



# Office of the Ohio Public Defender

*Timothy Young, State Public Defender*

## **JAIL-TIME CREDIT PACKET**

### **What is Jail-Time Credit?**

Jail-time credit is the part of your sentence that you have already served before you arrived at the Department of Rehabilitation and Correction (DRC). That usually means time confined in a county jail but can also be Community Based Correctional Facility (CBCF) lockdown time. When you are sentenced by an Ohio court to serve time in state prison, you are entitled to have the jail-time credit you earned before sentencing for your offense applied to or credited against the sentence for that same offense. That means that your prison sentence will be reduced by the jail-time you have already served for that case. You have a fundamental right to credit for time served in confinement, and that right is protected by the Equal Protection Clauses of the Ohio and United States Constitutions.

### **How is my Jail-Time Credit calculated?**

Although DRC is required to credit you with time already served, it is the trial court's responsibility to calculate the amount of credit you must be given. The trial court's jail-time credit calculation should be included in your filed sentencing entry. The statute requiring jail-time credit – Ohio Revised Code §2967.191 – applies to cases that went to trial and cases resulting from guilty pleas. So, the court calculates your jail-time credit. DRC is responsible for calculating credit for time that you spent being transported to DRC (called “transportation” or “conveyance” time) and time you spend in DRC custody or prison time. DRC cannot calculate the jail-time credit on its own and must rely on the jail-time credit amount that the trial court reports through its sentencing entry.

### **Time that the court must credit:**

- Confinement in lieu of bail (meaning you didn't bond out) in a jail while awaiting trial, a plea, or sentencing.
- Confinement in a juvenile facility before transfer to adult court.
- Confinement for a psychiatric examination to determine competence or sanity.
- Any other restraint that rises to the level of confinement, determined on a case-by-case basis (e.g. lockdown).
- Any time spent in a Community Based Correctional Facility (CBCF).
- Time held in another state before extradition to Ohio.

**Time that DRC must credit:**

- Confinement while awaiting transportation to serve the current prison sentence.
- Any prior prison terms for the same court case.

**Time that will *not* be credited:**

- Time spent in a county jail serving an unrelated misdemeanor sentence.
- Pre-indictment confinement (if on a different case).
- Time spent under house arrest or electronic monitoring.
- Time spent in a non-lockdown halfway house or drug rehab.

**How can I check my Jail-Time Credit?**

When you arrived at the DRC reception center and went through orientation, you received a Legal Packet prepared by the Office of the Ohio Public Defender as well as a “Time and Crime” report created by DRC’s Bureau of Sentencing Computation (BOSC). You can see the number of jail-time credit days that you have received on the bottom of the 2nd page of the time and crime report. If you are in the first few weeks of your sentence, that number may not be correct – it is possible that documentation from the court of your jail-time credit has not yet reached the staff at BOSC. One reason for the delay is that some judges give the job of calculating your jail-time to the sheriff or probation department. That office may still be in the process of sending your jail-time credit to BOSC. It often takes about 3-4 weeks.

Once BOSC receives updated jail-time credit paperwork from your county, BOSC should send you an “Update/Correction,” which is a computer printout that will tell you how much credit you received and your new “expected release date” or outdate. Your jail-time credit will also be shown on your JPay. If you do not receive an “Update/Correction” from BOSC and your JPay still has the wrong credit or date(s), or, if you no longer have a copy of your time and crime report, you can kite your case manager for your current jail-time credit.

**What if I am missing Jail-Time Credit?**

If you believe you are missing any of your jail-time credit, and it has been at least 3 weeks since you were admitted to DRC, there are steps you can take to verify the error and, if needed, to correct it. Once you confirm that jail-time credit is missing, you may end up filing a motion in the trial court for jail-time credit or including a jail-time credit claim in your direct appeal, if you file one. But first, you should make every effort to get copies of your jail or CBCF records.

