
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 965 **Hearing Date:** June 25, 2019
Author: Mark Stone
Version: May 16, 2019
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Youth Offender Hearings: Credits*

HISTORY

Source: Anti-Recidivism Coalition
Initiate Justice
National Center for Youth Law

Prior Legislation: AB 1308 (Stone), Ch. 675, Stats. 2017
SB 394 (Lara), Ch. 684, Stats. 2017
Proposition 57, approved by the voters on November 8, 2016
SB 261 (Hancock), Ch. 471, Stats. 2015
SB 260 (Hancock), Ch. 312, Stats. 2013

Support: ACLU of California; American Friends Service Committee; Asian Americans Advancing Justice – California; Bend the Arc: Jewish Action; California Attorneys for Criminal Justice; California Catholic Conference; California Coalition for Women Prisoners; California Public Defenders Association; Californians for Safety and Justice; Californians United for a Responsible Budget; Center for Health Justice; Center on Juvenile and Criminal Justice; #cut50; Ella Baker Center for Human Rights; Fair Chance Project; Homeboy Industries; Human Impact Partners; Human Rights Watch; Justice Reinvestment Coalition of Alameda County; Lawyers' Committee for Civil Rights of the San Francisco Bay Area; Legal Services for Prisoners with Children; MILPA; National Association of Social Workers, California Chapter; Prison Law Office; Re:store Justice; Root & Rebound; Rubicon Programs; San Francisco Public Defender; Santa Cruz Barrios Unidos; Showing up for Racial Justice Bay Area; Silicon Valley De-Bug; Smart Justice California; Starting Over, Inc.; TGI Justice Project; Tides Advocacy; Time for Change Foundation; University of California Student Association; W. Haywood Burns Institute; Youth Justice Coalition; 1 individual

Opposition: California District Attorneys Association; California Police Chiefs Association; California State Sheriffs' Association; Crime Victims United of California

Assembly Floor Vote: 44 - 23

PURPOSE

The purpose of this bill is to apply credits earned by a person in the custody of the California Department of Corrections and Rehabilitation (CDCR) to the person's youth offender parole eligibility date in order to advance that date.

Existing law provides that CDCR shall have authority 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 when a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole (LWOP) has been incarcerated for at least 15 years, the defendant may submit to the sentencing court, except as specified. (Pen. Code, § 1170, subd. (d)(2).)

Existing law provides that a youth offender parole hearing is a hearing by the Board of Parole Hearings (BPH) for the purpose of reviewing the parole suitability of any inmate who was 25 years of age or younger, or was under 18 years of age, as specified, at the time of his or her controlling offense. (Pen. Code, § 3051, subd. (a)(1).)

Existing law provides that a person who was convicted of a controlling offense that was committed when the person was 25 years of age or younger and for which the sentence is a determinate sentence shall be eligible for release on parole at a youth offender parole hearing by the board during his or her 15th year of incarceration, unless previously released pursuant to other statutory provisions. (Pen. Code, § 3051, subd. (b)(1).)

Existing law provides that a person who was convicted of a controlling offense that was committed when the person was 25 years of age or younger and for which the sentence is a life term of less than 25 years to life shall be eligible for release on parole by the board during his or her 20th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions. (Pen. Code, § 3051, subd. (b)(2).)

Existing law provides that a person who was convicted of a controlling offense that was committed when the person was 25 years of age or younger and for which the sentence is a life term of 25 years to life shall be eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions. (Pen. Code, § 3051, subd. (b)(3).)

Existing law provides that a person who was convicted of a controlling offense that was committed before the person had attained 18 years of age and for which the sentence is life without the possibility of parole shall be eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions. (Pen. Code, § 3051, subd. (b)(4).)

Existing law provides that the youth offender parole hearing to consider release shall provide for a meaningful opportunity to obtain release. (Pen. Code, § 3051, subd. (e).)

Existing law provides that in assessing growth and maturity, psychological evaluations and risk assessment instruments, if used by the board, are required to be administered by licensed psychologists employed by the board, and must take into consideration the diminished culpability of youth as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual. (Pen. Code, § 3051, subd. (f)(1).)

Existing law requires the board shall set the time for a subsequent youth offender parole hearing, as specified, if parole is not granted. (Pen. Code, § 3051, subd. (g).)

Existing law provides that the youth offender parole provisions do not apply to inmates who were sentenced under the Three Strikes law or the One Strike sex offense law, or who were sentenced to LWOP for a controlling offense committed after the person had attained 18 years of age. (Pen. Code § 3051, subd. (h).)

