

SENTENCING M E M O R A N D U M

SENTENCING COMMITTEE MEMORANDUM NO. 2: *Calculation of Credit Time*

TO: Superior Court Judges

Date: March 14, 2007

The Sentencing Committee submits the following information and recommendations concerning calculation of good time:

1. For any Level 5 sentence imposed, original or VOP, we are required to give credit for time served on that offense.¹
2. There are a variety of ways in which to determine such credit time and it should be included in our sentencing orders:

On original sentences:

- a. The defendant may have been held continuously up to the date of sentencing. If so, the JP Court commitment paper in the file will give the commitment date, the arrest date will usually be in the file, and this information is also available in JIC;
 - b. The defendant may have originally been held in default of bail but now be out. In this instance, there is in the file (1) JP Court commitment and (2) a bail bond. Each has a date allowing the judge to calculate how many credit days are to be given;
 - c. The defendant may have been held in default of bail on a capias for failure to appear. The front of the file or papers inside it will provide that capias return date.
- (1) The Level 5 time (even if suspended immediately) can be imposed effective the date the defendant began his/her incarceration (DOC preference). For example, if the defendant has been in custody since 12/7/06 the sentence would read "Effective December 7, 2006, the defendant is placed in the custody of the Department of Correction at Supervision Level 5 for a period of one year; or
 - (2) The Level 5 time can be imposed effective the date of sentencing

¹ 11 *Del.C.* § 3901.

calculating the time and giving those days as credit. For example, if the defendant has been in custody since 12/7/06 but is not being sentenced until February 1, 2007, then the sentence would read "Effective February 1, 2007 the defendant is placed in the custody of the Department of Correction at Supervision Level 5 for a period of one year, giving credit for 55 days previously served;"

(3) If the defendant was in custody in default of bail for a period of time and then released prior to your sentencing, the preferred sentencing language would be to make the effective date the date of the sentencing and give the defendant credit for the time in default of bail. For example, if the defendant was held in default of bail for 30 days on the case you are sentencing him/her on and then released, and you were sentencing him on February 1, 2007 the sentence would read "Effective February 1, 2007, the defendant is placed in the custody of the Department of Correction at Supervision Level 5 for a period of one year, giving credit for 30 days previously served."

On VOPs:

- (1) Defendant returned on a capias on a specific date (see options in preceding subparagraphs (1), (2), and (3) above about how to handle this at sentencing).
- (2) Defendant held on administrative warrant from a specific date, which is usually at the bottom, sentencing options are the same; or
- (3) Level 4 violations. The warrant or report has a date on it and that is usually the date the defendant "returned" to Level 5. Sentencing options are the same.
- (4) Sometimes the defendant will have DOC identification on his person which will give the commitment date.