**Getting Jail or CBCF records.**

Getting and then reviewing copies of your jail or CBCF records is very important at this stage. The records you need are basic – you need the dates of all your confinement related to the sentence you are currently serving. So, you will want your “booking” date(s) for the jail (or “admission” dates for a CBCF) and the release dates, and you want to know which jail stays match up with which court cases.

You can write to the jail (use the sheriff's office address) or CBCF where you were held to get those records. There are three [form letters][records requests] attached to this packet that you can use to reach out to staff there. You should include a self-addressed, postage-prepaid envelope with each request you make to a jail or CBCF. Otherwise, they probably will not send you the records. If you have family or friends living in that county, they may be able to help you get the address of the sheriff's office. You may also be able to get the address at your institution's law library or with the help of your case manager. If despite your best efforts, you cannot get ahold of the mailing address of the jail or CBCF, you can call or write to the Office of the Ohio Public Defender and ask for an intake attorney [if you are at ORW, CRC, or LORCI, you can kite the "public defender"] to ask for help getting the address.

Once you get them, review the records carefully, as well as this information packet, including the FAQs page. The records may jog your memory about the dates or make it clear that all or part of your time at the jail was for another case or a misdemeanor sentence, and not your current sentence. You may realize that you do not have a legal claim for jail-time credit after all. On the other hand, reviewing the records may provide the proof you need to pursue such a claim.

If, after reviewing this packet and the jail records, you believe that you are missing jail-time credit to which you are legally entitled, then you may decide to file a motion for jail-time credit. Defendants in criminal cases can file a motion to recover missing jail-time credit at any time after sentencing. The sentencing court retains continuing jurisdiction to grant or deny a motion for jail-time credit.

### **Motions for Jail-Time Credit.**

Note: if you are filing an appeal and have an appellate attorney appointed to you, reach out to them right away to let them know you think there is a jail-time credit error that you may need to include in your appeal. If you filed a notice of appeal pro se (on your own), be sure to include your jail-time credit concern along with your other claims.

It is always better to have the assistance of an attorney in filing any type of motion or action with the court. That said, due to a lack of resources, the Office of the Ohio Public Defender cannot file motions or represent people in court on jail-time credit matters. However, public defender offices in the following counties have indicated that they are willing to review and consider taking on jail-time credit cases:

Ashtabula  
Athens  
Belmont  
Clermont  
Cuyahoga  
Lake  
Montgomery  
Ross  
Washington

If you were prosecuted in one of these counties, write to the public defender office there and request a review of your jail-time credit. In your letter be sure to provide as many details as possible – dates you recall, names of any jails, CBCFs, or other lockdown facilities in which you were held, any cases from other counties you may have had pending or other sentences you may have been serving in the same period of time. Also, if you received your jail records and can make an extra copy, send one with your letter. Keep at least one copy of the records for yourself.

The public defender office may decide to take your case on directly, or may assist you in reconnecting with your non-PD trial attorney. If your county is not on the above list, you or your family should reach out to your trial attorney – who may be a public defender or a private attorney – to see if they may be willing to review your credit. Legal directories with office addresses for public defenders or other attorneys are generally available in the law library. If you cannot get a hold of the attorney’s address, you can call or write to the main office of the Office of the Ohio Public Defender and ask for an intake attorney [if you are at ORW, CRC, or LORCI kite the “public defender”] to ask for help getting that.

No matter which attorney reviews the records and law in your case, they may agree with your argument for more jail-time credit and offer to represent you or they may disagree that you are entitled to more and decide not to take your case. If so, you might decide to move forward and file a motion for jail-time credit on your own, using the fill-in-the-blank forms at the back of this packet.

**Attach “Evidence of Confinement” or an Affidavit.**

Once you have filled out the motion, you must attach “evidence of confinement” to it. Hopefully, you will be able to use the jail or CBCF records you requested earlier. Attach a copy of the records to each copy of your motion but remember to keep at least one copy for your own use. Evidence of confinement is crucial to the success of your motion. This is the evidence the judge will rely on in deciding your claim. Without evidence, the judge will likely dismiss or deny it.

