

	DEPARTMENT OF PUBLIC SAFETY CORRECTIONS ADMINISTRATION POLICY AND PROCEDURES	EFFECTIVE DATE: JUN 02 2009	POLICY NO.: COR.05.05
		SUPERSEDES (Policy No. & Date): COR.05.05 & 01/01/05	
	SUBJECT: SENTENCE COMPUTATION		Page 1 of 8

1.0 PURPOSE

To implement a clear and consistent policy specifying a method for the computation of all sentences imposed on inmates remanded to the custody of the Director of Public Safety.

2.0 REFERENCES AND DEFINITIONS

.1 References:

- a. HRS § 706-629 - Calculation of multiple dispositions involving probation and imprisonment, or multiple terms of probation.
- b. HRS § 706-668.5 – Multiple sentence of imprisonment (Revised 6/18/08 by ACT 193)
- c. HRS § 706-671 - Credit for time of detention prior to sentence; credit for imprisonment under earlier sentence for same crime.
- d. State of Hawaii v. Ropati Tauilili, 96 Hawaii 195, (2001)

.2 Definitions

- a. **Aggregate**: To combine multiple terms of imprisonment into one length of time to be served.
- b. **Consecutive**: Terms of confinement computed to run one after the other. One term must expire or be completely served before the next term may start.
- c. **Concurrent**: Terms of confinement computed to run at the same time. One term is running simultaneously with another term of imprisonment.
- d. **Pre-sentence credit**: The total amount of time spent in custody prior to being sentenced, in relation to the charge on which the inmate is sentenced. HRS § 706-671. Pre-sentence credit is generally comprised of any time spent in custody directly in relation to the arrest or after court ordered detention for the charges on which the defendant is being sentenced.

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- e. **Inoperative time**: This is the time spent on escape status from the service of a sentence which will not be credited toward the service of any sentence. This differs from an extension ordered by HPA because this inoperative time is during the service of a sentence while on escape status from a sentence of incarceration. The extension by HPA is for absconding from parole supervision while in the community.

3.0 **POLICY**

It is the policy of the Department of Public Safety (PSD) that every inmate sentenced to a term of imprisonment and remanded to the Department for the service of that sentence shall have an accurate maximum term release date computed by PSD staff.

- .1 All inmates sentenced to a term of imprisonment and remanded to PSD shall have their maximum term release date computed by staff at the facility where they are designated to serve their sentence. Felony sentences should be computed within one month of the inmate's arrival at a designated facility after sentencing. All misdemeanor sentences should be computed upon receipt of the sentence. Credit shall be given for any part of a day in custody. No days in custody should be credited toward more than one sentence, unless the sentences are to run concurrently, or the credit is required by policy or state law.
- .2 Staff shall determine the initial pre-sentence credit applicable to an inmate's incarceration starting upon the inmate's initial arrival at a pre-trial facility. The pre-sentence credit for all felony charges shall be documented on a Form 8709, (Attachment A). A running count of pre-sentence credit should be kept on this Form 8709. This information shall be verified, and kept in the inmate's institutional file for future computations, to provide to the sentencing court, and to the Hawaii Paroling Authority (HPA).
- .3 HRS §706-668.5 covers the computation of multiple sentences regarding whether the sentences should be computed to run concurrently or consecutively. This statute was amended on June 18, 2008, by ACT 193. Therefore, all sentences imposed prior to this date will be computed under the previous version of this statute. This previous version states that absent a specific order from the court, multiple sentences imposed at the same time

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will run concurrently, but multiple sentences imposed at different times will run consecutively. However, pursuant to ACT 193, all sentences imposed on June 18, 2008, or after will run concurrently with any other sentence unless the court orders the sentence to run consecutively. All references in this policy to HRS §706-668.5 prior to ACT 193 will be as "old law", and all references to ACT 193 will be "new law".

