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## **SENATE COMMITTEE ON PUBLIC SAFETY**

**Senator Nancy Skinner, Chair**

**2019 - 2020 Regular**

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**Bill No:** AB 2342

**Hearing Date:** August 7, 2020

**Author:** McCarty

**Version:** June 10, 2020

**Urgency:** No

**Fiscal:** Yes

**Consultant:** SJ

**Subject:** *Parole*

## **HISTORY**

**Source:** Anti-Recidivism Coalition  
Californians for Safety and Justice  
#cut50  
Legal Services for Prisoner's with Children  
National Institute for Criminal Justice Reform  
Project Rebound, Sacramento State  
Root & Rebound  
Underground Scholars Initiative  
Young Women's Freedom Center

**Prior Legislation:** AB 277 (McCarty), held in Assembly Appropriations 2019  
AB 1940 (McCarty), failed on the Assembly Floor 2018

**Support:** ACLU of California; Asian Americans Advancing Justice- California; Asian Solidarity Collective; California Attorneys for Criminal Justice; California Catholic Conference; California Coalition for Women Prisoners; California Public Defenders Association; Center for Employment Opportunities; Democratic Party of the San Fernando Valley; Drug Policy Alliance; Ella Baker Center for Human Rights; Initiate Justice; Pillars of the Community; Re:Store Justice; Reform Alliance; San Francisco Public Defender's Office; Smart Justice California; Think Dignity; Underground Scholars Initiative at UC Berkeley; We The People- San Diego;

**Opposition:** California District Attorneys Association

**Assembly Floor Vote:** 65 - 0

## **PURPOSE**

***The purpose of this bill is to create a program through which parolees are able to earn "reintegration credits" to reduce the length of their parole term.***

*Existing law provides for a period of post-prison supervision immediately following a period of incarceration in state prison. (Pen. Code, § 3000 et seq.)*

*Existing law* requires the following persons released from prison prior to, or on or after July 1, 2013, be subject to parole under the supervision of the Department of Corrections and Rehabilitation (CDCR):

- A person who committed a serious felony listed in Penal Code section 1192.7, subdivision (c);
- A person who committed a violent felony listed in Penal Code section 667.5, subdivision (c);
- A person serving a Three-Strikes sentence;
- A high risk sex offender;
- A mentally disordered offender;
- A person required to register as a sex offender and subject to a parole term exceeding three years at the time of the commission of the offense for which he or she is being released; and,
- A person subject to lifetime parole at the time of the commission of the offense for which he or she is being released. (Pen. Code, § 3000.08, subd. (a).)

*Existing law* requires all other offenders released from prison to be placed on post-release community supervision (PRCS) under the supervision of a county agency, such as a probation department. (Pen. Code, §§ 3000.08, subd. (b), 3450.)

*Existing law* provides that, notwithstanding any other law, a person released from prison prior to October 1, 2011, is subject to parole under CDCR supervision. (Pen. Code, § 3000.09.)

*Existing law* establishes parole-term lengths based on the committing offense and the date the offense is committed. (Pen. Code, §§ 3000, subd. (b)(6), 3000.1.)

*Existing law* provides for the opportunity for early discharge from parole for all parolees after a certain period of continuously-successful parole. For example:

- Requires that specified persons who have been released on parole who were not imprisoned for a violent felony, a serious felony, or an offense requiring registration as a sex offender, and who have been on parole for a period of 6 months, be discharged from parole within 30 days unless BPH, for good cause, determines the person should be retained; or
- Requires specified persons who have been released on parole who were imprisoned for a serious felony or an offense requiring registration as a sex offender, and who have been on parole continuously for one year since release from confinement, to be similarly discharged from parole; or
- Requires that specified persons who have been released on parole from state prison who were imprisoned for a violent felony, and who have been released on parole for a period not exceeding 3 years and have been on parole continuously for 2 years since release from confinement, or who have been released on parole for a period not exceeding 5 years and have been on parole continuously for 3 years since release from confinement, be similarly discharged from parole. (Pen. Code, § 3001.)

*Existing law* entitles a parolee to an annual review hearing until the statutory maximum period of parole expires. (Pen. Code, § 3001, subd. (d).)

