

The Service of Sentences and Credit Applicable to Offenders in Custody of ODOC

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I. Introduction

The mission of the Oklahoma Department of Corrections is to:

1. Protect the public
2. Protect the employee
3. Protect the offender

The Department of Corrections protects the public by maintaining offenders remanded to its custody for the duration of their sentences of confinement or supervision. All sentences are served and monitored according to Oklahoma state statute and applicable case law. The following is a brief overview of the policies based on state law regarding the service of sentences.

II. Incarceration

Most incarcerated offenders are eligible by Oklahoma statute to have their term of imprisonment reduced by earning credits. A credit is equal to a day.

When an inmate is received at Lexington Assessment and Reception Center (males) or Mabel Bassett Assessment and Reception Center (females), a beginning release date is established by adding the term of incarceration, as designated by the judgment and sentence, to the reception date. This date is then converted to days remaining to serve. Each month, thereafter, the days

remaining to be served are updated based upon the number of credits earned or lost and the number of days served. When the days remaining to serve reaches "0", the inmate has discharged the sentence.

After classification at an assessment and reception center the inmate will be transferred to an appropriate security level at a correctional facility.

A. Time Spent in County Jail

1. Pre-Sentencing Jail Time

The sentencing judge in Oklahoma has the discretion to decide whether to allow a defendant credit for time served in a county jail before sentencing. A deduction for time served in a county jail before sentencing is almost always ordered. Consequently, all inmates will receive a deduction from the term of incarceration equal to the number of days held by the county jail prior to sentencing unless the sentencing judge orders that an inmate not receive credit for jail time or credit for time served. If the Judgment and Sentence or other sentencing documents include a specific number of days as credit for time served, said number of days is to be calculated as pre-sentencing jail time. If court ordered, time spent in a state mental institution for evaluation of competency is also applied as a sentence reduction credit with proper documentation.

2. Post-Sentencing Jail Time

57 O.S. 138, provides that all offenders sentenced to the Department of Corrections to a term of incarceration are entitled to have deducted from their sentence the number of days spent in the county jail beginning on the date of sentencing.

3. Deferred Reception Credits

Effective September 1, 1993, 57 O.S. 138 provides that offenders sentenced to imprisonment in the Department of Corrections, but detained in the county jail because of the department's reception scheduling procedure, will be awarded earned credits at the rate of Class Level 2 beginning the date of the judgment and sentence to the day of reception. Effective November 1, 2002, deferred reception credits will be awarded beginning the date of the Judgment and Sentence to the day prior to reception. The amount of credit will be determined by multiplying the number of days by .73.

B. Earned Credit Classes

Effective November 1, 1988, 57 O.S. 138 provides that every inmate will be assigned to one of four class levels. Class level assignments are determined by the adjustment review committee/unit treatment team based upon the desired behavior of the inmate in all areas of institutional life: work attendance and productivity, conduct record, program participation, cooperative general behavior, and appearance of self and living area.

Effective November 1, 2001, 57 O.S. 138, provides for two enhanced levels of credit for inmates who have never been convicted as an adult or a youthful offender or adjudicated delinquent as a juvenile for any of the felony crimes listed in 57 O.S. 138, subsection E. Eligible inmates assigned to Levels 3 or 4 are awarded credit at the enhanced rates.

The class levels and their corresponding credits are as follows:

- Class Level 1 - 0 credits per month
- Class Level 2 - 22 credits per month
- Class Level 3 - 33 credits per month
- Class Level 4 - 44 credits per month
- Enhanced Class Level 3 - 45 credits per month
- Enhanced Class Level 4 - 60 credits per month

1. Class Level Criteria

a. Class Level 1

Inmates will be assigned to Level 1 under the following circumstances:

