposes of Cal. Penal Code § 2900.5(a). The Court of Appeal has held that the language of subsection (a) which reads ". . . in any city, county, or city and county jail . . ." should be broadly interpreted. In *People v. Cowsar*,[32] a case where the defendant was convicted of second degree murder following his return to sanity, the court held he was entitled to have the time he spent in a state hospital following suspension of the original proceedings credited on his sentence. The court felt this was necessary ". . . to avoid an unconstitutional disparity in treatment between those confined in jail and in a state hospital prior to trial."[33]

c. The last area concerned the prospective application of Cal. Penal Code § 2900.5 which is dealt with in subsection (c). In the

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sion has since been reversed by the United States Supreme Court in McGinnis v. Royster, 410 U.S. 263 (1973), the effect of the reversal was not to say that refusal to grant credit for pretrial incarceration was not a denial of Fourteenth Amendment rights, but, as pointed out in *In re* Young, 32 Cal. App. 3d 68, 75, 107 Cal. Rptr. 915 (1973), only that the refusal under the state statute to give "potential additional days" each month for actual time served to those incarcerated prior to sentencing did not deny them equal protection even though the additional days were ordinarily available for "good conduct and efficient performance of duty" to inmates who had actually been sentenced.

30. People v. Yarbrough, 37 Cal. App. 3d 454, 112 Cal. Rptr. 391 (1974).
31. *Id.* at 459-60, 112 Cal. Rptr. at 394.
32. People v. Cowsar, 40 Cal. App. 3d 578, 115 Cal. Rptr. 160 (1974).
33. *Id.* at 581, 115 Cal. Rptr. at 161.

important case of *In re Kapperman*,[34] the California Supreme Court held the prospective limitation invalid as violative of the California Constitution, Art. I, §§ 11, 21, which requires uniform operation of laws and prohibits special privileges and immunities, and of the Equal Protection Clause of the Fourteenth Amendment, since the limitation constitutes a legislative classification which is not reasonably related to a legitimate public purpose. The *Kapperman* court felt, however, that the invalidity of subsection (c) did not invalidate the entire presentence credit procedure provided in the rest of the statute. Rather, the credit is to be extended to those persons incarcerated or on parole for felony offenses regardless of the date of their commitment to state prison.[35]

INABILITY TO AFFORD BAIL

The first time a California court had the opportunity to apply Penal Code § 2900.5, it considered the question of credit for presentence incarceration in lieu of bail. In the case of *In re Young*,[36] a defendant was convicted for violating Cal. Health and Safety Code § 11531 (sale of marijuana). Because he could not post bail, he was confined for 62 days in the county jail between his arrest and delivery to corrections. These 62 days were not credited against the minimum term, and the defendant petitioned the Court of Appeal for a writ of habeas corpus.

In granting the writ, the *Young* court accepted the petitioner's view that Cal. Penal Code § 2900, which provides that a prison term commences upon actual delivery of a defendant into custody of the Department of Corrections, violates federal standards of equal protection and due process because it denies credit for presentence incarceration due solely to indigency and, as such, amounts to invidious discrimination.[37] Carrying the reasoning of the United States District Court in *Jones v. Wittenberg*[38] closer to its logical conclusion, the California court carefully scrutinized "classifications" of those who can afford bail and those who can not and concluded that:

34. *In re* Kapperman, 11 Cal. 3d 542, 522 P.2d 657, 114 Cal. Rptr. 97 (1974).
35. *Id.* at 545-50, 552 P.2d at 658-62, 114 Cal. Rptr. at 98-102.
36. *In re* Young, 32 Cal. App. 3d 68, 107 Cal. Rptr. 915 (1973).
37. *Id.* at 75, 107 Cal. Rptr. at 920.
38. 323 F. Supp. 93 (N.D. Ohio 1971).

> [a]lthough the presentence jail time may not be 'punishment' as defined by the Penal Code, it is a deprivation of liberty. The additional deprivation suffered only by the indigent does not meet federal standards of equal protection and does not comply with the mandate of uniform operation of all laws contained in article I, section 11 of the California Constitution. The enactment of Penal Code section 2900.5 is evidence that the disparate result does not further a compelling government interest that is served by classification.[39]

By granting presentence credit for incarceration in lieu of bail, the courts were now free to turn their attention to the particularly complex and recurring issues that have arisen since the passage of Cal. Penal Code § 2900.5: the question of presentence credit for incarceration on multiple prosecutions, the question of the effect of Cal. Penal Code § 2900.5 on the trial court's authority to retain jurisdiction over a defendant after conviction and the question of a defendant's parole eligibility.

Multiple Prosecutions

The problem concerning multiple prosecutions arises under Cal. Penal Code § 2900.5(b) which provides in part that ". . . credit shall be given only where the custody to be credited is attributable to charges arising from the same criminal act or acts for which the defendant has been convicted."