If you tried but were unable to obtain the records, you should attach an affidavit to your motion detailing the dates and place(s) you were confined on this case. Blank affidavit forms are in the back of this packet. You do not need to attach an affidavit if you have already attached evidence of confinement from everywhere that you were confined. If you have records for some, but not all of the places, use the affidavit to address the missing information.

If you use the affidavit, be aware that you are swearing and affirming under the penalty of perjury that each statement in the affidavit is true. Do not include false statements in your affidavit. Remember that an affidavit must be notarized to be effective. You may ask your case manager to assist you with that.

### **Know your court's filing rules.**

Once you have filled out the motion and attached the records proving your confinement, you will need to file it with the court that sentenced you. You will do that by mailing it to the Clerk of Courts in your county. Do *not* send the motion to the Office of the Ohio Public Defender. Do *not* send the motion to BOSC. Be sure to go to the law library to get the mailing addresses and to read the local rules for your county. The rules will explain how many copies of your motion you need to file, and once you know that you can have the copies made through your unit staff.

For most counties in Ohio, you send the *original* motion with attachments plus at least one copy of your motion, to the Clerk of Court, plus one copy to the prosecuting attorney's office. So, that's 3 copies total – 2 to the clerk's office, and 1 to the prosecutor. **However, you need to check the rules for your county**, because **some clerks of court may require as many as 5 copies of your motion.** Every motion – original or copy – must have all the attachments as well. If your law library is unavailable because your institution is on lockdown or for any other reason, you may call or write to the Office of the Ohio Public Defender [if you are at ORW, CRC, or LORCI, you can kite the “public defender”] to ask for that information.

### **Decision from the court.**

If you have received additional jail-time credit you will receive an “Update/Correction” printout from BOSC, which will also provide you with your new out date. The timing will depend on the speed of your court, which varies widely. If you do not hear anything within a month after filing your motion, you might write to the clerk of courts to see if the judge has ruled on your motion. Your case manager may also be able to tell you if you have received additional credit.

If the court denies all or part of your pro se motion for jail-time credit, you may wish to appeal the decision. If so, call or send a letter to the Office of the Ohio Public Defender requesting an appeal packet as soon as you receive the denial. When you file your appeal, request that an attorney be appointed to represent you on appeal. However, the trial court is not required to appoint an attorney for the appeal of the denial of your jail-time credit motion because you are not constitutionally entitled to one.

## Frequently Asked Questions about Jail-Time Credit

Below are some of the most frequently asked questions we get about Jail-Time Credit. If you have a question that is not listed below, write to us at the Office of the Ohio Public Defender and we will write back and try our best to answer.

### **How does Jail-Time Credit work when I am serving consecutive sentences?**

Consecutive sentences are served one after another. For example, if you had two 1-year sentences – from the same case – to serve consecutively, you would serve one first and then the other for a total sentence of 2 years. When a defendant is sentenced to consecutive terms, the jail-time credit is only applied to one term. So, if you serve the two 1-year sentences in a row and had 2 months of jail-time credit, DRC will only apply the 2 months of credit one time – 2 months off of the 2-year total sentence. However, if you are sentenced to 1-year terms in two different cases to be served consecutively – again, you serve first one and then the other for a total of two years. If each case has different amounts of jail-time credit – the first case had 2 months of jail-time credit, but the second case had 4 months of jail-time credit – the jail-time credit is added together for 6 months off a 2-year total sentence.