The most likely event where old law and new law sentences will have to be computed together will be when an inmate sentenced under an old law sentence who has been paroled, is arrested on new charges and subsequently is sentenced under the new law. Thus, his parole on the old law sentence is revoked and will still be computed under the old law rules. The new law sentence, without an order to run consecutive, will by law, run concurrent to old law sentence.

- .4 Inmates must generally be in the custody and jurisdiction of the State of Hawaii before a Hawaii sentence can begin to run. An exception would be when a Hawaii sentence is imposed on an inmate who is in another jurisdiction's custody, and the Hawaii sentence is to run concurrently with the other jurisdiction's sentence that the inmate is currently serving. In this case, the Hawaii sentence would begin to run because it is concurrent to the other jurisdiction's sentence, and if the inmate had been transferred to Hawaii custody via a Writ of Habeas Corpus ad prosequendum, all the time in Hawaii custody up to the filing date of the sentence would be awarded as pre-sentence credit. This applies to old law sentences that were specified to run concurrent to any other sentence or specifically to the other jurisdiction's sentence. It also applies to all new law Hawaii sentences except those that are ordered to run consecutive by the court. Under the old law, without the specific order of concurrency, the Hawaii sentence cannot begin until the inmate completes the other jurisdiction's sentence. No pre-sentence credit can be awarded on a consecutive sentence for the time the inmate was borrowed via writ from another jurisdiction, especially when the inmate is receiving credit toward the other jurisdiction's sentence.
- .5 The Sentence Computation Form (Attachment B) shall be completed by the staff designated to compute the inmate's sentence, and shall be kept in the beginning of the Legal Documents section of the inmate file.
- .6 The Warden is responsible for insuring that an adequate number of trained staff are available on a regular basis for the computation of inmates' sentences and completion and filing of the required documents.

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4.0 METHOD OF COMPUTATION

- .1 When a defendant is in custody and is sentenced to a term of imprisonment, the date the sentence is filed with the Clerk of the Court is generally the start of the sentence, and the beginning point for any sentence computation. An exception to this premise may be when the court orders the sentence to begin *nunc pro tunc*, or to begin at an earlier date, which can only be credited if the inmate was in custody during the dates ordered *nunc pro tunc*. Another exception to starting the sentence on the file date is when the inmate is not in custody, but is brought into custody at a later date with a consecutive sentence, which would be the official start date for that sentence. There are no other situations where a sentence can be computed to start running before the date it is imposed.
- .2 To compute a sentence, the length of the sentence is added to the sentencing date to arrive at the preliminary maximum term release date. Any pre-sentence credit is deducted from the preliminary date, to arrive at the maximum term release date. Generally, all pre-sentence credit will be computed to end the day before the day the sentence is imposed, to prevent double credit for the date of sentencing. Credit will be given for any portion of a day in custody, and all pre-sentence credit will be computed in complete days only.
- .3 When a defendant is serving a sentence of probation, and during the service of that probation, is sentenced to serve a new term of imprisonment from another charge, the service of imprisonment will not toll, or stop the running of the prior sentence of probation. (HRS § 706-629). Therefore, in cases where a term of probation was being served when a sentence of imprisonment was imposed, the sentence of imprisonment should be computed independent of the term of probation. PSD will not compute terms of probation, but will note them in regard to the computation of terms of imprisonment. However, if a term of imprisonment is imposed as a condition of probation, PSD will compute that sentence applying any appropriate pre-sentence credit.
- .4 If an inmate is placed on "escape" status while being held in custody at a secure facility, any time on escape status will not be credited toward the sentence or pre-sentence credit which the inmate was serving. The total period of time an inmate spends on escape status should be added to the maximum term release date for the term for which the inmate was being held when the inmate escaped.