Existing law provides that the youth offender parole provisions do not apply to an individual to whom this section would otherwise apply, but who, subsequent to attaining 26 years of age, commits an additional crime for which malice aforethought is a necessary element of the crime or for which the individual is sentenced to life in prison. (Pen. Code § 3051, subd. (h).)

This bill provides that a person who was convicted of a controlling offense that was committed when the person was 25 years of age or younger and for which the sentence is a life term of less than 25 years to life shall be eligible for release on parole by the board through the youth offender parole process no later than the last day of the person's 20th year of incarceration, less any days of sentencing credits applied by CDCR, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions.

This bill provides that a person who was convicted of a controlling offense that was committed when the person was 25 years of age or younger and for which the sentence is a life term of 25 years to life shall be eligible for release on parole by the board through the youth offender parole process no later than the last day of the person's 25th year of incarceration, less any days of sentencing credits applied by CDCR, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions.

COMMENTS

1. Need for This Bill

According to the author:

In November 2016, California voters approved Proposition 57, authorizing the California Department of Corrections and Rehabilitation (CDCR) to expand credit earning opportunities for incarcerated people.

The regulations developed by CDCR expanded credit earning for good behavior, participation in self-help groups, and completion of educational and rehabilitative programs. The regulations state that credit earned “shall advance an inmate’s release date if sentenced to a determinate term or advance an inmate’s initial parole hearing date...if sentenced to an indeterminate term with the possibility of parole”

In recent years, California's Penal Code has been amended to address the special characteristics of people convicted before the age of 26. Today, the penal code now requires the Board of Parole Hearings to consider the features of youth and allows for earlier parole consideration for incarcerated people who were 25 or younger at the time of their controlling offense. However, CDCR does not consider a youth offender parole hearing date to be the "initial" parole hearing date.

This means that incarcerated people who are eligible for relief through Youth Offender Parole can only earn Prop 57 credits toward their original parole hearing date. In practice, people with Youth Offender parole hearing dates do not have access to the credit earning opportunities created by Proposition 57 and the rehabilitative incentive these opportunities offer. For example, a person who was sentenced to 100 years-to-life as a 16 year old is eligible to receive a Youth Offender parole hearing after serving 25 years, and is eligible to earn credits to advance their parole hearing date. But because CDCR regulations only allow these credits to advance the 100 year hearing date rather than the 25 year hearing date, this person would not benefit from credits earned.

Proposition 57 was intended to incentivize incarcerated people to work towards their own rehabilitation by giving them access to sentence-reducing rehabilitative programs. Existing CDCR regulations functionally exclude individuals with youth offender parole hearing dates from benefiting from these credit-earning opportunities.

This bill would require that any credit earned under Prop 57 be applied to an incarcerated person's first possible parole hearing date, including youth offender parole hearing dates.

2. Youth Offender Parole

SB 260 (Hancock), Chapter 312, Statutes of 2013, established a parole eligibility mechanism for both individuals sentenced to lengthy determinate terms (i.e., fixed length terms) and those sentenced to life terms for crimes committed when they were juveniles. Under the youth offender parole process created by SB 260, the person has an opportunity for a parole hearing after serving 15, 20, or 25 years of incarceration depending on their controlling offense. SB 261 (Hancock), Chapter 471, Statutes of 2015 and AB 1308 (Stone), Chapter 675, Statutes of 2017 expanded youth offender parole eligibility to those whose controlling offense occurred before they reached the age of 23 and 26, respectively.

3. Minimum Eligible Parole Date vs. Youth Parole Eligibility Date

An inmate serving a life sentence becomes eligible for parole hearings one year prior to the inmate's minimum eligible parole date (MEPD). That date is initially calculated when the person is received into CDCR's custody utilizing a somewhat complex formula. Essentially, the MEPD is calculated by adding the total term imposed (e.g., 25 years-to-life) to the date of reception at CDCR, subtracting the total number of pre-sentence credits, post-sentence credits, and vested credits, and then subtracting projected good conduct credits. The MEPD may be adjusted due to credit loss (e.g., for misconduct) or may be advanced due to programming credits earned (e.g., educational merit credits, rehabilitative achievement credits, etc.).

As described above, the Youth Offender Parole Program created a mechanism for certain inmates to have the opportunity to have a parole hearing after serving 15, 20, or 25 years of incarceration depending on the person's controlling offense. An inmate's Youth Parole Eligibility Date (YPED) is the date that an inmate is eligible for release if found suitable for parole at the initial youth offender parole hearing. For some inmates, their YPED is earlier in time than their MEPD. In other words, the Youth Offender Parole Program affords some inmates the opportunity to have a parole hearing at an earlier date than would otherwise be the case.

