
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2766 **Hearing Date:** June 18, 2024
Author: Low
Version: May 16, 2024
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Prisons: parole calculations and inmate release credits*

HISTORY

Source: Author

Prior Legislation: AB 15 (Dixon), failed in Assembly Public Safety in 2023
SB 288 (Nguyen), failed in Senate Public Safety in 2023
SB 359 (Umberg), failed in Assembly Public Safety in 2023
Proposition 57, as approved by the voters on November 8, 2016

Support: California District Attorneys Association; California Police Chiefs Association;
League of California Cities

Opposition: None known

Assembly Floor Vote: 72 - 0

PURPOSE

The purpose of this bill is to require the California Department of Corrections and Rehabilitation (CDCR) to compile an annual report for each facility that awards sentence credits for rehabilitation, good behavior, and education programs during the prior calendar year.

Existing law, as enacted by Proposition 57, provides that any person convicted of a nonviolent felony offense and sentenced to state prison is eligible for parole consideration after completing the full term for his or her primary offense. (Cal. Const., art. I, § 32, subd. (a)(1).)

Existing law, as enacted by Proposition 57, provides that CDCR has the authority to award credits earned for good behavior and approved rehabilitative or educational achievements. (Cal. Const., art. I, § 32, subd. (a)(2).)

Existing law requires CDCR to submit a report to the relevant fiscal and policy committees of the Legislature and the Legislative Analyst's Office whenever the department proposes regulatory changes pursuant to Section 32 of Article I of the California Constitution that would affect inmate credit earning. Requires the report to include both of the following: an explanation of the rationale for each of the proposed changes to credit earning, and an estimate of the impact of the

proposed changes to credit earning on the size of inmate and parolee populations. (Pen. Code, § 2936.)

Existing law provides that, in addition to other specified limitations, the only inmate or parolee data which may be released without a valid written authorization from the inmate or parolee to the media or to the public includes that inmate's or parolee's: name; age; race and/or ethnicity; birthplace; county of last legal residence; commitment offense; date of admission to CDCR and CDCR number; facility assignments and a general description of behavior; patient health condition given in short and general terms that do not communicate specific medical information about the individual, such as good, fair, serious, critical, treated and released, or undetermined; manner of death as natural, homicide, suicide, accidental, or executed; and, sentencing and release actions, including month and year of current parole eligibility date. (Cal. Code Regs., tit. 15, § 3261.2, subd. (e)(1)-(11).)

This bill requires CDCR to compile an annual report for each department facility that awards sentence credits for rehabilitation, good behavior, and education programs during the prior calendar year, by March 1, 2026, and by March 1 of each year.

This bill requires the annual report to include the following information:

- The number of inmates at the facility who participated in rehabilitation, good behavior, and education programs during the year.
- The total number of hours of sentence credits earned by inmates, compiled in categories used by the department for sentence credits, including for activities in groups, educational programs, career technical education programs, treatment programs, prerelease programs, and grant programs.

This bill requires the annual report to be posted on the department's website.

COMMENTS

1. Need For This Bill

According to the author:

In recent news, we have seen cases of violent, convicted felons who were released early from their prison sentences, and who then went on to commit more violent felony offenses against the public. In many of these cases, the Department of Corrections and Rehabilitation (CDCR) has refused to disclose information as to how those inmates obtained their early release credits. It is vital to the creation of a fair and just system for all Californians, that we have a transparent criminal justice system.

2. Proposition 57

Proposition 57 was approved by the voters in 2016 and changed the rules governing parole and the granting of custody credits to inmates in state prison. Proposition 57 authorized CDCR to award credits earned for good behavior and approved rehabilitative or educational achievements. Prior to the passage of the initiative, the matter of conduct credits earned in prison was governed by statute. (See e.g., Pen. Code, §§ 2933 and 2933.1.)

Proposition 57 added section 32 to article I of the California Constitution which states, in pertinent part:

32. (a) The following provisions are hereby added to enhance public safety, improve rehabilitation, and avoid the release of prisoners by federal court order, notwithstanding anything in this article or any other provision of law....
- (2) Credit Earning: *The Department of Corrections and Rehabilitation shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements.*
- (b) The Department of Corrections and Rehabilitation shall adopt regulations in furtherance of these provisions, and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety. (Cal. Const., art. I, § 32, emphasis added)

Effective May 1, 2021, the rate of Good Conduct Credits earned for individuals serving time for a violent felony increased to 33.3%. (Cal. Code Regs, tit. 15, § 3043.2, subd. (b)(2).) The rate of Good Conduct Credits earned for nonviolent second and third strikers increased to 50%. (Cal. Code Regs, tit. 15, § 3043.2, subd. (b)(3).) Good Conduct Credits and other programming credits, such as Rehabilitative Achievement Credits, Milestone Completion Credits, and Educational Merit Credits, apply toward an incarcerated person’s Earliest Possible Release Date for determinate sentences and Minimum Eligible Parole Date for indeterminate sentences. (Cal. Code Regs, tit. 15, §§ 3043.2, subd. (b), 3043.3, subd. (c), 3043.4, subd. (b), 3043.5, subd. (b).)

3. CDCR’s Credit Calculations

CDCR regulations implementing Proposition 57 have garnered significant interest since the passage of the initiative and been the subject of several legal challenges, including the exclusion of registered sex offenders in the initial proposed regulations and the use of a “paper review” parole consideration process, among others. The regulations received additional attention following the announcement of changes to credit earning in the spring of 2021, and several news outlets ran stories with headlines regarding the significant number of incarcerated individuals who would be eligible for early release as a result. (See Don Thompson, *76,000 California prison inmates could be released earlier with good behavior* (May 1, 2021) available at <<https://www.latimes.com/world-nation/story/2021-05-01/76-000-california-inmates-now-eligible-for-earlier-releases>>.) The department’s credit calculations have been criticized for lacking transparency and being awarded in ways that are inconsistent with the voters’ intent. (Julie Watts, “*Secret*” *Prop. 57 prison credits: Are most felons really “earning” early release?* (Oct. 11, 2022) available at <<https://www.cbsnews.com/sacramento/news/investigating-prop-57-credits-how-was-sacramento-shooting-suspect-smiley-martin-out-of-prison-early/>>.) CDCR maintains that credit earning information is confidential. (*Id.*)

4. Effect of This Bill

This bill requires CDCR to compile an annual report for each facility that awards sentence credits for rehabilitation, good behavior, and education programs during the prior calendar year. This bill requires the annual report to include the following information:

- The number of inmates at the facility who participated in rehabilitation, good behavior, and education programs during the year.

- The total number of hours of sentence credits earned by inmates, compiled in categories used by the department for sentence credits, including for activities in groups, educational programs, career technical education programs, treatment programs, prerelease programs, and grant programs.

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