
Bill Analysis 2017 Regular Session

SPONSOR: Reps. Antonio Maestas

SHORT TITLE: Confinement Detention & Time Served Credit

SYNOPSIS OF BILL: Broadens the qualifications for earning “presentence confinement credit” for time spent after arrest while awaiting trial, to be credited toward a defendant’s ultimate sentence if convicted. Currently, this credit only accrues for time spent in jail or limited forms of “official confinement,” such as involuntary treatment at the State Hospital in Las Vegas. HB 471 would additionally allow credit for certain “release” scenarios that involve restrictive conditions, including inpatient treatment or house arrest. While credit for “official confinement” is mandatory, whether to grant credit for treatment or house arrest alternatives would be at the judge’s discretion.

HB 471 would also clarify that such credit applies to the sentence for *any* offense pending during the period of confinement. This is the subject of much litigation for defendants sitting in jail or on restrictive conditions of release for more than one case; parties have to argue to the court about whether credit for that confinement should apply to one, all, or only some of the pending cases.

STRENGTHS: This bill would provide consistency among the jurisdictions statewide and reduce litigation about when credits accrue and to which pending cases. It would also provide clarity as to what types of pretrial release conditions qualify for confinement credit; the case law in this area is very fact-specific and it is difficult to anticipate whether certain cases will qualify or not. By including treatment programs in those non-jail scenarios, the bill incentivizes defendants to voluntarily seek treatment pending resolution of their charges. Similarly, by including “house arrest,” the bill enables defendants to maintain the stability of home life and employment without losing credit toward a final sentence. Notably, such credit is not a *reduction* in the basic sentence, but recognizes that a portion of the sentence *has already been served*. Where such credit could reduce a final *prison* sentence as well, expanding such credit could facilitate favorable plea agreements while keeping families together.

ADDITIONAL INFO: As highlighted by the National Institute of Corrections, an Illinois study found that supervised release alternatives to incarceration that couple surveillance (GPS, curfews, etc.) with rehabilitative services like treatment and employment reduce recidivism. See <http://nicic.gov/topics/5191-evidence-based-practices-ebp-employment-reduces-recidivism>, listing: Illinois Criminal Justice Information Authority, “Fidelity to the intensive supervision probation with services model” (study based in probation, not pretrial release), *available at:* <http://www.icjia.state.il.us/articles/intensive-supervision-probation-with-services>.

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<p>The longer people stay in jail pending a charge, the longer their final sentence, and the more likely they are to recidivate in the future. HB 471 would incentivize and facilitate flexible non-jail alternatives for people pending trial who still enjoy a presumption of innocence. Meanwhile, judges retain the discretion to keep dangerous defendants in jail for community safety.</p>	<p>The bill provides clarity to a murky and frequently litigated area of law.</p>	<p>The cost of incarcerating people in jail pretrial is a heavy burden on counties. Alternatives benefit the counties' budgets as much as they benefit defendants. Moreover, without actually reducing the sentence, expanding opportunities for presentence confinement credit reduces final prison sentences, benefiting the budget of our Corrections Department as well.</p>	<p>Defendants who are detained for the entire pretrial period are over four times more likely to be sentenced to jail and over three times more likely to be sentenced to prison than defendants who were released at some point pending trial. Moreover, low-risk defendants who are detained pretrial for more than 24 hours are more likely to commit new crimes not only while their cases are pending, but also years later. <i>See</i> Laura and John Arnold Foundation Pretrial Detention study: http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-Pretrial-CJ-Research-brief_FNL.pdf</p>	<p>A</p>