Specifically, courts have been required to apportion presentence custody time credit in two different situations: those cases where the defendant is being held in a city or county jail for trial on one or more state charges arising from one or more criminal acts and those cases where the defendant is held either in state or federal custody prior to trial, where some of the charges are federal and some are based on violations of state statutes. The problem of apportioning credit can be further complicated by the issue whether the same or different acts served as the basis for the different federal and state charges.

a. The California courts have found very little in Cal. Penal Code § 2900.5(b) that causes difficulty when the defendant is seeking credit for presentence custody time where all the charges are for commission of state crimes. The only issue that has been thus far raised is the meaning of the phrase ". . . same criminal act . . . ."[40] This issue was squarely confronted in *People v. Ayala*,[41]

39. 32 Cal. App. 3d at 75, 107 Cal. Rptr. at 920 (1973).
40. Cal. Penal Code § 2900.5(b) (West 1972). For complete text *see, supra* note 1.
41. People v. Ayala, 34 Cal. App. 3d 360, 109 Cal. Rptr. 193 (1973).

where the defendant sold a powdery substance to an undercover agent, representing it to be heroin. Upon chemical analysis the substance was found not to contain any opiates, and charges were filed against the defendant for making a sale of a substance falsely represented to be a narcotic. The defendant was then arrested. A second analysis, however, disclosed the presence of some heroin in the sample. The initial charges were dropped for lack of proof, but a new charge was filed for the sale of heroin. The defendant was ordered to stand trial on that felony charge.

Upon defendant's appeal in which he urged a multiple prosecution argument, the court reviewed Cal. Penal Code § 2900.5(b) and stated that the defendant ". . . will be entitled to credit on his sentence for a conviction for sale of heroin for time spent in custody on the charge of sale of a substance falsely represented to be a narcotic."[42] In reaching this conclusion the court stated: "[c]learly the charge of sale of a substance falsely represented to be a narcotic arises from the same criminal act from which arises the charge of sale of heroin,"[43] and thus held the requirements of subsection (b) were met.

b. Less clear, however, are those cases where a defendant has committed acts in violation of both state and federal statutes. Both state and federal courts have had difficulty in determining when presentence credit should be allocated for time spent in the custody of another sovereign and how double credits can be avoided.

Because there have been more opinions dealing with this problem in the different federal circuits, and because several federal decisions have interpreted 18 U.S.C. § 3568[44] before the California courts addressed the issue under Cal. Penal Code § 2900.5(b),[45] it is appropriate here to review some of the more important of the federal decisions before turning to recent California decisions.

The first important federal case was *Davis v. Attorney General*,[46] decided by the Fifth Circuit. The appellant was arrested on October 3, 1967, on state charges for which bail was set two days later. He would have posted bail except that on October 13, 1967,

42. *Id.* at 363, 109 Cal. Rptr. at 195.
43. *Id.*
44. 18 U.S.C. § 3568 (1966). For complete text *see, supra* note 2.
45. Cal. Penal Code § 2900.5(b) (West 1972). *See, supra* note 1.
46. Davis v. Attorney General, 425 F.2d 238 (5th Cir. 1970).

the United States Parole Board issued a mandatory release violation detainer warrant, directing the state to hold him for federal authorities. Appellant argued that the federal detainer was responsible for his commitment because the state officials relied on the detainer warrant in refusing to release him on bail, even though he ultimately pled guilty to the state charge.

The Court of Appeals held the appellant had alleged facts which would entitle him to credit under 18 U.S.C. § 3568, stating "[i]f he was denied release on bail . . . [it] was time spent in custody in connection with the [federal] offense, since the detainer was issued upon authority of the appellant's federal conviction and sentence."[47]

A year later, in *Jackson v. Attorney General*,[48] the same court acted to limit *Davis*[49] in a case where a defendant was arrested and held in state custody after a federal mandatory release violator warrant had issued. The defendant argued that if he had posted bail, the federal warrant would have been executed and he would have been in federal custody and would thus have qualified for time credit under 18 U.S.C. § 3568.

In rejecting this argument, the Court of Appeals emphasized the differences in the facts of the two cases. In the *Davis* case ". . . state officials relied on the detainer warrant to refuse to release [the defendant] on bail. Here the petitioner was not denied state bail because of the parole violator warrant; in fact, he was not denied state bail at all. Though it was offered to him and though he wanted it, he simply could not make it."[50] The court proceeded to state that if the petitioner was allowed credit in such circumstances, then

> . . . carried to its logical conclusion this could only mean that as to a prisoner facing both state charges and federal parole revocation, all state jail time [would be] necessarily joint and concurrent with the unexpired portion of his federal sentence. The court does not read *Davis* as requiring any such result.[51]

Not all circuits, however, have agreed with the rationale of *Jackson*. This is true especially where the court has taken the opportunity to apply equal protection arguments to factual situations where the defendant is unable to make bail because of indigency. The Second Circuit, in *United States v. Gaines*,[52] bas-