*Existing law* prohibits, for an inmate who has committed specified crimes and is released on parole, from being returned to a location within 35 miles of the residence of a victim or witness if the victim or witness makes such a request and the Board of Parole Hearings (BPH) finds that the placement is necessary to protect the victim or witness. (Pen. Code, § 3003, subds. (f) & (h).)

*This bill* provides that a person on parole serving a determinate period of parole is entitled to earn reintegration credits to reduce the term of that parole, except as specified.

*This bill* provides that a person on parole subject to lifetime parole may earn reintegration credits to advance the date of the parolee's discharge review.

*This bill* specifies the rates at which reintegration credits are earned for completing specific types of programs or activities while on parole.

*This bill* specifies the following credit earning rates for the completion of an accredited academic program or course:

- For a general equivalency high school diploma, 12 months of credit.
- For an associate degree, 12 months of credit.
- For a bachelor's degree, 12 months of credit.
- For the completion of any quarter, trimester, or semester-long course taken towards an academic degree for which a passing grade was received and for which credit was not awarded for the completion of a degree, six weeks of credit.

*This bill* defines "accredited" as a program or course that is accredited by an accrediting agency recognized by the U.S. Department of Education or the State of California.

*This bill* awards reintegration credits for other specified activities as follows:

- Six months of credit for the completion of a certified career or technical education or training program or certificate, as specified;
- Two months of credit for the completion of a cognitive behavioral treatment program;
- Three months of credit for the completion of a substance abuse treatment program or residential treatment program that is not court-ordered; and,
- Ten days of credit per month for the completion of a minimum of 12 voluntary service hours per month.

*This bill* specifies that if no other credits are earned in the 12-month period before the annual review, a person on parole may earn 15 days of credit per month for remaining free of any new arrests or parole violations.

*This bill* provides that reintegration credits may be awarded for academic achievements completed while on parole in cases in which the parolee began the academic program during the period of incarceration.

*This bill* prohibits reintegration credits from being awarded for the completion of any counseling or treatment that the person is required to complete pursuant to a court order.

*This bill* requires that reintegration credits earned during the 12-month period before each annual review be awarded at the annual review. Requires the department to reduce the period of parole imposed on a person on parole by the amount of reintegration credit awarded at the parolee's annual review. Prohibits earned credits from being revoked once earned and provides that they may not be waived by any court, parolee, or other government agency.

*This bill* provides that any reintegration credits earned during the 12-month period before each annual review may, at the discretion of the parole agent, be revoked and not awarded only if a person on parole has had a new arrest or a parole violation during that 12-month period.

*This bill* provides that a person on parole may not be awarded more than 12 months of credit earned during a 12-month period. Prohibits excess credits earned in a 12-month period before an annual review from being awarded in a subsequent year.

*This bill* specifies the guide that parole agents are required to utilize when revoking earned credits.

*This bill* requires that a person on parole be awarded retroactive credits for educational or training programs that were completed during the parolee's current period of parole but before the effective date of this bill, subject to the specified restrictions.

*This bill* excludes a person who is required to register as a sex offender pursuant to Section 290 from eligibility to earn reintegration credits.

*This bill* defines "voluntary service" as any time spent volunteering for a nonprofit or government agency, including time spent visiting prisons, jails, or juvenile detention facilities. Any volunteer activity shall be approved by a parole agent and documented by a site supervisor in a manner prescribed by the department.

*This bill* authorizes a parolee who successfully earns and is awarded any amount of reintegration credits to have their 50-mile radius of restricted travel increased by 25 miles after each annual review during which credits are awarded, except as prohibited by law and subject to the approval of the parole agent. Provides that the total restricted radius of travel authorized shall not exceed 125 miles.

*This bill* provides that a parolee may travel outside of their radius of restricted travel for educational or employment-related purposes, except as provided and subject to the approval of their parole agent. Provides that an increase in travel area excludes any areas within 35 miles of a victim or witness, as described, and does not authorize travel across state borders without a travel pass.

*This bill* prohibits, as a condition of continued state funding, an entity that receives state funds and provides services and programs in the fields of education, job training, workforce placement, health, or housing, from denying access to services or programs to a person on the basis that the person is currently or previously has been on parole or post-release community supervision.

*This bill* directs CDCR and BPH to adopt regulations to carry out these provisions.

*This bill* prohibits that the ability to earn in-custody credits from being waived by a sentencing court or by a defendant as part of a plea agreement.