### **How does Jail-Time Credit work if I am serving concurrent sentences? Who or what is *Fugate*?**

Concurrent sentences are served at the same time. If you were sentenced to two 1-year sentences to be served concurrently, you would serve 1 year, not 2 years. In 2008, the Ohio Supreme Court held in *State v. Fugate* that when a defendant is sentenced to concurrent prison terms for multiple charges, jail-time credit must be applied to each concurrent prison term. See, *State v. Fugate*, 2008-Ohio-856, 117 Ohio St.3d 261, syllabus. So long as you are held on a charge while awaiting trial or sentencing, you are entitled to jail-time credit for that sentence. A court cannot choose to apply the jail-time credit earned in a case to just one of the concurrent terms and leave the other concurrent term with no credit. So, if your court imposed concurrent sentences in your case, but applied different amounts of jail-time credit to each of the sentences, you may be entitled to additional credit.

For example, if you were held in jail for 60 days on a 2-count theft case, and the judge sentenced you to 1 year on count 1, and 1 year on count 2, to be served concurrently, the judge cannot then apply 60 days of jail-time credit to just the first 1-year sentence and zero jail-time credit on the other 1-year sentence. If she did that, you would end up serving an entire year – instead of a year minus the 60 days you had already served -- and wouldn't get the benefit of your jail-time credit. The court would have to apply the 60 days of credit to both sentences, so they would end at the same time – 60 days short of the 1-year sentence.

### **If my case began when I was under 18, and I spent time in the Department of Youth Services (DYS) before coming to DRC, should I get Jail-Time Credit for that DYS time?**

Yes, you are entitled to jail-time credit for the time you spent confined in DYS on the same case for which you are serving time in adult prison. If the jail-time credit listed on your DRC sentencing report does not include your DYS time, please reach out to the Office of the Ohio Public Defender

by letter or by calling collect the main number – 614-466-5394 – and asking for the Juvenile Division.

**Can I get Jail-Time Credit for CBCF time?**

Whether time served in a CBCF constitutes “confinement” depends on the level of restriction placed on you during your stay and may have to be proven in court. Factors the court will consider include whether you were on lockdown or had a curfew. For example, it may be that, in earlier “steps” of your CBCF time, you were on lockdown and earned jail-time credit. However, if, as you successfully progressed through the program, you “stepped down” to a less restrictive phase and could come and go, your time in the step-down unit is much less likely to count as jail-time credit.

**What about time I spent in an out-of-state jail on an Ohio warrant for my current case?**

Yes, you are entitled to jail-time credit for time served in an out-of-state jail awaiting extradition on an Ohio warrant or detainer, so long as you are not serving a sentence for another case.

**Can I get Jail-Time Credit for pre-trial or sentencing time I spent on home confinement?**

No, you cannot. Home confinement, even with electronic monitoring, is not considered “lockdown” time, and does not count for the purposes of applying jail-time credit.

**Can I get Jail-Time Credit for time I spent in a drug rehabilitation center, sober living facility, or half-way house?**

A court does not have to give you jail-time credit for time in a rehab program, sober living or halfway house, unless it was a CBCF and you were on lockdown.

**Can Jail-Time Credit affect my eligibility to file for Judicial Release?**

Yes, it can. People serving non-mandatory sentences of exactly 5 years or ‘more than 5, but less than 10 years,’ can combine jail-time credit with prison time to get to their Judicial Release eligibility date. People serving sentences of ‘2 years or more, but less than 5 years,’ must get to their eligibility point – 180 days – with prison time only; jail-time credit cannot be used to meet the 180-day requirement.

**Will I still get Jail-Time Credit if I went to trial?**

Yes. The statute or law requiring jail-time credit – Ohio Revised Code §2967.191 – applies both to cases that went to trial and cases resulting from guilty pleas.

IN THE COURT OF COMMON PLEAS  
\_\_\_\_\_ COUNTY, OHIO  
YOUR COUNTY

STATE OF OHIO, :  
 :  
Plaintiff, :  
 :  
vs. : Case No(s). \_\_\_\_\_  
 :  
\_\_\_\_\_, :  
 :  
Defendant. :

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**MOTION FOR JAIL-TIME CREDIT**

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\_\_\_\_\_ asks this Court for jail-time credit. R.C. 2929.19; R.C. 2967.191. I was delivered into state custody on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. Later, I learned that I received only \_\_\_\_\_ days of jail-time credit.