47. *Id.* at 240.
48. Jackson v. Attorney General, 447 F.2d 747 (5th Cir. 1971).
49. 425 F.2d 238 (5th Cir. 1970).
50. 447 F.2d 747, 748-49 (5th Cir. 1971).
51. *Id.* at 749.
52. United States v. Gaines, 449 F.2d 143 (2nd Cir. 1971).

ings its decision on the authority of *Williams v. Illinois*[53] and *Tate v. Short*,[54] held that a defendant was entitled to credit against a federal sentence for time spent in state custody after a state court set bail in connection with state charges and where the defendant had not been released on bail solely because he lacked sufficient funds, thus preventing him from being taken into federal custody. The court felt the defendant's ". . . lack of wealth has resulted in his having to serve a sentence that a richer man would not have had to serve, an impermissible discrimination according to *Tate* and *Williams*."[55]

In spite of decisions like *Gaines*,[56] however, the decisions in *Davis v. Attorney General*[57] and *Jackson v. Attorney General*[58] have been generally followed in cases dealing with presentence custody time credit. In *Boyd v. United States*,[59] the parameters of *Davis* were further defined. The appellant was arrested in Alabama and extradited to Louisiana. A detainer was filed against him on charges that he had also committed bailable federal offenses, since he could have obtained a release by posting state bond and then posting federal bond.

Boyd[60] held that the appellant was not in custody in connection with the federal offenses and was not entitled to credit on the federal sentence for time spent in state custody between the original arrest and the federal commitment. The court discussed the confines of *Davis*:[61]

> The thrust of *Davis* is to the effect that denial of state bail must be caused by the federal detainer. If state bail is granted, petitioner is then free to seek federal bail and no credit for state custody is allowed. As a corollary, it seems useless for a prisoner to make state bail if immediate federal custody—not subject to bail—is to follow. Consequently, in those two instances the courts will grant credit towards a subsequent federal sentence for the 'jail time' spent in state custody. However, some petitioners appear to contend that the mere presence of a state and federal charge at the

53. 399 U.S. 235 (1970).
54. 401 U.S. 395 (1971).
55. 449 F.2d at 144 (2nd Cir. 1971).
56. 449 F.2d 143 (2nd Cir. 1971).
57. 425 F.2d 238 (5th Cir. 1970).
58. 447 F.2d 747 (5th Cir. 1971).
59. Boyd v. United States, 448 F.2d 477 (5th Cir. 1971).
60. *Id.*
61. 425 F.2d 238 (5th Cir. 1970).

same time automatically grants credit. It does not. If both charges are bailable, a prisoner is free to seek the right to bail in each instance. Failure to do so does not inure to receive double credit. Thus, *Davis* applies only where a prisoner continues in state custody solely because of the presence of a federal detainer issued in connection with a non-bailable federal offense, or a federal offense for which bail has been refused.[62]

In *Doss v. United States*,[63] the Eighth Circuit took the same position in limiting presentence custody time credit that the Fifth Circuit took in *Jackson*.[64] A federal prisoner was released on parole. A parole violators warrant was subsequently issued, but not executed. In the meantime the defendant was arrested by the state of Missouri on a concealed weapons charge. The defendant was kept in custody prior to his conviction on the state charge, although the facts were in dispute as to whether he was denied bail because of the federal detainer. The state of Missouri credited the defendant's term of imprisonment from the period of his initial arrest. When the defendant was released from state custody and taken into federal custody, he claimed credit for the same pretrial detention against his federal sentence.

Quoting the rationale used in *Jackson*,[65] the court denied the defendant's claim, stating that he ". . . owed a debt to two sovereigns. Each had a right to exact its debt successively and independently of the other. For every day he spent in jail because of either, the petitioner was and is entitled to credit from one sovereign or the other."[66]

The Ninth Circuit has also had opportunity to use *Davis*[67] and found an opportunity to distinguish it on the facts. In *United States v. Eidum*,[68] the defendant was arrested on a state charge in Nebraska and was questioned by the F.B.I. on a federal charge. He was indicted on the federal charge on September 30, 1970. He pleaded guilty in December and was sentenced on January 22, 1971. The defendant argued that he should be given credit for all the time he had been in detention from the state arrest until the time he was sentenced. In distinguishing *Davis*, the court stated that

[i]n the *Davis* case the prisoner was denied bail on a state charge because a federal detainer was lodged against him. That detainer

62. 448 F.2d at 478-79 (5th Cir. 1971).
63. Doss v. United States, 449 F.2d 1274 (8th Cir. 1971).
64. 447 F.2d 747 (5th Cir. 1971).
65. *Id.*
66. 449 F.2d at 1275 (8th Cir. 1971).
67. 425 F.2d 238 (5th Cir. 1970).
68. United States v. Eidum, 474 F.2d 579 (9th Cir. 1973).