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- .5 When a sentence is imposed in hours instead of days, the final computation must be done in hours. However, all pre-sentence credit will be computed in complete days only, and the pre-sentence credit will be deducted from the sentence with the remaining term to be computed and served in hours. Therefore, a defendant who has been arrested and booked for any period of time will be credited with at least one day of pre-sentence credit. If this defendant is sentenced to a 72 hour sentence, the one day, or 24 hours of pre-sentence credit will be deducted from the maximum term of 72 hours, and the defendant will have 48 hours to serve in a PSD facility. This 48 hour term should be computed to run in hours, so that if the time stamp on the judgment is 10:00 a.m. on a Tuesday, the defendant should be released from the facility at 10:00 a.m. on the following Thursday.
- .6 In a situation where a court order specifically conflicts or contradicts with a statute, the staff assigned to the computation should contact the court for clarification. In addition, in these situations, staff should contact the Offender Management Office as soon as possible for additional guidance.

5.0 PRE-SENTENCE CREDIT

- .1 All time spent in custody by a defendant prior to sentencing, that is related to the crime for which the sentence is subsequently imposed is pre-sentence credit, and shall be deducted from the maximum and minimum terms of imprisonment, HRS §706-671. Generally, pre-sentence credit will be computed to end the day before the day the sentence is imposed, to prevent double credit for the date of sentencing. Any part of a day spent in custody prior to sentencing will be credited as one day of pre-sentence credit. All pre-sentence credit will be computed only as complete days, equal to 24 hour credits. Pre-sentence credit is not discretionary, except in the case of a sentence of probation revoked and sentenced to a new term of probation, as described in paragraph 3 of this section. Therefore, the court cannot properly order the denial of pre-sentence credit, or additional pre-sentence credit for time that was not served. If this occurs, contact the Offender Management Office immediately.
- .2 When a judgment of conviction or sentence is vacated, and a new term of imprisonment is imposed for the same crime, the original pre-sentence credit and all time served toward the original sentence will be deducted from the new sentence, HRS § 706-671.

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- .3 In cases where the original sentence of probation is revoked, and a new term of probation is ordered, with a term of incarceration as a condition of probation, any time spent on the initial arrest and initial term of probation will generally not be credited as pre-sentence credit, unless specifically ordered by the court. Only in this situation, does the court have discretion as to whether any or all pre-sentence credit is to be awarded. Therefore, absent specific language from the court as to pre-sentence credit, PSD will routinely credit only the pre-sentence credit that should be awarded from the arrest on the most recent revocation, and apply this credit to the term of incarceration for the subsequent term of probation. A term of probation which is revoked and sentenced to an indeterminate term of imprisonment must deduct all pre-sentence credit from any detention associated with this charge.
- .4 Pursuant to the Tauilili case, no consecutive sentences will receive pre-sentence credit for the same period of time more than once. Therefore, in the case where an inmate is sentenced to two terms of imprisonment for five years to run consecutively, and the inmate has one year of pre-sentence credit that was earned for the same period of time for both sentences, the computation would be a 10 year aggregate term with the one year of pre-sentence credit applied only once to the beginning of the term, not one year to both five year terms. However, if consecutive sentences have different pre-sentence credit that was for separate times in custody that do not overlap, each sentence should be awarded the respective credit. The concept for this case is not to award pre-sentence credit for any day more than one time, or not to "double dip". In computing consecutive sentences, the starting date for a consecutive sentence will be the day after the preceding sentence expired.
- .5 No pre-sentence credit should be awarded for any time the inmate was not in custody. In the event a court specifies an amount of presentence credit for an inmate that is inconsistent with the pre-sentence credit amount computed by PSD staff, the staff performing the computation should contact the court to inform them of the difference and to verify the amount of credit to be awarded. The Offender Management Office should also be contacted as well in these cases.
- .6 In unusual circumstances such as a pre-trial detainee in custody in another jurisdiction pending extradition to Hawaii, or a pre-trial detainee hospitalized in Hawaii for mental health issues, pre-sentence credit should generally be awarded if the detainee was in custody pursuant to the Hawaii charges on which he is sentenced, and not able to move about in the community at their discretion.

