

STAFF MEASURE SUMMARY

Senate Committee On Judiciary

Fiscal: Fiscal impact issued

Revenue: No Revenue Impact

Action Date: 06/02/15

Action: Do Pass With Amendments To The A-Eng Bill. (Printed B-Eng.)

Meeting Dates: 05/20, 06/02

Vote:

Yeas: 4 - Burdick, Gelser, Prozanski, Thatcher

Exc: 1 - Kruse

Prepared By: Jeff Rhoades, Counsel

WHAT THE MEASURE DOES:

Provides that Department of Corrections must consider lesser or greater included offense of crime for which sentence imposed and any other crime in same county designated as part of same criminal episode when computing sentence. Establishes that incarcerated person receive credit for time served in jail after arrest and before commencement of probationary sentence when probation ordered as downward dispositional departure, presumptive sentence or as part of diversion program or specialty court program where the defendant is not on probation. Provides that unless both court expressly orders otherwise and prosecuting attorney and defendant provide consent, person may not receive presentence incarceration credit for time served in jail if crime not directly related to crime for which current sentence being imposed, or for violation of conditions of probation, parole or post-prison supervision for crime not directly related to crime for which current sentence imposed. Places sunset of July 1, 2017 for district attorney veto on presentence incarceration credit for time served in jail on crime not directly related to crime for which sentence imposed. Allows sentencing judge to limit credit for time served given to inmates sentenced on downward dispositional departure. Applies to sentencing proceedings occurring on or after effective date of act. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Substance of the bill
- Workgroup discussions from past legislative sessions
- Technical nature of the bill
- Objections to district attorney veto power

EFFECT OF COMMITTEE AMENDMENT:

Places sunset of July 1, 2017 for district attorney veto on presentence incarceration credit for time served in jail on crime not directly related to crime for which sentence imposed.

BACKGROUND:

The product of a 2014 workgroup, House Bill 2310 B is a “clean up” bill that clarifies when a defendant will receive credit for time served as part of a Department of Corrections (DOC) sentence. Defendants may be held in local jail custody pending sentence. Upon sentencing, a defendant may receive probation, a diversionary program or a term of incarceration. In the event probation or diversion is granted, there is the possibility that a defendant will fail in his or her obligations to the court. Should this occur, the court may revoke probation or diversion and impose the original term of incarceration.

House Bill 2310 B clarifies that, in the event the court revokes a probationer, the probationer will receive credit for time served as part of any presentence incarceration. Such credit is only given when a defendant is sentenced as part of a downward dispositional departure, a presumptive sentence or as part of a diversionary program where the defendant is not on probation. For example, if a defendant is given a downward dispositional departure, that means the defendant was given probation in lieu of the presumptive sentence of incarceration. In such a case, the bill allows the court to limit credit for time

served to 90 days. The bill also specifies that lesser or greater included offenses, as well as offenses committed as part of the same criminal episode in the same county, shall all be considered together in computing an offender's DOC term of incarceration.

House Bill 2310 B also addresses the situation where a defendant is held in custody both on a probation violation and a new criminal case. The bill makes clear that a judge has the discretion to give a defendant credit on the new criminal matter for time served as part of a probation violation, provided that both the prosecuting attorney and the defendant consent.