> was issued upon the authority of the prisoner's federal conviction and sentence. In the instant case, however, no federal process of any sort had issued against appellant until November, 1970, when his release was prevented by a federal detainer. Thus no active involvement of the federal government was present which had an effect on appellant's state custody until November, 1970. He pleaded guilty to the federal charge approximately a month later. Only this period of time after the federal detainer had issued should be credited under 18 U.S.C. § 3568, against petitioner's sentence on state charges.[69]

The *Eidum* rationale was further defined by the Ninth Circuit in the complicated factual situation of *United States v. Foster.*[70] In *Foster*, the defendant pleaded guilty on January 12, 1973, to passing an altered Federal Reserve Note with intent to defraud. The District Court sentenced him to the custody of the Attorney General, providing that he be confined in a jail-type institution for the first 60 days, to be served on consecutive weekends with the remainder of the term to be suspended and the defendant to be placed on three years probation. At the time of sentencing, the defendant had been in continuous federal custody for 39 days, and the District Court indicated its intention to credit this time toward the 60-day sentence.

The defendant was then released on January 12 into state custody and removed to the Orange County jail pending sentencing on state charges. The state court imposed a 15-day sentence to run concurrently with the 60-day federal sentence. He was then released on February 6, after serving the 15-day sentence. Upon release, the defendant had served a total of 64 days in custody since his original arrest on the federal charge and he argued that this confinement discharged his federal jail time requirement. Because of this belief, he failed to report to the Los Angeles County jail to serve the remainder of his federal jail time and was consequently charged with violating the terms of his probation.

In refusing to hold that the defendant had violated the terms of his probation, the Ninth Circuit stated:

> If the state would not have incarcerated him pending the outcome of his state prosecution but for the federal conviction, the time he spent in the Orange County jail is to be deemed 'custody in connection with' the federal charge. [Here the court cited *Eidum* and

69. *Id.* at 580-81.
70. United States v. Foster, 500 F.2d 1241 (9th Cir. 1974).

Jackson]. On the other hand, if his custody in the Orange County jail was exclusively pursuant to the state offense and was not influenced by the federal conviction, no credit for time served is due. The record can be appropriately developed and the issue resolved on remand.[71]

In concluding the discussion of the federal cases it can be seen that, with the limited exception of those situations where indigency is the sole cause of a defendant's continued commitment,[72] the rationale of *Davis*[73] and *Jackson*[74] which allows credit against a federal sentence for time spent in state custody only in those cases and only to the extent that the state custody is necessarily caused by or continued by federal action, is the prevailing position of the federal courts.

c. In 1974 a California court first considered the problem of multiple prosecution and had some difficulty in applying Cal. Penal Code § 2900.5(b) credits to state sentences when time had already been served by the defendant on federal charges. In *In re Miller*,[75] the defendant was arrested and incarcerated in the Los Angeles County jail on charge of robbery. Shortly after his arrest, a federal detainer was lodged against him from El Paso, Texas, on a charge of assaulting an officer. Pending the trial for robbery, the defendant remained in the Los Angeles jail for approximately 165 days until he was delivered into federal custody for 23 days and pleaded guilty to the federal charge. He was then returned to Los Angeles and there pleaded guilty of robbery. The trial court ordered his sentence on the state conviction to run concurrently with the federal sentence.

A habeas corpus proceeding was brought to the Court of Appeals by the defendant in which he sought credit for the 23 days he had spent in federal custody. Justice Elkington, speaking for the majority in *Miller*,[76] cited in *In re Kapperman*[77] as authority, and held that the time the defendant spent in federal custody could not reasonably be said to be ". . . attributable to charges arising from . . ."[78] the robbery of which the defendant was convicted in California. Nevertheless, the court concluded that Cal. Penal Code § 2900.5 showed the " '. . . [l]egislature had made a *policy decision*

71. *Id.* at 1243.
72. *See, e.g.*, United States v. Gaines, 449 F.2d 143 (2nd Cir. 1971).
73. 425 F.2d 238 (5th Cir. 1970).
74. 447 F.2d 747 (5th Cir. 1971).
75. *In re* Miller, 41 Cal. App. 3d 125, 115 Cal. Rptr. 756 (1974), *vacated*, 41 Cal. App. 3d 1046, 116 Cal. Rptr. 624 (1974).
76. *Id.* For the text of the vacated opinion *see* 115 Cal. Rptr. 756.
77. 11 Cal. 3d 542, 522 P.2d 657, 114 Cal. Rptr. 97 (1974).
78. Cal. Penal Code § 2900.5(b) (West 1972). For complete text *see*, *supra* note 1.

that for purposes of credit, precommitment detention should be equated with postcommitment imprisonment . . . .'"[79] Since the sentences were run concurrently, the court felt there was no valid reason why, for purposes of credit on the defendant's California sentence,