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- .7 The appropriate pre-sentence credit should be computed for each count of each criminal case because there may be different pre-sentence credit for each different count or case. When an inmate is arrested on new charges after being out on some type of official release, parole, probation, supervised release, etc., and the new charge is subsequently dismissed, the time spent strictly in custody on the new charge cannot be credited toward any other charge. There are numerous case notes to this effect after HRS §706-671.
- .8 When an inmate is already in custody and is arrested, pleas, is convicted, or is documented to be in custody pursuant to a new charge during the time the inmate is already in custody on previous or other charges or sentences, the time from the documentation of custody for the new charge until the date the sentence is filed will count as pre-sentence credit to be deducted from the subsequent sentence. In this case, the inmate is generally awarded sentence time for the first sentence or charge, and pre-sentence credit for the same period of time for the subsequent sentence. Therefore, an inmate serving a felony sentence of five years in Hawaii, who is served an arrest warrant for a new charge during the service of his sentence, will get both credit toward the initial sentence and pre-sentence credit for the new charge for the same period of time. Pre-sentence credit should not be awarded to an inmate who is in another jurisdiction's custody simply because a Hawaii arrest warrant is served upon them. An inmate should be in Hawaii custody, or being held just for Hawaii charges in another jurisdiction for credit to apply.
- .9 All pre-sentence credit should be documented on the Form 8709, which should be initiated upon the inmate's arrival at the initial facility, and continually maintained in the inmate's file. The facility should always be prepared to respond to any court's inquiry with the appropriate pre-sentence credit after the inmate's arrival in that facility. The pre-sentence credit shall include any time spent in police custody, as well as any time incarcerated in any facility of the department or other facilities, so long as the detention was related to the charge upon which the inmate is sentenced. Once an inmate is sentenced and transferred to his designated facility, the staff at that facility will provide all the pre-sentence credit information to the Hawaii Paroling Authority on the Form 8709 within one month of the inmate's arrival at the designated facility.
- .10 When a defendant is released from custody to appear at court at a later time for a proceeding on the initial charge, but the defendant fails to appear in court, the court often issues a warrant for criminal contempt. When the defendant is arrested on the warrant for contempt, the pre-sentence credit for the time from the arrest on the warrant should ONLY be credited toward the sentence imposed for the contempt charge. Pre-sentence credit for the time

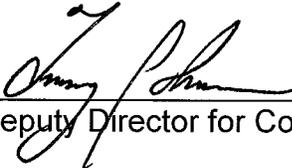
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of arrest can only be applied to the underlying charge IF the underlying charge is referenced in the warrant and/or an order pertaining to bail is issued pertaining to the underlying sentence. Absent these specific elements, no credit should be awarded to the initial or underlying charge for any time spent in custody as a result of the arrest and detention for criminal contempt because it is clear that the court did not intend to have the defendant arrested on the underlying charge. In the event a sentence is imposed on the contempt charge and on the underlying charge, credit may be given to both provided the underlying charge is referenced in the warrant and/or on an order pertaining to bail. In the event the court does not sentence the defendant on the criminal contempt charge, staff should contact the court to determine the court's intent, so that the open charge does not remain in the inmate's file.

6.0 SCOPE

This policy applies to all Department of Public Safety personnel. All prior policies, procedures, and practices are hereby superceded to the extent that they are inconsistent with this policy.

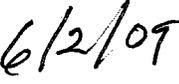
APPROVAL RECOMMENDED:


 Deputy Director for Corrections


 Date

APPROVED:


 Director


 Date

Sentence Computation Form

Inmate Name: _____ SID: _____

Case: _____ Counts: _____

Sentence Filed Date: _____ Concurrent with: _____

Consecutive with: _____

Sentence Start Date: _____

Sentence Length: _____

Discharge Date (Straight Time): _____

Pre-sentence Credit Total: _____ (check form 8709)

Maximum Term Release Date: _____

Comments: _____

Prepared By: _____ Date: _____