- (1) When placed on escape status
- (2) While under sentence of death
- (3) When incarcerated under the Delayed Sentencing Program for Young Adults, 22 O.S. 996.1

b. Class Level 2

Inmates will be assigned to Level 2 upon their reception at the Lexington Assessment and Reception Center (excluding those inmates returned from escape); unless they meet the criteria listed below to be placed at a higher earned credit level. To maintain this level of earning, the inmate must receive good evaluations for participation in a work or program assignment, good evaluations for personal hygiene and maintenance of living area, meet program participation requirements, and maintain a satisfactory attitude and relationship with staff and other inmates.

c. Class Level 3

Inmates may be considered for a promotion to Level 3 after being incarcerated for at least three months including post-sentencing jail time and any time spent incarcerated in an intermediate revocation facility or delayed sentencing program. To promote to or maintain

this level of earning, the inmate must receive excellent work or program evaluations, excellent evaluations for personal hygiene and maintenance of living area, meet program participation requirements, and maintain a satisfactory attitude and relationship with staff and other inmates.

d. Class Level 4

Inmates may be considered for a promotion to Level 4 after being incarcerated for at least eight months including post-sentencing jail time and any time spent incarcerated in an intermediate revocation facility or delayed sentencing program. To promote to or maintain this level of earning, the inmate must receive outstanding work or program evaluations, and outstanding evaluations for personal hygiene and maintenance of living area, , meet program requirements, and maintain a satisfactory attitude and relationship with staff and other inmates.

C. Other Types of Credit

1. Achievement Credit

Effective November 1, 1988, achievement earned credits for successful completion of agency approved programs, or for attaining goals or standards set by the agency, will be awarded. These credits can be earned through participation in a variety of programs such as substance abuse, cognitive/behavioral, education, and vocational training. This credit is authorized per 57 O.S. 138.

2. Meritorious Earned Credit

Inmates who perform meritorious acts involving property preservation or matters of life, security, or safety are eligible to receive up to 100 credits for each act. This credit is authorized per 57 O.S. 138.1.

3. Emergency Time Credit

This credit was mandated per 57 O.S. 570, the "Oklahoma Prison Overcrowding Emergency Powers Act" and commonly referred to as "Cap" credit. The act was in effect from April 4, 1984 until its repeal effective July 1, 2001.

Upon the declaration by the Governor that a state of emergency existed within the penal system, the director of the Department of Corrections authorized each facility to grant 60 days of emergency time credit to all eligible inmates. An emergency existed whenever the inmate population exceeded 95 percent of authorized capacity. Once an emergency was declared, the director was authorized by law to grant the credit every 60 days for as long as the emergency existed. Effective July 1, 1989, no inmate received more than 360 days of emergency time credit during a year.

Eligibility for emergency time credits was determined by the following criteria:

- a. Classified as medium security or lower
- b. Incarcerated for nonviolent offense as defined by 57 O.S. 571
- c. Not incarcerated for a second and subsequent offense under provisions of Section 51 or 52 of Title 21 of the Oklahoma Statutes.

4. Credit Prior to November 1, 1988

Prior to November 1, 1988, state law authorized inmates to earn credits based solely on their work or program assignments. Up to three days of credit could be earned for each day of participation. Prior to September 8, 1976, state law authorized the granting of good time, an automatic reduction of the term of incarceration based upon the sentence length. In addition to this statutory good time, inmates could be granted work time, work incentive credits, and blood time.

Current inmates whose crimes were committed while these credit statutes were in effect are entitled to have terms of imprisonment reduced by such credits. The Department of Corrections grants the inmate the credit or combination of credits most advantageous in accordance with ex post facto court rulings.

5. Lost Credit

Inmates are subject to lose earned credits, achievement credits and deferred reception credits as punishment through the disciplinary process for infractions of Department of Corrections' rules and regulations. When an inmate is charged with a violation, he/she is formally notified, and a hearing date is established. Trained staff will review the charge, interview the inmate, and render a decision. If found guilty, punishment, established per degree of violation, is rendered. Due process is maintained through several levels of appeal.

