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Subject: Day-for-day credit proposal in justice reinvestment

Hello Representatives,

As I've listened in on testimony regarding the Justice Reinvestment bill, and had discussions with a few stakeholders, I realize there is confusion about what the probation day-for-day credit proposal does in the justice reinvestment bill. Some who have testified have indicated the proposal makes changes that it won't make.

I write this with the hope of providing some clarity--and because we believe it increases the fairness of our probation system while incentivizing compliance with probation rules. These are both important goals.

Knowing that these are complex and confusing topics, however, I'm happy to speak or testify in person as well.

As you know, everybody sentenced to a term of probation is also sentenced to an underlying to-serve sentence. For example, a person might be sentenced to 1-2 years to serve, but all of that term is suspended while a person completes a 1-year term of probation. If they complete probation without incident, the to-serve sentence goes away. If they violate probation, they potentially face the entirety of that 1-2 year sentence no matter how long they served on probation without incident.

The day-for-day credit in this proposal is not applied to the person's probation, but rather to their underlying sentence.

So the proposal does not cut anybody's probation term in half, or by any time at all. Whatever probation term the person is sentenced to is the probation term they'll serve (setting aside other avenues that may exist for shortening probation). If there is programming that someone must complete in order to complete probation, prosecutors and judges can simply sentence that person to a probation term that allows time for completion.

It does reduce the underlying sentence, giving the person day for day credit toward their underlying sentence minimum. So if the person violates probation they will get credit for the time served without incident. For example, let's say a person were sentenced to 1-2 years to serve, all suspended with a 1-year term of probation. If they violate after 9 months of probation, they will have 3 months to 2 years left on their underlying sentence.

This should not be hard to calculate because the bill draws a bright line: as soon as an arrest warrant is issued for a VOP, the day for day credit stops. That's it, no interpretation required. Whether and when credit starts up again after a VOP is resolved is something the courts will decide and specifically authorize--so DOC will also have clear direction there too.

I hope that is a helpful explanation. We would still love to see this aspect of the bill move forward as we believe it is much fairer to probationers to get credit for time served on probation without incident--just as people on furlough do now. It will also create further incentive for good behavior.

Thank you for your work on this bill! We do greatly appreciate it.

Best, David

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