Legislative Testimony

Oregon Criminal Defense Lawyers Association

February 5, 2014

The Honorable Jeff Barker, Chair
The Honorable Brent Barton, Vice-Chair
The Honorable Wayne Krieger, Vice-Chair
House Judiciary Committee, Members

RE: HB 4098

Dear Chair Barker, Vice-Chairs and Members,

The Oregon Criminal Defense Lawyers Association is an organization of attorneys who represent juveniles and adults in delinquency, dependency, and criminal prosecutions and appeals throughout the state of Oregon. Thank you for the opportunity to submit the following comments in support of House Bill 4098.

What does HB 4098 do?

HB 4098 expands the availability of "credit for time served" by requiring an inmate's felony sentence to be "credited" with time spent in local custody on the same, similar or related charges, whether the jail time was spent prior to sentencing or after sentencing as the result of violation sanctions. It also give a court discretion to allow "credit" for time in custody on unrelated charges, if the court exercises its discretion to do so.

What is the law now?

Current law greatly limits the instances when "credit for time served" incarceration may be allowed. Current law allows "credit" in the narrow circumstance when a defendant is sentenced to prison for the *same crime* alleged in the indictment.[1] However, the normal course of plea negotiations often requires a more varied and flexible approach, often resulting in an inmate pleading to a lesser or greater crime than that originally charged, or even to an entirely new characterization of the offense.

[1] ORS 137.370 (2) (a) allows credit "*for the crime for which sentence is imposed.*"

Additionally, when a probationary sentence is revoked and an inmate is ordered to serve time in custody, current law allows, does not require, a probation judge to "credit" the inmate's prison sentence with time spent in local custody on the underlying crime, or on subsequent probation violation sanctions. [ORS 137.372 (1)] The same is true with diversion programs and specialty courts.

Why is it necessary to change the law?

The state of current law limits the parties' and the court's ability to resolve a case in a sensible manner. Practitioners and courts often error in believing their intention to allow "credit" controls the sentence; in those instances, under current law, DOC must disallow the "credit" because it is not expressly allowed by statute. Additionally, an offender is truly "serving time" for a crime, irrespective whether the incarceration is pretrial or as part of probation revocation sanctions. By right, that time should count toward the offender's ultimate sentence.

How does HB 4098 change current law?

- HB 4098 requires DOC to award "credit" for pretrial incarceration not only when the inmate is sentenced for the same crime as originally charged, but also for: (1) a lesser included offense; (2) a greater included offense; and (3) any crime that was committed as part of the same criminal episode. [Section 1]
- Allows (but does not require) a sentencing judge to award "credit" for pretrial incarceration when the inmate is in local custody on a different case. [Section 1 subsection (4)]
- Requires a sentencing judge to award "credit" for time in local custody when a probation sentence is revoked, a conditional discharge probation is revoked, or for revocation of a diversion program or specialty court program. [Section 2]

OCDLA supports HB 4098, and urges the Committee's support.

Thank you for your consideration of these comments. Please do not hesitate to contact me if you have any questions.

Respectfully submitted,

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