



## MINNESOTA JUDICIAL TRAINING UPDATE



### JAIL CREDIT CALCULATION NEW SUPREME COURT "CLARKIN" RULE

**QUESTION:** When The Court Imposes A Concurrent Sentence, Defendant Is Entitled To Jail Credit For All Time Spent In Custody In Connection With The Offense Being Sentenced Including Time Spent In Custody Related To Other Charges

**BUT**

**How Do You Calculate The Starting Point For Jail Credit?**

**ANSWER:** In *State v. Clarkin*, 817 N.W.2d 678, 689 (Minn. 2012) the Minnesota Supreme Court established a **NEW** rule (the "Clarkin" rule) for calculating when jail credit begins. Both the old rule and the new "Clarkin" rule are set out below:

**THE OLD JAIL CREDIT RULE** The old rule was originally established in *State v. Friske*, 521 N.W.2d 859 (Minn.App.1994). However, in September 2012, the Supreme Court in *State v. Clarkin* rejected the "Friske" rule and replaced it with the new "Clarkin" rule.

**OLD RULE:** *A defendant was entitled to credit for all time spent in custody following arrest, including time spent in custody on other charges, beginning on the date the prosecution acquired probable cause to charge defendant with the offense for which he or she was arrested."*

**Note:** *This old rule was favorable to Defendants and was consistently used to award jail credit in instances where probable cause existed prior to defendant's actual arrest or the prosecutor's decision to charge a defendant.*

**THE NEW “CLARKIN” JAIL CREDIT RULE:** The new rule is more favorable to the state. The starting point for calculating jail credit begins on the date:

- 1) the State has completed its investigation in a manner that does not suggest manipulation by the State, and
- 2) the State has probable cause and sufficient evidence to prosecute its case against the defendant with a reasonable likelihood of actually convicting the defendant of the offense for which he is charged.” *State v. Clarkin*, 817 N.W.2d 678 (Minn. 2012).

**NOTE: IN MOST CASES** defendant’s arrest or filing of a complaint will serve as the starting point for calculating Jail credit. However, depending on the circumstances of your case, the jail credit starting point could occur earlier if the above “Clarkin” jail credit rule applies.

**NOTE: BEST PRACTICE RECOMMENDATION:** In order to avoid the risk of a Jail Credit hearing to determine application of the “Clarkin” rule, it is recommended that attorneys stipulate (if possible) to the amount of jail credit a defendant is entitled to as part of a negotiated plea agreement.

**THREE IMPORTANT JAIL CREDIT PRINCIPLES:**

- 1) **Presumption:** There is a statutory presumption that all sentences are concurrent unless the Court specifies a consecutive sentence. M.S. 609.15, subd. 1(a).
- 2) **Burden of Proof:** Defendant has the burden of establishing he/she is entitled to jail credit for a specific period of time. Once defendant meets this burden, the granting of jail credit is not discretionary with the trial Court. *State v. Johnson*, 744 N.W.2d 376, 379 (Minn.2008).
- 3) **Stating Jail Credit:** When the Court sentences a defendant, it must state the number of days spent in custody in connection with the offense being sentenced. Minn. R. Crim. P. 27.03, sub. 4(B).