

PROBLEM-SOLVING COURTS PRACTICE GUIDELINES  
Program Participation Credit Time

I. Definitions

- A. "Credit Time" or "Good Time Credit" refers to time awarded pursuant to IC 35-50-6 and is based on good behavior while incarcerated or otherwise confined.
- B. "Time Served" refers to actual days spent incarcerated or otherwise confined.

II. Indiana Law

- A. Credit time classes (IC 35-50-6-3)
- B. Credit time assignments (IC 35-50-6-4)
- C. Deprivation of credit time (IC 35-50-6-5)
- D. A person imprisoned for a crime earns credit time. Except as set forth under IC 35-38-2.5.-5, a person does not earn credit time while on parole or probation. A person who, upon revocation of parole, is imprisoned on an intermittent basis does not earn credit time for the days he spends on parole outside the institution. (IC 35-50-6-6)
- E. A person serving a term of incarceration (intermittent or consecutive) as a condition of probation does not earn credit time. (IC 35-38-2-2.3)
- F. A person confined on home detention as a condition of probation earns credit for time served. (IC 35-38-2.5-5) (See *Dishroon v. State*, 722 N.E.2d 385 (Ind. Ct. App. 2000))
- G. A person confined as a direct commitment to a community corrections program earns credit time as well as credit for time served. An individual serving home detention as a condition of a community corrections program earns credit for time served. (IC 35-38-2.6-6) (*Purcell v. State*, 721 N.E.2d 220 (Ind. 1999))

III. Summary

- A. State statute establishes a right to credit time and/or credit for time served for various groups of people in the criminal justice system. If a problem-solving court participant is incarcerated or otherwise confined in conjunction with program participation then it must be determined if any of these statutes are applicable and if the award of credit time and/or credit for time served is appropriate. Accurate calculation in accordance with these statutes becomes particularly important if a participant is terminated from the program and faces incarceration with the Department of Correction.

B. Some programs have chosen to incorporate a “waiver” provision in the program’s participation agreement whereby the participant agrees that he/she is not entitled to credit time during program participation. Such a provision was discussed by the Court of Appeals in an unpublished opinion, *Stapleton v. State*, 855 N.E. 2d 1076 (Ind. Ct. App. 2006). In *Stapleton*, the Court of Appeals appears to accept the State’s argument that a participation agreement is a contractual arrangement in which the defendant is permitted to give up certain rights in exchange for a favorable outcome. However, the Court cautions that any such a waiver of rights must be clear and explicit to be enforceable.

- The following credit time waiver language is offered as an example of a provision that may be incorporated into a participation agreement:

“I agree to waive my right to earn credit for time served and credit time for any time spent in jail or otherwise confined to which I would otherwise be entitled pursuant to Indiana law during my participation in this program.”

C. Other programs have declared failure to follow program rules and requirements indirect contempt of court. See IC 34-47-3. Indirect contempt of court is willful disobedience of an order lawfully issued punishable by a fine, imprisonment or both fine and imprisonment. In accordance with IC 35-50-6-3, only those persons imprisoned for a crime or confined awaiting trial or sentencing earn credit time. Consequently, if the participation agreements includes a provision that failure to follow program rules is contempt of court, the participant would not be entitled to earn credit for time served or credit time for any period(s) of confinement during program participation. Please note however, that statute requires certain due process rights in conjunction with contempt proceedings. See IC 34-47-3-5(b); *In re Nasser*, 644 N.E.2d 93, 95 (Ind. 1994); *In re Contempt of Wabash Valley Hosp., Inc.*, 827 N.E.2d 50 (Ind. Ct. App. 2005).