> . . . his federal precommitment detention should not also be equated with his federal postcommitment imprisonment. Failure to do so would frustrate the state's clear policy that its prison inmates suffer no greater total period of incarceration than that imposed by law for their crime.[80]

The decision in *Miller* was not upheld, however. On rehearing approximately one-month-and-a-half later, the Court of Appeal reversed itself by vacating the former decision and adopting a more restrictive reading of Cal. Penal Code § 2900.5(b).[81]

Looking at the same facts that had confronted the court in its first decision, Justice Elkington again spoke for the majority:

> Subdivision (b) of Section 2900.5 makes it clear that [the defendant] is to be credited on his Los Angeles robbery sentence only with such jail time as is reasonably 'attributable to charges' leading to that robbery conviction. The time spent by [the defendant] in the El Paso jail in the wholly unrelated federal proceeding was not attributable in any way to the Los Angeles robbery charge. Accordingly, section 2900.5 extends him no credit for the time so served.[82]

Further, the court justified its reversal by citing the same authority it had used to justify its first holding.[83] "Nothing," said the court, "is found in *Kapperman* or *Young*, relied upon by [the defendant], which suggests a different conclusion."[84] Clearly, another case was required to clarify the apparent conflict created by *Miller* as to the meaning of *Kapperman* and *Young*.

In re Jordan[85] was such a case. For the first time, a Court of Appeal set guidelines for the application of Cal. Penal Code § 2900.5

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79. 41 Cal. App. 3d 125, 128, 115 Cal. Rptr. 756, 757 (1974), *vacated*, 41 Cal. App. 3d 1046, 116 Cal. Rptr. 624 (1974).
80. *Id.* at 128, 115 Cal. Rptr. at 757.
81. Cal. Penal Code § 2900.5(b) (West 1972). For complete text *see, supra* note 1.
82. *In re* Miller, 41 Cal. App. 3d 1046, 1049, 116 Cal. Rptr. 624 (1974), *vacating*, 41 Cal. App. 3d 125, 115 Cal. Rptr. 756 (1974).
83. 11 Cal. 3d 542, 522 P.2d 657, 114 Cal. Rptr. 97 (1974).
84. 41 Cal. App. 3d 1046, 1049, 116 Cal. Rptr. 624, 625 (1974).
85. *In re* Jordan, 50 Cal. App. 3d 155, 123 Cal. Rptr. 268 (1975).

and, using *Young*[86] as its basis, supplied a Constitutional base for the application of that Code section to the question of presentence custody time credit. In *Jordan*, the defendant was first arrested in 1972 by agents of the United States Treasury Department for receiving, concealing and transporting explosive materials. The defendant made a motion for a medical examination to determine whether he was competent to stand trial and was subsequently held in federal custody for more than two years until charges against him were dismissed. He was then taken into custody by California authorities, pleaded guilty to receiving stolen property and was sentenced to state prison. The trial court denied the defendant's request for the two-year credit against his state sentence.

The *Jordan* court, distinguishing the facts of *Miller*,[87] noted that in *Miller* the federal proceedings were "wholly unrelated" to the state charge. In *Jordan*, on the other hand, the time the defendant ". . . spent in federal custody was directly related to the state charge, since it was one act which constituted both a state and federal offense."[88] Going further, the *Jordan* court gave its decision more importance by anchoring it to a Constitutional mandate, rather than merely giving its interpretation to the meaning of a phrase in a statute.[89] The court recognized that the defendant had been deprived of his liberty during the period while in federal custody

> . . . because of a circumstance (incompetency) beyond his control. This can operate to create an unconstitutional discrimination fully as serious to the alleged incompetent as exists in *Young* with reference to an indigent.[90]

Based on this rationale the court concluded that there was ". . . no reason why the equal protection clause should not apply to the [defendant] so that he will receive credit for the time spent in the federal facility."[91]

In this decision, the *Jordan*[92] court showed a willingness to extend the equal protection arguments far beyond their original application to factual situations dealing with indigency only.[93] Since the defendant in *Jordan* was not indigent, and since state charges were not filed until after the defendant's release from fed-

86. 32 Cal. App. 3d 68, 107 Cal. Rptr. 915 (1973).
87. 41 Cal. App. 3d 1046, 116 Cal. Rptr. 624 (1974).
88. 50 Cal. App. 3d at 157, 123 Cal. Rptr. at 269 (1975).
89. Cal. Penal Code § 2900.5 (West 1972). For complete text *see, supra* note 1.
90. 50 Cal. App. 3d at 157, 123 Cal. Rptr. at 269-70 (1975).
91. *Id.* at 158, 123 Cal. Rptr. at 270.
92. *Id.*
93. *See In re* Young, 32 Cal. App. 3d 68, 107 Cal. Rptr. 915 (1973).

eral custody, the court could have opted for a strict reading of Cal. Penal Code § 2900.5(b) by refusing to give credit for the time spent in federal custody. Instead, it chose to liberally construe the section in keeping with the constitutional spirit first enunciated by the *Young*[94] court.

