
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 292 **Hearing Date:** July 6, 2021
Author: Stone
Version: March 17, 2021
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Corrections: prison credits*

HISTORY

Source: Ella Baker Center for Human Rights
Initiate Justice
Re:Store Justice
Transformative In-Prison Workgroup

Prior Legislation: AB 3160 (Stone), didn't move in 2020 due to COVID-19

Support: ACLU California Action; Asian Americans Advancing Justice – California; Asian Prisoner Support Committee; California Alliance for Youth and Community Justice; California Attorneys for Criminal Justice; California Catholic Conference; California Public Defenders Association; Californians for Safety and Justice; Californians United for A Responsible Budget; Communities United for Restorative Youth Justice; Defy Ventures; Drug Policy Alliance; Freedom Within Project; GRIP Training Institute; Insight Garden Program; Jail Guitar Doors; Legal Services for Prisoners with Children; Los Angeles County District Attorney's Office; Los Angeles Regional Reentry Partnership; National Association of Social Workers, California Chapter; National Institute for Criminal Justice Reform; National Prevention Science Coalition to Improve Lives; Paws for Life K9 Rescue; San Francisco Public Defender; Showing Up for Racial Justice Bay Area; Silicon Valley De-Bug; Smart Justice California; Success Stories Program; UC Berkeley, Underground Scholars Initiative; UC Irvine School of Law, Criminal Justice Clinic; UnCommon Law; W. Haywood Burns Institute; White People 4 Black Lives; William James Association; Youth Alive!; over 1,000 individuals

Opposition: California District Attorneys Association

Assembly Floor Vote: 43 - 27

PURPOSE

The purpose of this bill is to: (1) direct the California Department of Corrections and Rehabilitation (CDCR) to use its constitutional authority to award custody credits to specified inmates serving a sentence for a violent felony or a nonviolent second- or third-strike felony at a rate of a one day credit for every day in custody; and (2) require CDCR to award credits and conduct rehabilitative programming in a manner that meets specified requirements.

Existing law provides that any person convicted of a nonviolent felony offense and sentenced to state prison shall be 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 authorizes CDCR to award credits earned for good behavior and approved rehabilitative or educational achievements. (Cal. Const., art. I, § 32, subd. (a)(2).)

Existing law provides that for every six months of continuous state prison custody, an inmate shall be awarded credit reductions from his or her term of confinement of six months. Prohibits an inmate from receiving more than six months' credit reduction for any six-month period (Pen. Code, § 2933, subd. (b).)

Existing law prohibits, notwithstanding any other law, any person who is convicted of a violent felony offense, as specified, from accruing more than 15 percent of worktime custody credit. (Pen. Code, § 2933.1, subd. (a).)

Existing law specifies that for defendants sentenced to state prison with a strike prior the total amount of credits awarded shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison. (Pen. Code, § 667, subd. (c)(5), Pen. Code, § 1170.12, subd. (a)(5).)

Existing law states that the award of specified custody credits, shall advance a state prison inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date, as specified, if sentenced to an indeterminate term with the possibility of parole. (Cal. Code of Regs., tit. 15, § 3043.)

Existing law provides that an inmate meeting one or more of administrative or irregular placement conditions, known as administrative determinants, may be housed in a facility with a security level which is not consistent with the inmate's placement score. (Cal. Code of Regs., tit. 15, § 3375.2, subd. (a).)

Existing law includes, among the list of administrative determinants, the three-letter code "VIO" meaning that an inmate has a current or prior conviction for a violent felony, or a sustained juvenile adjudication including, but not limited to, those listed under Penal Code section 667.5(c), a felony conviction or equivalent finding for Penal Code section 192(b), a felony or misdemeanor conviction or equivalent finding for Penal Code section 422 or 646.9, or a guilty finding for Division A-1 or A-2 RVR offense that is the equivalent of a Penal Code section 667.5(c) offense which occurred on or after February 20, 2017, which, as determined by the CSR, requires placement in a facility with a higher security level than that indicated by his or her placement score. (Cal. Code of Regs., tit. 15, § 3375.2, subd. (b)(28).)

Existing law provides that the award of Good Conduct Credit requires that an inmate comply with CDCR regulations and local rules of the prison and perform the duties assigned on a regular and satisfactory basis. (Cal. Code of Regs., tit. 15, § 3043.2, subd. (a).)