## COMMENTS

### 1. Need For This Bill

According to the author:

For decades, the parameters of parole supervision in California have been tethered to commitment offense even though the crime for which a person is convicted often says very little about that person's readiness to become a responsible and productive citizen. The primary focus of parole agents and staff has been to punish missteps, rather than identify persons' needs, and promote their successes in attaining goals to meet those needs. While people on parole are encouraged to seek educational or job training opportunities, they are not incentivized to complete programs that greatly increase the likelihood of successful reentry.

California's system of parole supervision must adopt a new paradigm that focuses on the successful reintegration and gives parole agents the time and tools they need to identify those who should remain on parole, and to help those persons obtain the programs and achieve measurable progress to become productive members in their communities.

Research shows that public safety is improved when determinations about the length and nature of community supervision reflect the person's unique circumstances and conduct, and when the parole system places greater emphasis on rewarding persons on parole for their acquisition of critical life skills rather than punishing them for their blunders.

AB 2342 will reduce recidivism in California by incentivizing persons on parole to pursue educational and vocational goals, and participate in rehabilitation programs for which they can earn credits reduced terms of supervision.

Parole is intended to be guided supervision for a successful re-entry and this will be essential as folks are sent home due to the novel coronavirus. California is granting early release to 3,500 folks in an effort to reduce crowding as infections begin spreading through the state prison system. This pandemic will continue to force us to reevaluate our prison overcrowding.

### 2. Changes to Parole Supervision As a Result of Realignment

Prior to realignment, individuals released from prison were placed on parole and supervised in the community by parole agents of CDCR. Realignment shifted the supervision of some released prison inmates from CDCR parole agents to local probation departments. Parole under the jurisdiction of CDCR for inmates released from prison on or after October 1, 2011 is limited to those defendants whose term was for a serious or violent felony; were serving a Three-Strikes sentence; are classified as high-risk sex offenders; who are required to undergo treatment as mentally disordered offenders; or who, while on certain paroles, commit new offenses. (Pen.

Code, §§ 3000.08, subds. (a) and (c), and 3451, subd. (b).) All other inmates released from prison are subject to up to three years of PRCS under probation supervision. (Pen. Code, §§ 3000.08, subd. (b), and 3451, subd. (a).)

This bill would apply only to individuals released from prison and placed on parole, not on PRCS.

### **3. Parole**

The length of a person's parole term depends on the commitment offense, the sentence imposed, and the date the offense is committed. Most inmates who received a determinate sentence will serve a three-year period of parole, with the possibility of a one-year extension. (Pen. Code § 3000, subd. (b).) Most parolees can be discharged from parole early by successfully completing a specified amount of parole time without obtaining any violations. Different time periods apply in determining the presumptive discharge date, depending on the length of parole. (Pen. Code, § 3001.) For example, a person who was not imprisoned for a serious or violent felony, or for a registerable sex offense, and who is subject to a three-year parole period must be discharged from parole within 30 days after a consecutive six-month period of violation-free parole unless BPH decides to retain the person on parole. (Pen. Code, § 3001, subd. (a).)

When a parolee reaches the presumptive discharge date, CDCR will prepare a recommendation as to whether or not the person should remain on parole. Parole terminates automatically unless BPH decides to retain the parolee after the presumptive discharge date. If the parolee is retained on parole, the parolee's case will be reviewed annually until the maximum parole date is reached. (Pen. Code, § 3001, subd. (d).) If a parolee has not been discharged early, the parolee must be discharged from parole at the end of the maximum statutory period of parole specified.

### **4. Effect of This Bill**

This bill creates a program through which parolees are able to earn "reintegration credits" to reduce the length of their parole term. The bill specifies the credit earning rate for successful completion of various rehabilitative programs and activities, including academic programs and coursework, certified career or technical education or training, cognitive behavioral treatment program, substance abuse treatment program, and volunteer work. The bill also authorizes a parolee to earn up to 15 days of credit per month for not having any parole violations or new arrests if no other credits are earned during the 12-month period prior to the annual review. Credits cannot be earned for the completion of a court-ordered counseling or treatment program.

This bill specifies that reintegration credits may be awarded for academic achievements completed while on parole when the person began the academic program while still incarcerated. This bill limits the amount of credits that may be awarded to no more than 12 months of credit during a 12-month period. Additionally, this bill requires reintegration credits to be awarded retroactively for educational or training programs completed during the parolee's current period of parole but before the effective date of this bill.