RETENTION OF CUSTODY OVER THE DEFENDANT BY THE TRIAL COURT AND THE PAROLE PROBLEM

The question of whether presentence custody time credit must be given under Cal. Penal Code § 2900.5 must be considered when the trial court wishes to retain custody over the convicted defendant by placing him on probation. Further, after the defendant has been sentenced and committed to prison, the Adult Authority must consider the effects of the same statute in determining the defendant's parole advance date and the parole discharge date.

a. The trial court does have authority under Cal. Penal Code § 19(a)[95] to retain authority over defendants after conviction for felonies in certain circumstances. The question of whether Cal. Penal Code § 2900.5 credit must be applied in such a situation was answered in the negative in *People v. Brasley*.[96] Here the defendant, following a plea of guilty, was convicted of second degree burglary. He was sentenced to the state prison for the term prescribed by law. Execution of the sentence, however, was suspended and he was placed on probation for three years on the condition that he serve 12 months in the county jail. From the time of his arrest until his sentencing, the defendant had spent 83 days in jail because he was unable to post bail.

The Court of Appeal held that the defendant was not entitled

94. *Id.*

95. Cal. Penal Code § 19(a) (West 1972):
In no case shall any person sentenced to confinement in a county or city jail, or in a county or joint county penal farm, road camp, work camp, or other county adult detention facility, or committed to the sheriff for placement in any such county adult detention facility, on conviction of a misdemeanor, or upon commitment for civil contempt, or upon default in the payment of a fine upon conviction of either a felony or a misdemeanor, or for any reason except upon conviction of more than one offense when consecutive sentences have been imposed, be committed for a period in excess of one year; provided, however, that the time allowed on parole shall not be considered as part of the period of confinement.

96. People v. Brasley, 41 Cal. App. 3d 311, 115 Cal. Rptr. 910 (1974).

under Cal. Penal Code § 2900.5 to apply this time toward the reduction of his 12-month jail term. Although the court recognized that

> . . . upon pronouncement of a sentence of imprisonment in a state prison the defendant acquires the legal status of a person who has both been convicted of a felony and sentenced to such imprisonment, [nevertheless] by granting probation and withholding commitment the court retains jurisdiction over the defendant under the probation procedures.[97]

Since the court can determine the conditions of probation, including imprisonment in the county jail for up to one year, and since the court was aware of the 83 days already served by the defendant and still chose to require the defendant to serve the maximum jail term permitted under Penal Code § 19(a),[98] it was held the trial court did not abuse its discretion in not reducing the 12-month jail term.[99]

b. Cal. Penal Code § 2900.5 plays an important part in determining the defendant's parole advance date, (*i.e.*, that date upon which the defendant may be considered for parole eligibility).

Opinion CR72-36[100] of the California Attorney General sets out the original guidelines that were formulated on the parole advance date:

> In all cases other than those governed by section 3044 of the Penal Code, section 2900.5 serves to reduce the minimum term of imprisonment *and the minimum time to be served prior to parole eligibility to the extent that jail time is credited to a person's sentence.* Section 2900.5 requires, in effect, that a person be treated as if he had served the credited jail time in state prison prior to the time of his delivery into the custody of the Director of Corrections.[101] [Emphasis added.]

The California Supreme Court apparently agrees with the Attorney General since it has read Cal. Penal Code § 2900.5 as giving a credit to advance the parole eligibility date even though it was careful, at the same time, not to unduly interfere with the Adult Authority's discretion in setting the actual parole release date.[102] The court said nothing, however, as to whether it agreed with the Attorney General's analysis of Cal. Penal Code § 2900.5 credits in relation to Cal. Penal Code § 3044.[103]

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97. *Id.* at 315, 115 Cal. Rptr. at 912.
98. Cal. Penal Code § 19(a) (West 1972). For complete text *see, supra* note 95.
99. 41 Cal. App. 3d 311, 115 Cal. Rptr. 910 (1974).
100. 55 Op. Cal. Att'y Gen. 318 (1972).
101. *Id.* at 319.
102. 11 Cal. 3d at 547, 522 P.2d at 659-60, 114 Cal. Rptr. at 99-100 (1974).
103. The California Attorney General concluded that Cal. Penal Code § 3044, which provides for minimum prison terms for certain types of offenses,

c. The final area that the California courts have recognized as involving problems under Cal. Penal Code § 2900.5 is the parole discharge date, (*i.e.*, that date when the defendant may be deemed discharged from parole so that a subsequent offense is not considered a violation of parole). Several cases illustrate the problems that can arise.

