

*Boettcher, Beets, Battlestar Galactica!*¹

I. Sentence Credit Basics: The Law (Relevant Statutes, Major Cases, Related Authority)

A. Wis. Stat. § 973.155

1. Defendant entitled to sentence credit when (1) in custody (2) in connection with course of conduct for which was sentence imposed
 - a) Custody = subject to escape charge for leaving status (Wis. Stat. § 946.42; *Magnuson, Friedlander*²)
 - b) In Connection = factual connection...why was client taken into custody

(1) Q: When can an existing connection be severed? A: Sentencing in one/any case severs connection between subsequent custody and pending cases, return to institution in revocation cases (*Beets*, Wis. Stat. § 304.072, *Davis*)

2. Consecutive sentences: Day for day credit...not duplicate credit even if custody was in connection with multiple cases. *Boettcher*.
3. “Effectively consecutive” cases: *Boettcher* applies (i.e. sentence imposed after defendant has completed prior sentence(s) that received proper sentence credit). *Jackson*.

B. Wis. Stat. § 973.15 (when a sentence begins, court authority to impose cc/cs sentences, sentence structure basics)

1. Sentences begin at noon = no credit for day of sentencing.
2. § 973.15(5) and *Brown* -- if you are lawfully transferred to another jurisdiction, you get credit against your Wisconsin sentence.

C. Wis. Stat. § 973.04 (credit for time spent on vacated and reimposed sentence)

D. Wis. Stat. § 304.072 (sentence of a revoked probationer (with stayed sentence), parolee, or person on supervision “resumes running” when they return to prison. That date, not the date of revocation severs the connection that might have existed between custody and other pending case(s). *See Davis*. Relevant when new sentence is ordered concurrent.

II. Sentence Credit Basics: Investigating Sentence Credit Claims

A. JOC, Jail records, Revocation Summary/Order, CLIENT, Client’s other related cases, discovery.

¹ See <https://www.youtube.com/watch?v=WaaANll8b18>

² Please see sentence credit appendix for helpful cases and citations.

1. Jail records are not infallible, especially in light of *Johnson* (Milwaukee County example)
 2. Examples of common “missed” credit: 1) Warrant issued, client arrested in another jurisdiction and held until extradited or returned to Wisconsin; 2) Client arrested and released while case is investigated; 3) Dismissed and read-in cases considered at sentencing (*Floyd*); 4) starting from date of initial appearance or filing of complaint, not arrest; 5) custody in different county based on DOC holds
- B. Make a timeline
- C. Count days (or use an online tool)
- D. DOC Records to establish how credit is being applied--sentence credit computations
1. Example of situation where client doesn’t realize credit was already applied by the DOC upon revocation by (1) totalling up hold/conditional time and (2) effectively running revocation/reconfinement from date of last arrest/detention pending revocation.

III. Obtaining Sentence Credit for your Client

A. Trial Court Litigation

1. Statute requires the Court (not the clerk!) to “make and enter a specific finding of the number of days for which credit is to be granted.” *Kitt*.
2. At Sentencing
 - a) Know your local court rules and judicial preference; county-specific paperwork.
 - b) Lawyer should determine credit in advance of the hearing and support with documentation where appropriate (this will save your client the hassle of an appeal). If credit is significant, or if possibly disputed, you should also try to establish in advance of the plea and document your advice to the client appropriately.
3. Post-sentencing
 - a) DOC can, and will, request that credit be re-examined.
4. Revocation--DOC has authority to determine credit at time of revocation; if inaccurate you should contest in the revocation context.

B. Postconviction Litigation

1. Motion for credit, burden on defendant to establish both custody and factual basis for connection to course of conduct for which sentence imposed
2. Usually fact heavy in terms of timeline/dates and bases for custody, not the substance of the case
3. Apply the relevant law: 973.155 + the specific rules/cases that apply to the issue raised
4. Best practice is to file as a Rule 809.30 PCM within those deadlines. Possible to file a sentence credit motion at “any time” if credit is somehow missed or omitted at an earlier stage of the appeal. Clients can seek credit at any time, but won’t be entitled to an attorney after the direct appeal.
 - a) The statute appears to require a petition to the DOC; the inmate can petition the DOC but 99% of courts recognize that a sentence credit motion can be filed without proof of a “petition.”
5. Remember that SPD policy will not force your client to choose between credit and a no-merit--they can have both!

C. Sentence Credit Appeals

1. Review should generally be de novo, unless strange factual issue
2. Appeals of sentence credit denials are governed by 809.30; don’t forget you can file a PCM if appointed from a denial of a pro se motion.

D. Special Rules, Unique Cases, and Other Issues You Should Be Aware Of

1. Read-ins: entitled to credit for time spent in custody in connection with any crimes “read-in” at sentencing. *Floyd*.
2. Good time credit: Wis. Stat. § 302.043 makes every inmate sentenced to a county jail eligible to earn good time at a rate of 25% off their sentence...when court’s “use up” all earned sentence credit to impose a “time served” jail sentence, 25% of the credit is “left over” to be potentially used up on consecutive sentences (assuming there is a factual connection between the sentence on which you seek credit and the custody, i.e. custody was connected to 2 pending cases or 2 probation cases/holds)
3. Procedural connection not required: filing of complaint or initial appearance isn’t the start date if client taken into custody at earlier time in connection with the case. Don’t let state or court allow “procedural

severance” either. Once a factual connection exists, force the state to point to case or statute that requires severance. *See Carter*.

4. *Hintz*: signing signature bond on new case, when taken into custody on po hold for conduct related to new case does not “severe connection” between custody and new case. *See Wis. Stat. 973.155(1)(b)*...court of appeals has been good lately about holding state and circuit court to *Hintz* and *Hintz*-type rule...show how/why connection that existed when someone taken into custody is severed...focus on factual connection, not procedural severance
 - a) Signature bond can complicate things in other cases; if, for example the client is sitting on two open criminal matters and has a signature on one and cash on the other. Law is that if client signs the bond, he probably cannot receive credit on both cases.
5. Conditional time: not entitled to credit against jail term imposed as condition of probation, but court is permitted to grant it as exercise of discretion.
6. Even life sentences can get credit (in a sense)--*Seeley* shows that court can utilize credit in setting ES eligibility date.
7. *Armstrong* sentence mod claims: if court *thought* and/or granted a significant amount of credit that client was not due, then potential basis to modify sentence to align with court’s intent.