

AMENDED IN SENATE FEBRUARY 19, 2010

AMENDED IN SENATE JUNE 29, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1395

Introduced by Assembly Member Torrico
(Coauthor: Senator Correa)

February 27, 2009

An act to add Section 3005 to the Penal Code, relating to parole. An act to amend Sections 2933 and 4019 of the Penal Code, relating to inmates, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1395, as amended, Torrico. ~~Parole conditions. Inmates: incentive credits.~~

Existing law provides time credit for work performance and good behavior to prisoners confined to a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp. Specifically, except regarding certain prisoners who are limited to 15% credit against sentenced time, existing law provides that a term of 4 days will be deemed to have been served for every 2 days spent in actual custody in one of these facilities, except that a term of 6 days will be deemed to have been served for every 4 days in actual custody for prisoners required to register as sex offenders, prisoners committed for a serious felony, or prisoners with a prior conviction for a serious or violent felony.

This bill would instead provide that prisoners sentenced to state prison, except for those required to register as sex offenders, committed for a serious felony, or with a previous conviction for a serious or

violent felony, who are confined in a city or county jail, industrial farm, or road camp prior to and after the date of a sentence to state prison shall have one day deducted from his or her period of confinement for every day the prisoner served in a city or county jail, industrial farm, or road camp. The bill would provide that a prisoner sentenced to state prison who is confined in a city or county jail, industrial farm, or road camp may not receive the day for day credit if it appears by the record that the prisoner refused to satisfactorily perform labor or failed to satisfactorily comply with rules and regulations, as specified. The bill would provide that, for prisoners otherwise in a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp, except those subject to the 15% limitation on credits noted above, a term of 6 days will be deemed to have been served for every 4 days spent in actual custody. Because this bill would change the punishment for crimes, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law authorizes the imposition of various conditions on persons released from prison on parole. Under existing law, one of the conditions imposed upon a prisoner released on parole is that the prisoner agree to be subject to search or seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant and with or without cause. If the prisoner does not agree to that condition of release, he or she loses worktime credits earned and may not be released from prison until he or she agrees to that condition or the entire term of imprisonment has expired, as specified.~~

~~This bill would, instead, require that any person being released on parole who was not committed to prison for a registerable sex offense, a serious felony, a violent felony, or any felony that directly or indirectly involved violence or the threat of violence, and who does not have a prior conviction for a serious or violent felony, be released on parole with only two conditions. Specifically, this bill would provide that an eligible parolee shall agree in writing to be subject to search or seizure and submit to random drug testing by a parole officer or other peace~~

~~officer at any time of the day or night, with or without a search warrant and with or without cause. This bill would provide that any eligible inmate who does not agree in writing to those conditions shall lose worktime credit earned pursuant to specified provisions on a day-for-day basis and shall not be released until he or she either agrees in writing to these conditions or has no remaining worktime credit, whichever occurs first.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~^{yes}.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2933 of the Penal Code is amended to
2 read:

3 2933. (a) It is the intent of the Legislature that persons
4 convicted of a crime and sentenced to the state prison under Section
5 1170 serve the entire sentence imposed by the court, except for a
6 reduction in the time served in the custody of the Secretary of the
7 Department of Corrections and Rehabilitation pursuant to this
8 section and Section 2933.05.

9 (b) For every six months of continuous incarceration, a prisoner
10 shall be awarded credit reductions from his or her term of
11 confinement of six months. A lesser amount of credit based on
12 this ratio shall be awarded for any lesser period of continuous
13 incarceration. Credit should be awarded pursuant to regulations
14 adopted by the secretary. Prisoners who are denied the opportunity
15 to earn credits pursuant to subdivision (a) of Section 2932 shall
16 be awarded no credit reduction pursuant to this section. Under no
17 circumstances shall any prisoner receive more than six months'
18 credit reduction for any six-month period under this section.

19 (c) Credit is a privilege, not a right. Credit must be earned and
20 may be forfeited pursuant to the provisions of Section 2932. Except
21 as provided in subdivision (a) of Section 2932, every eligible
22 prisoner shall have a reasonable opportunity to participate.