4. Proposition 57 Credit Earning

Among other things, Proposition 57 amended the state constitution to authorize CDCR to award various types of credits to inmates and directed the department to promulgate regulations pertaining to credit earning. The text provides: "The Department of Corrections and Rehabilitation shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements." (Cal. Const., art. I, § 32, subd. (a)(2).) CDCR adopted emergency regulations to implement Proposition 57 in 2017, and the final regulations were approved in 2018. Those regulations amended and repealed the then-existing credit earning regulations. The regulations cover pre-sentence, good conduct, milestone completion, rehabilitative achievement, educational merit, and extraordinary conduct credits. (Cal. Code. Regs, tit. 15, §§ 3043-3043.6.)

Individuals with determinate terms as well as those sentenced to life with the possibility of parole are eligible for the Youth Offender Parole Program. According to CDCR, the department is not currently awarding credits to advance an inmate's initial youth offender parole hearing date. Instead, credits are applied to advance an inmate's initial parole hearing—based on the inmate's MEPD—which may be scheduled to occur much later in time. However, earlier this year, the Office of Administrative Law approved CDCR emergency regulations regarding credit earning. One of the amended regulations provides that beginning on January 1, 2021, credits will be awarded to advance an inmate's initial youth offender parole hearing for the subset of inmates eligible for youth offender parole who are serving an indeterminate term of 25 years to life. (https://oal.ca.gov/wp-content/uploads/sites/166/2019/01/2018-1220-03EON_APP-1.pdf)

This bill would require any credits applied by CDCR to be subtracted from an inmate's YPED in order to advance the inmate's initial youth offender parole hearing date.

5. Argument in Support

Smart Justice California writes:

Recent reforms have expanded the opportunity for people in custody to engage in rehabilitative programs and earn credits toward their parole eligibility. The purpose of these reforms is to incentivize rehabilitation, encouraging people in custody to avail themselves of treatment and education program while in custody, making them more likely to succeed on release. Unfortunately, CDCR is currently applying these credits to the end of lengthy sentences rather than the beginning, thereby reducing significantly the incentive to participate in programming. AB 965 changes that for the youngest people in prison, applying earned credits to the earliest possible parole date for a person eligibility for Youth Offender parole consideration.

Allowing every person with a Youth Offender Parole date to earn time off their earliest parole date will maximize the impact of credit-earning systems. This approach is consistent with many recent reforms adopted by the Legislature that recognize the capacity for change of young people and the need to ensure that youth with extremely long sentences have a meaningful opportunity for parole consideration in a reasonable time frame. By applying earned credits to their earliest possible parole date, AB 965 ensures that the youngest people in prison are encouraged to participate in rehabilitative programming that lowers their risk of returning to prison and increases their likelihood of remaining disciplinary-free while in custody.

... Having a meaningful chance to earn credits is not only fair, it increases public safety and the likelihood of these individuals succeeding, living full lives when released.

6. Argument in Opposition

According to the California District Attorneys Association:

Currently, all state prison inmates are eligible for Proposition 57 credits, except for inmates sentenced to death or to life without the possibility of parole. Before Proposition 57 was passed, inmates convicted of murder earned no conduct credits and violent felons earned 15%. Now, inmates convicted of a violent felony, including murder, earn 20% conduct credits and may earn additional credit such as milestone completion, rehabilitative achievement, and educational merit credit. Therefore, an inmate serving a term of 25 years to life for first degree murder is eligible for parole at year 20 or earlier, and does not even utilize the provisions of P.C. 3051 (youth offender parole), which set parole eligibility during the 25th year.

A youth offender serving a consecutive term for multiple violent crimes, such as a fifty-years-to-life term for two murders is currently eligible for parole during year 25. The additional conduct credits granted by AB 965 would make a multiple murderer eligible for parole during year 20 or earlier, at the same time as an inmate who committed one murder.

We support rehabilitation, but there has to be proportionality between the gravity and number of an inmate's crimes, and eligibility for parole. The generous credits created pursuant to Proposition 57 currently apply to youth offenders. They should not apply to P.C. 3051 or P.C. 3055, both of which already provide for early parole for youth and elderly offenders. In cases where inmates are serving consecutive sentences for multiple crimes, current youth parole provisions make inmates eligible for parole years, even decades, sooner than they otherwise would be.

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