

---

# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

---

**Bill No:** AB 1597                      **Hearing Date:** May 10, 2016  
**Author:** Mark Stone  
**Version:** March 9, 2016  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** JM

**Subject:** *County Jails: Performance Milestone Credits*

## HISTORY

**Source:** Los Angeles County Sheriff's Department

**Prior Legislation:** AB 512 (Stone) 2014, held in Assembly Appropriations  
AB 624 (Mitchell) – Chapter 266, Statutes of 2013

**Support:** American Civil Liberties Union; California Attorneys for Criminal Justice;  
California Catholic Conference; California Peace Officers' Association;  
California State Association of Counties; California State Sheriffs' Association;  
Los Angeles County Board of Supervisors

**Opposition:** None known

**Assembly Floor Vote:** 54 - 17

## PURPOSE

***This bill allows an inmate in the county jail, who has not been sentenced, to earn program credit reductions for successfully completing specific program performance objectives, otherwise known as "milestones."***

*Current law* provides that in addition to credit awarded for good behavior, a sheriff may also award a prisoner program credit reduction from his or her term of confinement. A sheriff who elects to participate in this program shall provide guidelines for credit reductions for inmates who successfully complete specific programming performance objectives for approved rehabilitative programming, including, but not limited to, credit reductions of not less than one week to credit reduction of not more than six weeks for each performance milestone. (Pen. Code, § 4019, subd. (a)(1).)

*Current law* states that regulations promulgated by the sheriff shall specify the credit reductions applicable to distinct objectives in a schedule of graduated program performance objectives concluding with the successful completion of an in-custody rehabilitation program. Commencing upon the approval of these guidelines, the sheriff shall thereafter calculate and award credit reductions as authorized. A prisoner may not have his or her term reduced by more than six weeks for credits awarded during any 12-month period of continuous confinement. (Pen. Code, § 4019, subd. (a)(2).)

*Current law* states that program credits is a privilege, not a right. Prisoners shall have a reasonable opportunity to participate in program credit qualifying assignments in a manner consistent with institutional security, available resources, and guidelines set forth by the sheriff. (Pen. Code, § 4019, subd. (b).)

*Current law* provides that "approved rehabilitation programming" shall include, but is not limited to, academic programs, vocational programs, vocational training, substance abuse programs, and core programs such as anger management and social life skills. (Pen. Code, § 4019, subd. (c).)

*Current law* provides that additional credits awarded may be forfeited, as specified. Inmates shall not be eligible for program credits that result in an inmate being overdue for release. (Pen. Code, § 4019, subd. (d).)

*Current law* specifies that only inmates sentenced to the county jail for a felony term pursuant to realignment (Pen. Code § 1170, subd. (h)) are eligible for prisoner program credit reductions. (Pen. Code, § 4019, subd. (e).)

*This bill* provides that an inmate in a county jail, who has not been sentenced, shall not be prevented from participating in approved rehabilitation programs that result in credit reductions for completing specific program performance objectives.

*This bill* states that if a person is awarded credits prior to sentencing, the credits shall be applied to a sentence for the offense for which the person was awaiting sentence when the credits were awarded under the same terms and conditions as all other credits awarded.

*This bill* provides that evidence that an inmate has participated in or attempted to participate in any approved rehabilitation program eligible for credit is not admissible in any proceeding as an admission of guilt.

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is

1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants’ December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for This Bill

According to the author:

Existing law fails to ensure that prisoners awaiting trial in county jails can take advantage of existing rehabilitation programs. It also fails to allow jail administrators to provide full access to and credit for these programs, which can help with recidivism and overcrowding. Currently, people serving an executed felony jail sentence can earn credits for up to six weeks reduction in his or her sentence per year by participating in certain approved Prison Earning Credit programs when these programs are available in the institution in which a prisoner is serving his or her sentence. Approved programs teach prisoners a variety of life and career skills. Examples of these programs include anger management programs, substance abuse programs, and GED programs.

Unfortunately, these programs are not available to inmates who are being held in jail prior to conviction. The programs are also not available to inmates serving misdemeanor jail terms.

Research has proven that these programs help reduce recidivism. These programs provide prisoners with skills that will help them reintegrate into their communities post-release; therefore, it is in the interest of the state to provide strong incentives for eligible prisoners to participate in and complete these programs. The annual maximum credit of six weeks' sentence reduction for people in state prison was implemented in order to provide an incentive to participate. By allowing people in county jails to participate in these types of programs for credit earning, including those awaiting trial, the state can encourage more eligible prisoners to participate in programs proven to reduce recidivism.

A Judicial Council Report found that it can take anywhere from 30 days to 12 months. During this time, prisoners should be able to take advantage of credit earning opportunities by taking part in helpful programs. If a participating prisoner ultimately is convicted and sentenced, he or she will already have begun to build career and life skills programs and can have credits to reduce their sentence.

## **2. Background and Argument from the Sponsor, the Los Angeles County Sheriff**

The Los Angeles County Sheriff argues and explains:

In 2013 the Los Angeles County Sheriff's Department sponsored Assembly Bill 624 by Assemblymember Holly Mitchell, which created Penal Code Section 4019.4. Section 4019.4 allowed sentenced felons in the county jail to earn additional "milestone" credits for successful completion of education programs. In Los Angeles County, this program and "milestone" credit earnings has been tremendously successful. According to a July 16, 2015 report, 43 percent of eligible inmates successfully earned milestone credits for completing educational programs.

Assembly Bill 1595 will amend Penal Code Section 4019.4 to expand these educational opportunities to all inmates in county jail. This expansion would include allowing those convicted of a misdemeanor to participate in and earn milestone education credits, as well as allow for those felons who have not yet been convicted (pre-trial) to participate in the program with a promise that if they successfully complete the milestones, they could apply the earned credit upon conviction."

## **3. Pretrial Jail Incarceration and Programming Incentives**

Many felony defendants are held in county jail prior to conviction because they cannot afford bail. Pretrial incarceration often makes up a large proportion of a convicted defendant's sentence. This bill would allow jail inmates to earn rehabilitation credits prior to conviction, creating an incentive for inmates to participate in such programs, likely increasing the chances that a defendant would not reoffend. Without this bill providing pretrial "milestone" credits, a defendant who has served much of his or her sentence prior to trial would likely get reduced benefits from participation in rehabilitation programs in the limited amount of time before release.

A felony defendant who is facing conviction would also have an incentive to engage in rehabilitation in order to establish a factor in mitigation for the court's consideration in imposing sentence. Further, where a defendant has served a substantial portion of his or her eventual sentence prior to conviction, he or she may have little incentive to accept probation and supervision, as he or she would be required only a part of the total sentence after conviction. Defendants who are not supervised and offered rehabilitation and education services in the community may be more likely to reoffend. Under this bill, it is likely that even inmates who refuse probation will engage in rehabilitation and education programs while in custody.

Proposition 47 has increased the proportion of jail inmates serving misdemeanor jail terms, as the proposition reclassified many offenses, most notably drug possession, that were previously felonies or wobblers, as misdemeanors. Inmates serving sentences for misdemeanor convictions have the same need for rehabilitation services as those who previously served felony sentences for the same crimes. This bill would grant these inmates programming credits, creating an incentive for participation in rehabilitation programs.

**-- END --**