The first case to deal with the problem was *In re Grey*.[104] The defendant was convicted in 1967 on one count of forgery and was sentenced to a term of 6 months to 14 years commencing in 1967. In 1969, the Adult Authority fixed his term at 6 years—the first three to be served in prison and the last three on parole. Approximately one month before defendant's parole was due to expire, he was taken into custody on a charge of forgery and was charged with violation of parole. In an effort to avoid resentencing for violation of parole, the defendant advanced the theory that his precommitment custody time credit should have been applied to advance, retroactively, his parole discharge date.

In rejecting this argument, the California Supreme Court held that, with respect to the credits under Cal. Penal Code § 2900.5, "[t]he credit does not advance the parole termination date fixed by the Adult Authority so long as the credited time, plus the prison

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is in a unique situation and thereby not susceptible to the presentence credits under Cal. Penal Code § 2900.5. He reached this conclusion by comparing Cal. Penal Code § 3041 with § 3044. In the first section, the Legislature amended the provisions of the section to conform with Cal. Penal Code § 2900.5. In the latter section, however, the Legislature did nothing to change its mandatory terms even in light of section 2900.5. The Attorney General concluded that if the Legislature had wished to change the meaning of section 3044, it would have done so as it did in the case of section 3041. 55 Op. Cal. Att'y Gen. at 319-20 (1972).

104. *In re* Grey, 11 Cal. 3d 554, 522 P.2d 664, 114 Cal. Rptr. 104 (1974). *See also*, SENTENCING COMPUTATION LAWS AND PRACTICES: A PRELIMINARY SURVEY, prepared by the Resource Center on Correctional Law and Legal Services and published by the American Bar Association Commission on Correctional Facilities and Services, January, 1974. On pages 32-33 it points out that ". . . in some 20 states, all with indeterminate sentencing statutes, good time credits are deducted from both the minimum and maximum terms. In 23 other jurisdictions, including . . . the federal system, the deduction is from the maximum term only. The deduction from the minimum term fixes the earliest date at which a prisoner becomes eligible for parole; the deduction from the maximum fixes the date at which release from the institution becomes mandatory, either conditionally, as if on parole, or unconditionally."

and parole time already served or to be served, does not exceed the maximum term."[105] In giving its rationale for the holding, the court felt that:

> [a]pplication of section 2900.5 credit to advance the parole termination date would . . . interfere with the Authority's discretionary functions. The Parole period ordinarily would represent that period of time deemed appropriate for the parolee to demonstrate his readiness for complete discharge of custody. A reduction of that period by reason of a time credit would result in premature termination of parole supervision. Nothing in the language of section 2900.5 suggests that the credit is to be applied to the parole termination date, and the equal protection principles involved in *In re Kapperman* do not require such a result.[106]

Closely allied is the problem of whether, once it is determined that the defendant was still on parole when the second crime was committed, he is entitled to credit on the new sentence for the time he was held in custody on a parole hold. *Cerda v. Superior Court*,[107] though it addressed this issue, left it clear that the question was anything but settled. The defendant was arrested on November 17, 1970, upon criminal charges while on parole. A parole hold was placed on him, and he remained confined in the county jail until February 19, 1971, when he was sentenced to state prison for conviction of second degree burglary and possession of drugs. The defendant contended he was entitled to credit for the time he spent on the parole hold prior to the sentence.

In rejecting a contention by the prosecutor that Cal. Penal Code § 2900.5 should not apply to the defendant because the effect would be to give him a double credit for the time spent in the county jail, (credit on the previous felony sentence upon which he had been paroled in addition to the new sentence), the Court of Appeal held that the defendant was entitled to the presentence credit on the new charges and felt that even if a double credit would result there was no prescription against such a consequence in the language of the statute as interpreted by *Kapperman*.[108] The court made it clear, however, that it was not called upon by the facts to determine the effect of the time credit on the defendant's prior prison term. Further, since the defendant himself asserted that he was entitled to only one credit for the period of jail custody on a single continuous term of confinement in the state prison, a concurrence with

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105. 11 Cal. 3d 554, 555, 522 P.2d 664, 665, 114 Cal. Rptr. 104, 105 (1974).
106. *Id.* at 556, 522 P.2d at 665, 114 Cal. Rptr. at 105 (1974).
107. Cerda v. Superior Court, 42 Cal. App. 3d 491, 116 Cal. Rptr. 896 (1974), *vacating* 41 Cal. App. 3d 122, 115 Cal. Rptr. 754 (1974).
108. 11 Cal. 3d 542, 522 P.2d 657, 114 Cal. Rptr. 97 (1974).

the defendant's contention by the Adult Authority would moot the double credit question.[109]

In *In re Bentley*[110] the Court of Appeal addressed the heart of the problem by clarifying the meaning of Cal. Penal Code § 2900.5 as it affected the parole discharge date in light of the California indeterminate sentencing law.[111] In a factually complicated case, the defendant was granted parole by the Adult Authority on August 17, 1970, from a sentence for robbery in which the term had been fixed at 9½ years on August 6, 1970. The defendant's parole discharge date had been fixed at April 20, 1974. However, prior to such time defendant was charged with manslaughter. He waived his prerevocation hearing and his parole was revoked: At the same time his term was reset at the statutory maximum—life. Defendant advanced the theory that when the Adult Authority revoked his parole they acted without authority, since he alleged he was due more than two years of presentence credit time that he had earned prior to the effective date of Cal. Penal Code § 2900.5. According to the calculations of the defendant, if this time were granted, the manslaughter charge would have occurred well after the defendant's parole had expired.