This bill provides that reintegration credits earned during the 12-month period prior to the annual review may be revoked at the discretion of the parole agent only if a parolee has had a new arrest or parole violation. Once the reintegration credits are awarded at the annual review, they may not be revoked.

This bill excludes individuals who are required to register as a sex offender pursuant to Section 290 from eligibility to earn reintegration credits.

Other provisions of the bill permit a parolee who has been awarded reintegration credits to have the mileage limits of their restricted travel area increased subject to parole agent approval and other restrictions and prohibit an entity that receives state funds and provides services and programs related to education, job training, workforce placement, health, or housing, from denying access to services or programs to a person on the basis that the person is currently or previously has been on parole or PRCS.

## 5. Constitutional Authority to Award Credits Given to CDCR in Proposition 57

Proposition 57, the “The Public Safety and Rehabilitation Act of 2016” of the November 2016 election amended the state Constitution to authorize CDCR to award credits earned for good behavior and approved rehabilitative or educational achievements. Prior to Prop. 57, the matter of conduct credits earned in prison was governed by statute. (See e.g., Pen. Code, §§ 2933, 2933.1.)

The relevant portion of Prop. 57 reads:

“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)

As pertains to this bill, this language raises the question of whether the Legislature still has the authority to enact statutory credit schemes. A memo authored by two retired judges addressed the issue:

“[I]t is not clear whether the credits awarded by CDCR for good behavior are *in addition* to the credits currently authorized under sections 2933 and 2933.05, or whether CDCR has *exclusive jurisdiction* to determine all good conduct and rehabilitation credits earned by inmates. It is unlikely that it is the intent of the sponsors of the Act to simply confirm CDCR’s existing authority to grant conduct credits. Rather, the Act is intended to *increase* the authority of CDCR to grant conduct credits for good behavior and participation in rehabilitation programs. At a minimum, therefore, the Act likely gives CDCR authority to award credits in addition to those already provided by statute, and not to be limited because of the nature of the current crime. If CDCR has exclusive jurisdiction to determine conduct credits, presumably it may set credits at a higher or lower rate than currently provided by statute. It is at least arguable that CDCR is given total control over credits because the Act specifies that CDCR ‘shall have the authority to award credits’ ‘notwithstanding any other law.’” (Couzens & Bigelow, *Proposition 57: The Public Safety and Rehabilitation Act of 2016* (May 2017), pp.

12-13 <<http://www.courts.ca.gov/documents/prop57-Parole-and-Credits-Memo.pdf>>.)

In *People v. Brown* (2016) 63 Cal.4th 335, the California Supreme Court considered the scope of Elections Code section 9002, which permits amendments to a proposed initiative measure if they are “reasonably germane” to the measure’s theme, purpose, or subject. In opining that the proposed amendments to Prop. 57 violated this section—including those which would grant CDCR the authority to award good conduct and rehabilitative credits—Justice Chin’s dissenting opinion discussed the implications:

“The constitutional amendment would also give the Department of Corrections and Rehabilitation (department) constitutional authority to award behavior and other credits. The Legislature has already enacted detailed mandatory provisions for the department to award conduct and participation credits. (See Pen. Code, § 2931 et seq.) But the amended measure’s proposed constitutional language is permissive. Presumably, authority to award credits includes authority not to award credits or to award lower credits than the statutes currently require. Because the Constitution prevails over mere statutes, it appears the proposed constitutional amendment would displace the current statutory provisions for credits and shift authority over such credits from the legislative to the executive branch of government.” (*Brown, supra*, 63 Cal.4th at p. 359.)

Justice Chin’s dissent further stated:

“The proposed constitutional amendment gives the department “authority to award credits earned for good behavior and approved rehabilitative or educational achievements.” (Amended measure, § 3, adding art. I, proposed § 32, subd. (a)(2).) But it does not explain how this new, apparently permissive constitutional provision would interact with the detailed, mandatory provisions for credits the Legislature has enacted. As I have already discussed, the constitutional provision would seem to displace the statutory scheme. But I am not sure that is the intent. Displacing the statutory credit scheme might be one of the measure’s “unintended consequences”.... (*Brown, supra*, 63 Cal.4th at p. 361.)

