

Sentencing Decision Tree

Working with AB 109, AB 116 and AB 117

August 26, 2011
Nancy Brewer

Felony Sentencing On or After October 1, 2011

1. Is the defendant *currently convicted* of a serious felony, violent felony, or a crime requiring 290 registration, or a crime where there is a §186.11 enhancement? (AB 117: § 1170 (h)(3))
 - a. Yes: Standard sentencing laws apply; the defendant is eligible for CDCR or probation (AB 117: § 1170 (h)(3); AB 117: § 1170 (a)(3)-(d); AB 117: § 1170.1; PC § 1203; PC § 1203.1 (a))
 - b. No: Proceed to Question 2
2. Does the defendant have a *prior conviction* for a serious felony, violent felony, or offense requiring 290 registration? (AB 117: § 1170 (h)(3))
 - a. Yes: Standard sentencing laws apply; the defendant is eligible for CDCR or probation (AB 117: § 1170 (h)(3); AB 117: § 1170 (a)(3)-(d); AB 117: § 1170 (b); AB 117: § 1170.1; PC §§ 667 (b)-(i)/1170.12; PC § 667 (b); AB 117: 667.5(b); PC § 1203; PC § 1203.1 (a))
 - b. Note that the statute says “prior conviction”, so a juvenile adjudication that will qualify as a strike under the Three Strikes law shouldn’t affect someone’s §1170(h) eligibility because a juvenile adjudication isn’t a conviction. (See *People v. Pacheco* (2011) 194 Cal.App.4th 343, 346.)
 - c. While a prior conviction can be dismissed pursuant to PC§1385 for 3 Strikes sentencing purposes, it may not be §1385’d to render a person eligible for §1170(h) sentencing. (AB 117: §1170(f))
 - d. No: Proceed to Question 3
3. Do all the charges qualify for sentencing under §1170(h)? See list provided of crimes specifically listed in AB 109 and AB 117, and remember that PC §18 was amended to say that , except where a different punishment is prescribed, every felony is punishable by imprisonment for 16 months, or two or three years as provided in subdivision (h) of Section 1170.
 - a. Yes: A felony punishable under 1170 (h) *shall be* punishable by imprisonment in the county jail for the term described in the offense (AB

117: § 1170 (h)(2)), or punishable in the county jail for a term of 16 months, 2 or 3 years (AB 117: §1170 (h)(1))

i. Court may:

- 1) Order the defendant to serve a term in county jail for a period not to exceed the maximum possible term of confinement; or
- 2) For non-specified offenses only, impose a sentence which includes a period of county jail time and a period of *mandatory probation* not to exceed the maximum possible sentence (AB 116: § 1170 (h)(5))
- 3) Stay sentencing, grant the defendant probation and order the defendant to serve a term of confinement in the county jail as a condition of probation (PC § 1203; PC § 1203.1(a))

ii. Proceed to Question 4

b. No: If ANY charges *do not* qualify for sentencing under § 1170 (h), standard felony sentencing laws apply; the defendant is eligible for CDCR or possibly probation (AB 117: § 1170 (h)(3); AB 117: § 1170 (a)(3)-(d); AB 117: § 1170.1; PC § 1203; PC § 1203.1 (a))

4. Did the Court sentence the defendant pursuant to § 1170 (h)?

a. Yes:

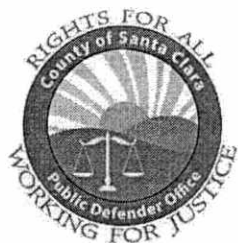
- i. The court may impose the maximum possible term of confinement in the county jail (AB 117: § 1170 (h)(5)); OR
- ii. Court may impose a sentence which includes a period of county jail time and a period of *mandatory probation* not to exceed the maximum possible sentence for non-specified offenses only (AB 116: § 1170 (h)(5))
 - 1) AND presumably the probationary period must also comport with PC § 1203.1 (a)
- iii. Confinement in the county jail for more than one year will qualify as a prison prior in future criminal actions (AB 117: § 667.5 (b))

b. No: Court placed the defendant on felony probation:

- i. If the defendant was originally charged with all § 1170 (h) felonies, the defendant cannot be sent to CDCR upon revocation of the defendant's probation, as disposition is controlled by AB 117: § 1170(h)(2)