Basing its decision on *Grey*[112] and *Kapperman*,[113] the court said that although it may have been proper to allocate such credit to the defendant's sentence, it was an error for the lower court to apply it to reduce the term of parole prescribed by the Adult

109. 42 Cal. App. 3d 491, 495, 116 Cal. Rptr. 896, 898 (1974).
110. *In re* Bentley, 43 Cal. App. 3d 988, 118 Cal. Rptr. 452 (1974).
111. *See* Cal. Penal Code § 1168 (West 1972):
Every person convicted of a public offense, for which imprisonment in any reformatory or state prison is now prescribed by law shall, unless such convicted person be placed on probation, a new trial granted, or the imposing of sentence suspended, be sentenced to be imprisoned in a state prison, but the court in imposing the sentence shall not fix the term or duration of the period of imprisonment.
See also Cal. Penal Code § 3020 (West 1972):
In the case of all persons heretofore or hereafter sentenced under the provisions of Section 1168 of this code, the Adult Authority may determine and redetermine, after the actual commencement of imprisonment, what length of time, if any, such person shall be imprisoned, unless the sentence be sooner terminated by commutation or pardon by the Governor of the State.
112. 11 Cal. 3d 554, 522 P.2d 664, 114 Cal. Rptr. 104 (1974).
113. 11 Cal. 3d 542, 522 P.2d 657, 114 Cal. Rptr. 97 (1974).

Authority as a condition for the defendant's discharge.[114] The court then carefully described the policy of the indeterminate sentencing law and the limits of Cal. Penal Code § 2900.5 in view of that policy:

> [T]his policy reflects an emphasis on reformation of the offender, a a policy which the Legislature has sought to effectuate by giving broad discretionary powers to the Adult Authority. The terms of incarceration and parole are to be fixed in accordance with the adjustment and social rehabilitation of the prisoner after consideration of the merits of each individual case.[115]

Recognizing again that the Adult Authority's discretionary determinations are not to be lightly overridden, the court continued:

> Application of section 2900.5 credit to advance the parole termination date would . . . interfere with the Authority's discretionary functions. The parole period ordinarily would represent that period of time deemed appropriate for the parolee to demonstrate his readiness for complete discharge of custody. A reduction of that period by reason of a time credit would result in premature termination of parole supervision. Nothing in the language of section 2900.5 suggests that the credit is to be applied to the parole termination date, and the equal protection principles involved in *In re Kapperman* . . . do not require such a result. Consequently, it is only in those cases wherein the credited time, plus the prison and parole time already served or to be served, would exceed the maximum term that a retroactive credit under section 2900.5 can result in parole termination prior to the date fixed by the Adult Authority.[116]

In conclusion, it is clear that presentence custody time credit is not required to be given by the trial court when it retains jurisdiction over a convicted defendant by placing him on probation. It is equally clear that Cal. Penal Code § 2900.5 credits must be applied in determining parole eligibility. Finally, due to the discretion placed with the Adult Authority to avoid premature termination of parole supervision, Cal. Penal Code § 2900.5 does not require credit for presentence custody time except in those cases where the defendant would be required to serve more than the maximum sentence were credit not given.

Conclusion

In the last several years, then, both the California legislature and the California courts have recognized and dealt with the problem of presentence custody time credit. The defendant who serves time in jail prior to conviction whether because of indigency or other

114. 43 Cal. App. 3d 988, 118 Cal. Rptr. 452 (1974).
115. *Id.* at 993, 118 Cal. Rptr. at 455.
116. *Id.* at 993-94, 118 Cal. Rptr. at 455-56.

factors now has the right to have such time applied even where such incarceration is in lieu of bail. Implicit recognition has thus been accorded to the concept that presentence custody is in fact punishment.

A number of issues remain to be resolved before complete and effective implementation of Penal Code § 2900.5 is effected. Particularly thorny and complex problems are presented when a defendant is charged and convicted of more than one crime and when a defendant is charged under both state and federal statutes. Although the California Supreme Court has yet to address a number of crucial issues, the California Courts of Appeal have considered certain aspects of these problems, relying on and analyzing the relevant decisions of the federal courts. As the statute continues to be interpreted, it is to be hoped that the judiciary will continue its implementation in keeping with the clear legislative intent that a defendant receive presentence custody time credit for all time during which he is deprived of personal liberty.

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