The majority opinion did not address this issue. It remains an open question whether the Legislature still has the authority to enact statutes pertaining to credits. However, given the history and intent of Prop. 57, this debate is arguably limited to in-custody credits and not the post-release credits contemplated in this bill.

## 6. Parole Provisions in Public Safety Trailer Bill

The May Revision of the 2020-2021 budget included a proposal to cap parole terms for most parolees at 24 months, establish earned discharge for non-Penal Code section 290 registrants at 12 months, and establish earned discharge at 18 months for specified Penal Code 290 registrants. (<<http://www.ebudget.ca.gov/2020-21/pdf/Revised/BudgetSummary/PublicSafety.pdf>> [as of Aug. 3, 2020].) AB 88, the Public Safety Trailer Bill, amends the proposal in the May Revision. Specifically, the trailer bill:

- Limits the period of parole for a person sentenced to a determinate term to 2 years. Requires the Division of Parole Operations (DAPo) to review for possible discharge from

parole no later than 12 months after release, and requires the person to be discharged from parole if there have been no violations and the person is not a mentally disordered offender

- Limits the period of parole for a person sentenced to a life term to 3 years. Requires DAPO to review and refer to the Board of Parole Hearings (BPH) for possible discharge no later than 12 months after release. If BPH decides to retain the person on parole, a review for discharge must take place no later than 24 months after release.
- Provides that parole caps and early discharge from parole does not apply to individuals currently incarcerated for an offense requiring registration as a sex offender
- Does not apply to a person whose parole term at the time of the commission of the offense is less than the parole term prescribed in the trailer bill
- Does not apply to a person whose review period at the time of the commission of the offense provides for an earlier review period than that prescribed in the trailer bill

## 7. Argument in Support

The Anti-Recidivism Coalition writes:

Although post-release supervision is intended to help formerly incarcerated people, the conditions of parole supervision create many barriers for ARC members once they return home. This includes frequent check-ins with parole officers and only traveling within a certain radius. Limiting a person's movement and ability to travel prevents many ARC members from accepting much needed employment opportunities or attending school. Parole restrictions exacerbate the reentry process, as the purpose of parole should not be to restrict formerly incarcerated individuals further, but help them to achieve their goals and thrive in their communities.

Furthermore, many ARC members are kept on parole, even when they have stable housing, a job, and have continued to meet the conditions of parole. ... However, parole often does not factor these into their discharge decisions. ... Parole should not be time-oriented, but help people reintegrate and eventually discharge from parole. AB 2342 will give formerly incarcerated people the opportunity to discharge off parole early if they pursue and engage in rehabilitative, educational, and vocational programs while remaining crime-free.

...

AB 2342 will reduce recidivism in California by incentivizing persons on parole to comply with the conditions of parole, pursue educational and vocational goals, and participate in rehabilitation programs for which they can earn reduced terms of supervision. AB 2342 is rooted in the understanding that the principle objective of post-incarceration supervision is to coordinate, manage, encourage, and facilitate the successful reintegration of persons on parole. Research shows that public safety is improved when determinations about the nature of community

supervision reflect the person's unique circumstances and conduct, and when the parole system places greater emphasis on rewarding persons on parole for their acquisition of critical life skills rather than punishing them for their mistakes.

## 8. Argument in Opposition

According to the California District Attorneys Association:

Although AB 2342 excludes sex offenders, every other type of parolee is eligible for reintegration credits, including serious and violent offenders. Even those individuals whose offenses, like murder, resulted in lifetime parole would be able to apply reintegration credits to advance the date of their discharge hearing. It is unclear what the public benefit would be in having those individuals unsupervised in the community sooner than they would be under existing law.

We understand and appreciate your desire to create incentives for parolees to avail themselves of educational, career-training, and substance abuse programs, but we remain concerned about the individuals most likely to benefit from these credits. According to CDCR, the vast majority of parolees receive a three-year period of parole. Most of these parolees can be discharged from parole early if they complete a relatively short period of time without any violations. Individuals whose offenses were non-serious, non-violent, and non-sexual receive a presumptive discharge date of 30 days after completing a six-month period without violating their parole. By the time one of these individuals could earn these credits, they would likely already have been discharged from parole.

Meanwhile, individuals who, by virtue of the seriousness of their offense, receive significantly longer parole terms would be able to significantly shorten the amount of time they are subject to parole supervision. In fact, this appears to be the population most likely to benefit from these credits.

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