D. Determining the Approximate Amount of Time Served on a Sentence

Since statehood, Oklahoma law has provided for some type of credit to be applied as a sentence reduction. As a result, Oklahoma inmates rarely serve their sentences day-for-day in full. The following methods can be used to approximately project the amount of time to be served on a given sentence based upon an inmate's class level assignment.

1. Credit Rates

Class Level	Credits Per Month	Projected Release Rate
1	0	1.00
2	22	.58
3	33	.48
4	44	.41
Enhanced Level 3	45	.40
Enhanced Level 4	60	.34

a. Determine sentence length in days.

b. Project the number of days that would actually be served using the projected release rate for the level to which the inmate is assigned.

Example: 3,650 days x .58 (Level 2) = 2,117 days

2,117 days or 5.8 years is the approximate amount of time to complete a ten-year sentence for an inmate on earned credit Level 2.

2. Projecting the amount of time actually served does not consider the possible loss of credit due to misconduct, jail time granted, future class level changes, court ordered modifications, or release on parole. These factors greatly affect the accuracy of the preceding chart. A less complicated method can be used to estimate the amount of time to be served on a given sentence. The following formula projects the quickest amount of time a sentence can be served by assuming the inmate will earn the highest level of earned credits when eligible, a total of 200 achievement credits, and no loss of credit through misconduct.

(Sentence length in days) x .40* = approximate amount of time actually served

*Use .35 if enhanced credit level eligible

III. Probation and Parole

The Department of Corrections' probation and parole services supervise offenders sentenced to probation and inmates paroled by the Governor. Offenders do not receive credit reductions while on probation or parole.

A. Deferred Sentence

22 O.S. 991c. authorizes the court upon a verdict or plea of guilty, to defer sentencing and place a defendant on supervised probation. The Department of Corrections supervises the offender until the date specified on the order of deferred sentence. If the offender violates the conditions of the deferred sentence any time prior to its expiration, the court may accelerate sentencing and enter a judgment. The deferred judgment procedure does not apply to offenders found guilty or who plead guilty or nolo contendere to a sex offense required by law to register pursuant to the Sex Offenders Registration Act. Offenders with prior felony convictions are ineligible for a deferred sentence unless the court waives this prohibition upon written application of the district attorney.

B. Suspended Sentence

22 O.S. 991a. authorizes the court to suspend the execution of a sentence in whole or in part, with or without probation. Offenders who receive suspended sentences with probation are

supervised by the Department of Corrections for a period specified by the Judgment and Sentence. For example, if an offender receives a one-year suspended sentence he will be supervised for one calendar year beginning the date the Judgment and Sentence was rendered. This statute allows the Department of Corrections to end supervision at two years if deemed to be in the best interest of the public.

If a violation warrant is issued by the sentencing court any time prior to the termination of the suspended sentence, the offender goes through a revocation process and may have the sentence fully or partially revoked by the court. (22 O.S. 991b.)

If the sentence is revoked, the offender will be remanded to Department of Corrections custody for the period specified and may have the sentence reduced through the earned credit process previously described.

C. Split Sentence

The courts may render a sentence specifying a term of incarceration and a term of probation. The term of incarceration would be subject to credit reduction and upon discharge the specified period of probation would begin. The remaining probation is subject to revocation and additional incarceration. A suspended sentence expiration date is the sentencing date, plus the length of the sentence minus one day. Ex: Sentenced to a 10 year split sentence with 5 years incarcerated and 5 years suspended on 10-15-2015. The expiration date of the sentence will be 10-14-2025.

D. Parole

All parole recommendations are made by the Pardon and Parole Board (57 O.S., Sections 332 - 365). The Pardon and Parole Board should be contacted directly for information on how parole dockets are established.

Parole recommendations by the Pardon and Parole Board for violent offenders must have the Governor's approval. The Pardon and Parole Board can grant paroles for non-violent offenders. A parole is in effect until reaching the release date established at the time of parole. For example, if an inmate paroles on February 1, 2011, and the release date for the term of incarceration is March 5, 2014, the inmate would remain on parole until March 5, 2014.