I did not receive all the jail-time credit to which I was entitled. I was held in custody on this case as follows:

JAIL WHERE TIME WAS SERVED	BEGINNING DATE	ENDING DATE	NUMBER OF DAYS

I am entitled to a reduction of my sentence by the total number of days that I was confined for any reason arising out of the offense for which I was convicted and sentenced. R.C. 2967.191. The sentencing court retains jurisdiction to correct any error in its determination of jail-time credit not previously raised at sentencing. R.C. 2929.19(B)(2)(g)(iii). To that end, “[t]he offender

may, at any time after sentencing, file a motion in the sentencing court to correct any error made in making a determination [of days of credit], and the court may in its discretion grant or deny that motion.” *Id.*

When a defendant is held on multiple charges and then sentenced to concurrent prison terms for those charges, jail-time credit pursuant to R.C. 2967.191 must be applied toward each concurrent prison term. *State v. Fugate*, 117 Ohio St. 3d 261, 2008-Ohio-856. In addition, all time served in a CBCF constitutes confinement for purposes of R.C. 2967.191. *State v. Napier*, 93 Ohio St.3d 646, 2001-Ohio-1890.

\_\_\_\_\_ asks for an amended journal entry directing the Department of Rehabilitation and Correction to grant an additional \_\_\_\_\_ days of jail-time credit, for a total of \_\_\_\_\_ days of credit, through and including the date of sentencing, but not including prior prison credit.

Respectfully submitted,

\_\_\_\_\_  
YOUR SIGNATURE  
DEFENDANT, *pro se*

\_\_\_\_\_  
INSTITUTION NUMBER

\_\_\_\_\_  
INSTITUTION

\_\_\_\_\_  
ADDRESS/P.O. BOX NUMBER

\_\_\_\_\_  
CITY, STATE & ZIP CODE

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Jail- Time Credit was sent by regular U.S. Mail to the office of the \_\_\_\_\_ County Prosecutor, at  
YOUR COUNTY

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ADDRESS FOR YOUR COUNTY'S PROSECUTING ATTORNEY

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on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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YOUR SIGNATURE  
DEFENDANT, *pro se*



3. I made efforts to obtain records of confinement from the institutions listed in paragraph 3 by mailing record requests as follows:

JAIL WHERE TIME WAS SERVED

DATE REQUEST SENT

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4. I have not yet received a response to my record requests.

Further affiant sayeth naught.

\_\_\_\_\_  
YOUR SIGNATURE  
DEFENDANT, *pro se*

\_\_\_\_\_  
INSTITUTION NUMBER

\_\_\_\_\_  
INSTITUTION

\_\_\_\_\_  
ADDRESS/P.O. BOX NUMBER

\_\_\_\_\_  
CITY, STATE & ZIP CODE

Sworn to and subscribed in my presence on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_, 20\_\_\_\_  
Date

\_\_\_\_\_, DOB: \_\_\_\_\_  
Name & Date of Birth

\_\_\_\_\_  
Institution Number

\_\_\_\_\_  
Institution Name

\_\_\_\_\_  
Street Address/P.O. Box

\_\_\_\_\_  
City, State & Zip Code

**RE: Request for Booking/Admission & Release Information**

Dear Jail/CBCF Records Administrator:

I am writing to request your help in getting documentation of the dates I was held in your facility on **Case No.(s)** \_\_\_\_\_ and any other cases (even misdemeanors or cases from another jurisdiction) that I might have been held on there. Specifically, I need **my booking and release dates** and **the case numbers** that match up with each period I was in custody.

I have enclosed a self-addressed, postage-paid envelope, so that you can mail me a short letter or printout with the above-requested dates and case numbers. I will use this information to sort out my jail-time credit with the court, so it would be helpful if the paperwork has the facility's name on it or is on your letterhead.

Thank you for your assistance in this matter.

Sincerely,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name