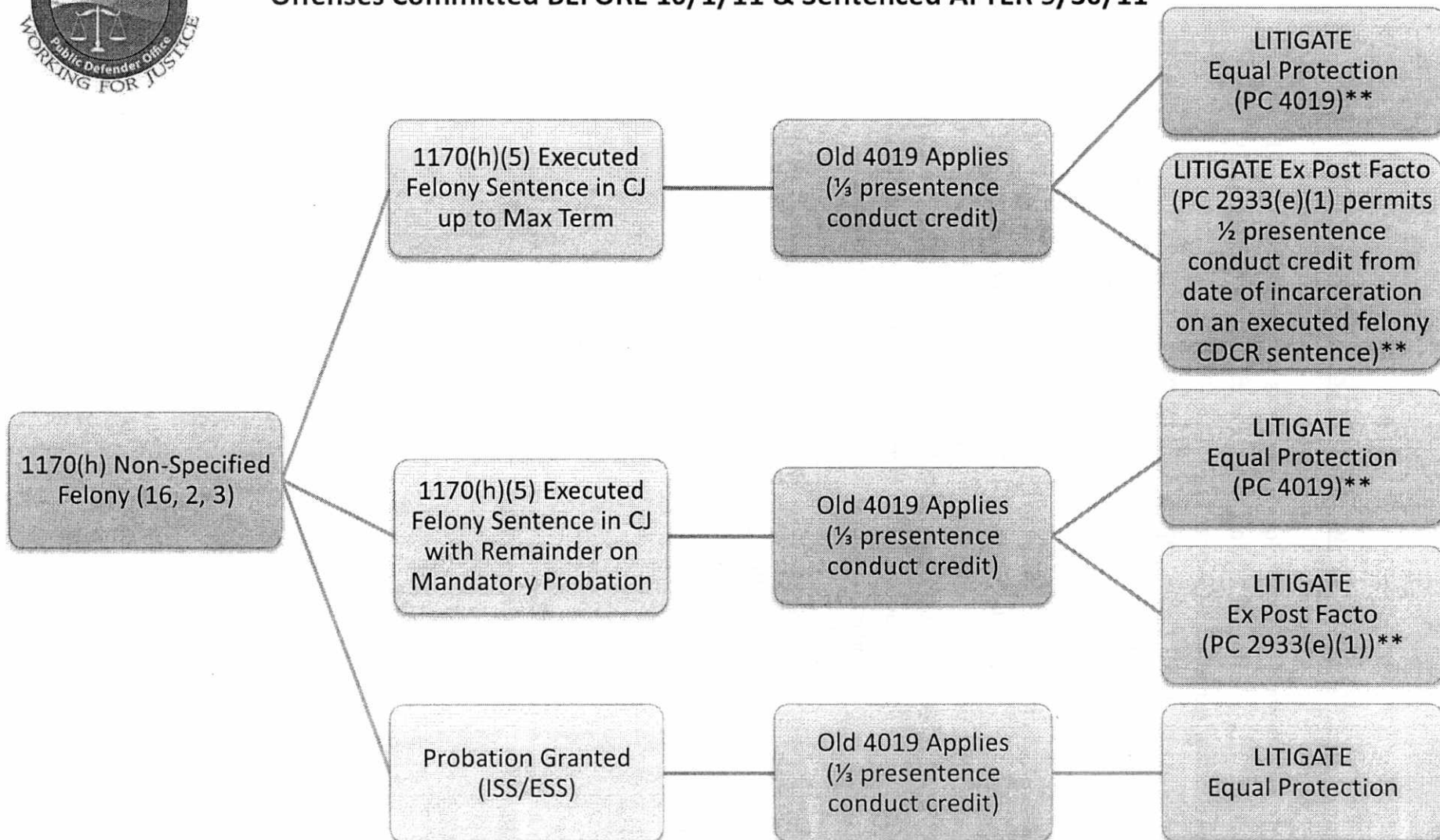
Credit Scheme Under AB 109/AB 117 as of October 1, 2011

1. Misdemeanants, §1170 (h) felons, defendants with a strike prior, and defendants charged with a serious felony are eligible to earn credit at a rate of 2:2 if the crime was committed on/after October 1, 2011 (§ 4019)
 - a. “Section 4019...shall apply if the prisoner is required to register as a sex offender...was committed for a serious felony...or has a prior conviction for a serious felony...or a violent felony (§ 2933 (e)(3))
 - b. “A term of 4 days will be deemed to have been served for every 2 days actually spent in custody” (§ 4019 (f))
 - i. In order to receive § 4019 credits, the person must be *committed* for a period of 4 days or longer (§ 4019 (e))
 - c. Persons convicted of a violent felony are limited to 15% credit under § 2933.1
 - i. Should defendant receive felony probation in lieu of a prison sentence, defendant will serve his county jail term at a rate of 2:2.
 1. But, if defendant’s probation is revoked and defendant is sentenced to prison, his local conduct credits will be recalculated to reflect an earning rate of only 15% (§ 2933.1)
2. For crimes committed before October 1, 2011, see the credits flow chart as to what arguments need to be made.



AB 109/117/116 Credit & Sentencing Chart

Offenses Committed BEFORE 10/1/11 & Sentenced AFTER 9/30/11



CHARGE

DISPOSITION

PRE-SENTENCE CREDIT

ISSUE