If any time prior to completion of the parole, the Department of Corrections initiates a parole violation warrant, the offender will receive due process through a two-part hearing and is subject to have the parole revoked by the Governor. The Governor, at his/her discretion alone,

may grant the time spent on parole as a deduction from the parole revocation. This time is commonly referred to as "street time".

E. Community Sentencing

The purpose of the Oklahoma Community Sentencing Act, 22 O.S. 988.3, is to protect the public; establish a statewide community sentencing system; adequately supervise felony offenders punished under a court-ordered community sentence; provide a continuum of sanctions to the court for eligible offenders sentenced to a community sentence within the community sentencing system; increase the availability of punishment and treatment options to eligible felony offenders; improve the criminal justice system within Oklahoma through public/private partnerships, reciprocal and inter-local governmental agreements, and interagency cooperation and collaboration; and operate effectively within the allocation of state and local resources for the Oklahoma criminal justice system.

Felony offenders who have been convicted of or who have entered a plea other than not guilty to a felony offense and who upon completion of a Level of Services Inventory or another assessment instrument have been found to be in the moderate range, are eligible for a community sentence if not otherwise prohibited by law. (22 O.S. 988.2). The District Attorney must consent to a community sentence for an offender with a violent crime enumerated in 57 O.S. 571. An offender must be statutorily eligible for probation in order to receive a community sentence.

IV. Special Consideration

A. Life Sentence

No deductions will be credited to any inmate serving a sentence of Life imprisonment; however, per 57 O.S. 138, a complete record of the inmate's participation in work, school, vocational training, or other approved programs is maintained. If a Life sentence is ever commuted or modified to a determinate sentence, the recorded credit would apply as a reduction.

B. Death Sentence

Persons under the sentence of death are not eligible to receive or earn any type of credit. If the sentence is modified or commuted to a sentence other than death, they would become eligible to earn credit.

C. Delayed Sentencing Program for Young Adults

Persons incarcerated under the Delayed Sentencing Program for Young Adults, 22 O.S. 996.1 are not eligible to receive earned credit or achieved credit deductions.

D. Concurrent/Consecutive

21 O.S., Sections 61.1, 61.3, and 22 O.S. 976 provide that sentences are to be served consecutively unless a Judgment and Sentence states that it is to run concurrently with another Judgment and Sentence. When revoking a parole, the Governor may order concurrence to an existing sentence.

E. Sentence Concurrent with Foreign Jurisdiction

Occasionally, offenders receive sentences in Oklahoma designated as concurrent to a sentence in another state, or the federal system, with initial custody assumed by the other jurisdiction. This is authorized per 21 O.S., Sections 61.2-61.4. The Oklahoma term of incarceration does not begin until the convicting county delivers the offender to the Department of Corrections custody per 21 O.S. 61.5. Upon delivery to a reception center, the offender will be credited with time served in the foreign jurisdiction beginning the date the Oklahoma Judgment and Sentence was rendered. After reception, the offender is eligible for earned credit under Oklahoma statutes.

F. 21 O.S. Section 801

Offenders sentenced under the 1982 amendment to 21 O.S. 801, serving at least their third separate and distinct felony conviction for a Robbery or Attempted Robbery with a Dangerous Weapon or Imitation Firearm, are not eligible for good time credits for ten years from reception, minus jail time. There must be documentation the sentence was enhanced under 21 O.S. 801.

G. Trafficking in Illegal Drugs Act

Effective November 1, 1989, 63 O.S. 2-415 provides that persons convicted of trafficking in marijuana, cocaine, heroin, amphetamine, methamphetamine, LSD, PCP, or crack are not eligible for earned credits for the duration of their sentence. Achievement credits may be awarded if the inmate meets the statutory standards for Level 2.

Effective November 1, 2018, 63 O.S. 2-415 was amended and removed the earned credit restriction for the duration of the sentence. The requirement for inmates to meet the statutory standards for level 2 to be met before receiving achievement credits was also removed. The November 1, 2018 amendment also caused sentences for Trafficking to be calculated as fifty percent (50%) sentences and not eligible for earned credits or any other type of credits which have the effect of reducing the length of the sentence to less than 50% of the sentence imposed.