This bill directs CDCR to use its authority pursuant to award one day of Good Conduct Credit for every day of incarceration (50 percent) to all of the following:

- An inmate sentenced to a determinate term with prior strike convictions, as specified, who is not serving a term for a violent felony and does not have a VIO administrative determinant;
- An inmate sentenced to an indeterminate term with prior strike convictions, as specified, who is not serving a term for a violent felony and does not have a VIO administrative determinant; and,
- An inmate serving a determinate term for a violent felony who does not have a VIO administrative determinant.
- An inmate serving an indeterminate term for a violent felony who does not have a VIO administrative determinant.

This bill defines “VIO administrative determinant” as the in custody classification given to an inmate by CDCR based on a conviction for certain offenses (violent felony) and pursuant to specified regulations.

This bill specifies that an incarcerated person who does not have a VIO administrative determinant includes, but is not limited to, a person for whom a previous VIO administrative determinant was removed or for whom a VIO administrative determinant was not imposed initially, as specified.

This bill defines “Good Conduct Credit” as credit awarded to an inmate by the department pursuant to specified regulations.

This bill provides that “violent felony” has the same meaning as that term is defined in subdivision (c) of Section 667.5.

This bill provides that an incarcerated person who is eligible for credit pursuant to this section shall receive credit as specified in the provisions of this bill unless eligible for more credit pursuant to other provision of the Penal Code or as awarded by CDCR in exercise of its authority pursuant to Section 32 of Article I of the California Constitution.

This bill requires CDCR to conduct programming in a manner that does all of the following:

- Prevents facility transfers from disrupting an incarcerated person’s programming. To accomplish this, the department shall, among other things, allow for voluntary facility transfers first;
- Prioritizes an incarcerated person that has transferred facilities for similar programs at the new facility;
- Ensures programming is offered even if the institution, facility or a section of the facility is on modified or restrictive programming;
- If distance learning or other alternatives to in-person programming are offered, ensure that those alternatives do not diminish in-person programming;
- Minimizes programming wait lists, especially in those institutions or facilities where programming wait lists exceed one year;
- Minimizes conflicts with an incarcerated person’s work schedule;
- Is available without restrictions to incarcerated persons that have recently changed status, security level, or facility; and,
- Offers an equitable selection of programming to incarcerated persons regardless of security level or sentence length.

This bill requires CDCR to award credits in a manner that does all of the following:

- Prevents disruptions in credits due to nonadverse transfers;
- Ensures credit earning opportunities are still provided if an institution, facility, or section of an institution is restricted for a security or medical concern;
- Ensures that credits are received when a program is canceled;
- Provides credits for all in-prison jobs, including, but not limited to, clerks, librarians, and porters, that is equitable to programming credits;
- Provides the same credit-earning opportunities and incentives for rehabilitative programming for incarcerated persons who participate in an in-prison programming as afforded to those who participate in a Department of Forestry and Fire Protection fire camp.

COMMENTS

1. Need for This Bill

According to the author:

Administrative barriers often make it difficult for people in prison to take advantage of programming and credit-earning opportunities. During normal operations, transfers to a new facility can be extremely disruptive to programming. Often, individuals are unable to complete a program they have spent months in, and they can be required to wait months, or even years, before a slot becomes available at the new facility. Lockdowns also cause significant disruptions to programming; for example, during the lockdown caused by the COVID-19 pandemic, all programming was suspended and most credit earning was halted. Further, there is a significant inequity in the designated value of different rehabilitative programs. Specifically, participation in Fire Camp increases credit-earning potential from 15% to 50%, higher than any other credit-earning threshold. However, not all individuals are able-bodied, physically fit, or young enough to participate in Fire Camp. This prevents these individuals from accessing the same credit-earning potential for participating in equally important rehabilitative programming.

2. Credit Earning

Violent Offenses

Penal Code section 2933.1 provides that any person who is convicted of a violent felony is limited to 15% custody credits. The list of violent felonies is contained in Penal Code section 667.5, subdivision (c), and includes crimes such as murder, various forcible sex offenses, kidnapping, robbery, and crimes involving the infliction of great bodily injury, among others.

Prior Strikes

Proposition 184, passed in 1994 and commonly referred to as the Three-Strikes Law, limited credits for individuals sentenced to a felony with a prior strike conviction to 20% credit earnings.

The Three-Strikes Law was amended by Proposition 36 in 2012 but the limitation on custody credits was not changed.

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. Prop. 57 authorized CDCR to award credits earned for good behavior and approved rehabilitative or educational achievements. Before Prop. 57, the matter of conduct credits earned in prison was governed by statute. (See e.g., Pen. Code, §§ 2933 and 2933.1.)