H. Racketeering

22 O.S. 1401, the Oklahoma Corrupt Organizations Prevention Act, applies to persons convicted of Racketeering activities. Offenders convicted under this act must serve one-half of their sentence day-for-day before becoming eligible for work release, house arrest, pre-parole conditional supervision, parole, or release from confinement on any other basis.

I. Distribution Within 2,000 Feet of School/Park, or Possession/Purchase Within 1,000 Feet of School/Park, or Possession/Purchase in the Presence of a Child Under 12

Effective May 19, 1989, 63 O.S. 2-401 provides that offenders convicted of Distributing Controlled Substances Within 1,000 Feet of a School must serve 50 percent of their sentence prior to becoming eligible for earned credits. Offenders convicted a second and subsequent time under this statute must serve 90 percent of their sentence prior to becoming eligible for credits. Effective September 1, 1991, 63 O.S. 2-401 was amended to include Distribution Within 1,000 feet of a Park or Recreation Area. Effective June 7, 1994, 63 O.S. 2-401 was amended to include Distribution Within 1,000 feet of a Public Housing Project. Effective November 1, 1999, 63 O.S. 2-401 was amended to include Distribution of a Controlled Substance Within 2,000 Feet of a School, Park, or Public Housing Project. Effective July 1, 2001, inmates convicted a second and subsequent time under this statute must serve 85% of their sentence prior to becoming eligible for earned credits. Effective July 1, 2003, 63 O.S. 2-401 was amended to include Distribution of a Controlled Substance Within 2,000 Feet of a Child Care Facility; and Manufacture of a Controlled Substance Within 2,000 Feet of a Public or Private Elementary or Secondary School, Public Vocational School, or a Public or Private College or University, or other institution of higher education, Recreation Center or Public Park Including State Parks and Recreation Areas, Public Housing Project, or Child Care Facility.

This provision was amended, effective November 1, 2018, and the amendment resulted in the removal from statute the percentages (50% for a first conviction and 85% for a second and subsequent conviction) of the sentence imposed in which an inmate must serve before becoming eligible for state correctional institutional earned credits for convictions under this provision.

Effective September 1, 1992, 63 O.S. 2-402 provides that offenders convicted of Possessing or Purchasing a Controlled Dangerous Substance Within 1,000 Feet of a School, Park, or Public Housing Project must serve 50 percent of their sentence prior to becoming eligible for earned credits. Offenders convicted a second and subsequent time under this statute must serve 90 percent of their sentence prior to becoming eligible for credits. Effective June 7, 1993, this statute was amended to also include the Possession or Purchase of a Controlled Dangerous Substance in the Presence of any Child Under 12 Years of Age.

This provision was amended, effective July 1, 2017, and the amendment resulted in the act of possessing or purchasing a controlled dangerous substance within 1,000 feet of a public or private elementary or secondary school, public vocational school, public or private college or university or other institution of higher education, recreation center, or public park to no longer being a crime distinct from possession or purchasing a controlled dangerous substance, which is now a misdemeanor.

J. Offenses Required to Serve 85% of Sentence

Effective March 1, 2000, 21 O.S. 13.1 provides that offenders who commit certain crimes on or after such date, must serve 85% of their sentence of imprisonment before becoming eligible for parole consideration and shall not be eligible for earned credits or any type of credits that might reduce the length of the sentence to less than 85%. Therefore, inmates are eligible to earn credits during the first 85% of the sentence; however, said credits will not be applied towards the sentence until the inmate has served 85% of the sentence. The crimes are Murder I, Robbery with a Dangerous Weapon, Rape I, Arson I, Burglary I, Bombs and Explosives Violations, Child Abuse, Forcible Sodomy, Child Pornography, Parental Consent to Child Pornography, Child Prostitution, and Lewd Molestation of a Child.