Specifically, Prop. 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, CDCR increased the rate of Good Conduct Credits earned for individuals serving time under Penal Code 667.5(c) from 20% to 33.3%, and from 33.3% to 50% for nonviolent second and third strikers. (<https://www.cdcr.ca.gov/proposition57/>)

This bill directs CDCR to award 50% custody credits to inmates who are serving a sentence which included an enhancement because the inmate had one or more prior strikes. This directive would apply whether the person is serving a determinate or indeterminate sentence as long as the current conviction is not for a violent offense and CDCR does not have the inmate classified “VIO.” “VIO” is an administrative classification CDCR uses for housing and programming which is based on prior convictions for violent offenses.

This bill also directs CDCR to award 50% custody credits to inmates serving determinate or indeterminate sentences for a current conviction of a violent offense if CDCR does not have the inmate classified as “VIO.”

Finally, this bill requires CDCR to award credits and conduct rehabilitative programming in a manner that meets specified requirements, including preventing facility transfers from disrupting an incarcerated individual’s programming and preventing disruptions in credits due to non-adverse transfers.

3. Argument in Support

According to Re:Store Justice, one of the bill's co-sponsors:

The Access to Programming Act will expand upon the growing success of rehabilitative in-prison programming by preventing disruptions to programming and credit-earning. ...

Recent changes to existing law have greatly expanded and incentivized programming for people who are incarcerated in California prisons. Still, the wait to participate in these classes remains years long at most prisons and CDCR has not developed the flexibility to ensure that each person's rehabilitation is prioritized. CDCR needs expanded tools and resources to meet the demands of increased programming and rehabilitation.

The Access to Programming Act ensures that programming will be offered even if a facility is on lockdown, and would allow incarcerated people to earn milestone credits for work assignments. Current CDCR policy does not distinguish between lockdowns for security reasons and lockdowns for institutional needs like staff training.

However, almost all rehabilitative programming is stopped for the duration of any and all lockdowns. These disruptions often undermine incarcerated people's opportunity to learn valuable insights and skills. Since the onset of the COVID-19 pandemic in March 2020, this disruption has made it so virtually no programming has been offered indefinitely. Further, incarcerated people are often denied access to education opportunities, and educational milestone credits, due to conflicting work assignments. This bill recognizes the training and skill-building that occurs within most job assignments.

The Access to Programming Act would reduce current barriers to programming due to transfers. Under current CDCR regulations, an incarcerated person's current programming is not considered during a non-adverse facility transfer. The Access to Programming Act instructs prisons to place transferred people on priority for programming that is consistent with the programming the person was participating in at the prison they are transferred from.

The Access to Programming Act offers equal incentives for programming, regardless of persons, health, or age, or physical abilities. Current CDCR policy awards enhanced good conduct credit earning for people who volunteer to fight fires. This policy excludes people who do not meet the criteria to volunteer due to disability, health, age, or physical reasons. It also is a very narrow incentive due to housing capacities. For example, of all the fire camps, only three are available to women. This bill will increase the effectiveness of this incentive by creating a fair standard and allowing everyone, regardless of disability, age, or health, a pathway to earn the same credits as people who volunteer in fire camps.

4. Argument in Opposition

The California District Attorneys Association writes:

This bill would increase state prison conduct credits for violent offenders, and for repeat offenders sentenced pursuant to the Three Strikes Law, even if they are not eligible or fit to participate in Fire Camp, and would provide a disincentive for inmates to participate in Fire Camp. We are not opposed to the parts of the bill that would lessen disruptions in state prison programming and credits.

Regulations promulgated by the California Department of Corrections and Rehabilitation (CDCR) after Proposition 57 was passed by the voters in November 2016 already provide generous conduct credits for state prison inmates. For example, before Proposition 57, violent offenders could earn only 15% conduct credits. After Proposition 57, they now earn 20%. Inmates serving sentences pursuant to the Three Strikes Law now earn 33.3% conduct credits and inmates serving sentences for non-serious/non-violent felonies earn 50%. An inmate serving a term for a violent felony who successfully completes firefighter training earns 50% credits and an inmate who would otherwise qualify for 50% credits earns 66.6% credits if firefighter training is successfully completed.

The state prison firefighter program is a privilege and not a right. It is also important to the people of the state of California, which has experienced devastating and deadly wildfires over the last few years. Increasing credits for inmates who do not qualify for firefighter training or who are not fit for such training is simply not fair to inmates who do the training and put their lives on the line to fight fires. Proportionality in conduct credits is important. Increasing the credits for inmates who are not physically fit or able-bodied and therefore cannot participate in firefighting training destroys proportionality. And, just as important, the credit increase actually provides a disincentive to participate in firefighting training.

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