Effective July 1, 2001, 21 O.S. 13.1 was amended to include the following crimes: Murder II, Manslaughter I, Poisoning with Intent to Kill, Shooting with Intent to Kill, Assault and Battery with a Deadly Weapon, Use of a Vehicle to Facilitate Use of a Firearm/Crossbow/Weapon, Assault with Intent to Kill, Conjoint Robbery, Robbery I.

Effective July 1, 2001, 63 O.S. 2-401 was amended to provide that offenders convicted of the crime of Aggravated Manufacture of CDS must serve 85% of their sentence of imprisonment before becoming eligible for parole consideration, earned credits or any type of credit that might reduce the length of the sentence to less than 85%. This means that these sentences cannot earn credits during the first 85% of the sentence

Effective March 8, 2002, 21 O.S. 13.1 was amended to include the crime of Abuse, Neglect, or Financial Exploitation by Caretaker of a Vulnerable Adult who is a resident of a nursing facility.

Effective November 1, 2007, 21 O.S. 13.1 was amended to include the crime of Aggravated Trafficking, 63 O.S. 2-415 and must serve 85% of their sentence of imprisonment before becoming eligible for parole consideration, earned credits or any type of credit that might reduce the length of the sentence to less than 85%. This means that these sentences cannot earn credits during the first 85% of the sentence. Effective November 1, 2018 63 O.S. 2-415 was amended to allow inmates are eligible to earn credits during the first 85% of the sentence;

however, said credits will not be applied towards the sentence until the inmate has served 85% of the sentence.

Effective November 1, 2011, 21 O.S., Section 13.1 was amended to include aggravated assault and battery upon any person defending another person from assault and battery.

Effective 1, 2014, 21 O.S. 748, provides inmates convicted of Human Trafficking must serve 85% of the sentence before being eligible for parole consideration or any earned credits. Effective November 1, 2014, inmates convicted of Human Trafficking are not eligible for earned credits for the duration of the sentence. Achievement Credits may be awarded after the inmate has served 85% of the sentence if the inmate is in compliance with the statutory standards for Class Level 2.

Effective November 1, 2017, 21 O.S. 1114 was amended to include all Rape by Instrumentation as Rape first degree. Rape by Instrumentation 21 O.S. 1111. 1 must serve 85% of the sentence of imprisonment before being eligible for parole consideration or earned credits.

Effective November 1, 2021, 21 O.S. 13.1 is amended to include any Abuse or Sexual Abuse of a Vulnerable Adult under 21 O.S. 843.3 and Abuse or Sexual Abuse by Caretaker under 21 O.S. 843.1. The law now provides that both 21 O.S. 843.1 and 21 O.S. 843.3 must serve 85% of the sentence of imprisonment before being eligible for parole consideration or earned credits.

The Court of Criminal Appeals has ruled that offenders whose Judgment and Sentences reflect they have been convicted of an "attempt" to commit an 85% crime are not subject to the 85% restriction and are eligible to earn credits toward the service of their entire sentence. This does not apply to the crimes of Attempt to Kill, 21 O.S. § 652; and attempts to damage, injure, or kill with the Possession, Use, Manufacturing or Telephone Threat of Incendiary Device or Bomb, 21 O.S. § 1767.1, as these statutes describe crimes in which the term "attempt" is an element of the crime.

K. Post-Conviction Relief/Court Orders

The Department of Corrections functions as the custodian for convicted felons. Therefore, if the court orders a reduction of a sentence or the application of credit to a sentence, the Department of Corrections will comply.

V. For more information concerning credits and the service of sentences, contact:

Tonia Dickerson, Manager
Sentence Administration, Offender Records and Registries
Oklahoma Department of Corrections
3400 Martin Luther King Avenue
P.O. Box 11400
Oklahoma City, Oklahoma 73136-0400

Phone:(405) 425-2625
Fax: (405) 425-2608
Email: tonia.dickerson@doc.ok.gov
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