23 (d) Under regulations adopted by the Department of Corrections
24 and Rehabilitation, which shall require a period of not more than
25 one year free of disciplinary infractions, credit which has been
26 previously forfeited may be restored by the secretary. The
27 regulations shall provide for separate classifications of serious
28 disciplinary infractions as they relate to restoration of credits, the

1 time period required before forfeited credits or a portion thereof
2 may be restored, and the percentage of forfeited credits that may
3 be restored for these time periods. For credits forfeited as specified
4 in paragraph (1) of subdivision (a) of Section 2932, the Department
5 of Corrections and Rehabilitation may provide that up to 180 days
6 of lost credit shall not be restored and up to 90 days of credit shall
7 not be restored for a forfeiture resulting from conspiracy or
8 attempts to commit one of those acts. No credits may be restored
9 if they were forfeited for a serious disciplinary infraction in which
10 the victim died or was permanently disabled. Upon application of
11 the prisoner and following completion of the required time period
12 free of disciplinary offenses, forfeited credits eligible for restoration
13 under the regulations for disciplinary offenses other than serious
14 disciplinary infractions punishable by a credit loss of more than
15 90 days shall be restored unless, at a hearing, it is found that the
16 prisoner refused to accept or failed to perform in a credit qualifying
17 assignment, or extraordinary circumstances are present that require
18 that credits not be restored. "Extraordinary circumstances" shall
19 be defined in the regulations adopted by the secretary. However,
20 in any case in which credit was forfeited for a serious disciplinary
21 infraction punishable by a credit loss of more than 90 days,
22 restoration of credit shall be at the discretion of the secretary.

23 The prisoner may appeal the finding through the Department of
24 Corrections and Rehabilitation's review procedure, which shall
25 include a review by an individual independent of the institution
26 who has supervisory authority over the institution.

27 ~~(e) A prisoner sentenced to the state prison under Section 1170
28 shall receive one day of credit for every day served in a county
29 jail, city jail, industrial farm, or road camp after the date he or she
30 was sentenced to the state prison as specified in subdivision (f) of
31 Section 4019.~~

32 *(e) (1) Notwithstanding Section 4019, a prisoner sentenced to
33 the state prison under Section 1170 shall have one day deducted
34 from his or her period of confinement for every day he or she
35 served in a county jail, city jail, industrial farm, or road camp
36 prior to and after the date he or she was sentenced to a state prison
37 term for which imposition or execution is not suspended.*

38 *(2) A prisoner may not receive the credit specified in paragraph
39 (1) if it appears by the record that the prisoner has refused to
40 satisfactorily perform labor as assigned by, or has not satisfactorily*

1 *complied with the reasonable rules and regulations established*
2 *by the sheriff, chief of police, or superintendent of an industrial*
3 *farm or road camp.*

4 (3) *Section 4019, and not this subdivision, shall apply if the*
5 *prisoner is required to register as a sex offender, pursuant to*
6 *Chapter 5.5 (commencing with Section 290), was committed for*
7 *a serious felony, as defined in Section 1192.7, or has a prior*
8 *conviction for a serious felony, as defined in Section 1192.7, or a*
9 *violent felony, as defined in Section 667.5.*

10 (f) The provisions of subdivision (d) shall also apply in cases
11 of credit forfeited under Section 2931 for offenses and serious
12 disciplinary infractions occurring on or after January 1, 1983.

13 *SEC. 2. Section 4019 of the Penal Code is amended to read:*

14 4019. (a) The provisions of this section shall apply in all of
15 the following cases:

16 (1) When a prisoner is confined in or committed to a county
17 jail, industrial farm, or road camp, or any city jail, industrial farm,
18 or road camp, including all days of custody from the date of arrest
19 to the date on which the serving of the sentence commences, under
20 a judgment of imprisonment, or a fine and imprisonment until the
21 fine is paid in a criminal action or proceeding.

22 (2) When a prisoner is confined in or committed to the county
23 jail, industrial farm, or road camp or any city jail, industrial farm,
24 or road camp as a condition of probation after suspension of
25 imposition of a sentence or suspension of execution of sentence,
26 in a criminal action or proceeding.

27 (3) When a prisoner is confined in or committed to the county
28 jail, industrial farm, or road camp or any city jail, industrial farm,
29 or road camp for a definite period of time for contempt pursuant
30 to a proceeding, other than a criminal action or proceeding.

31 (4) When a prisoner is confined in a county jail, industrial farm,
32 or road camp, or a city jail, industrial farm, or road camp following
33 arrest and prior to the imposition of sentence for a felony
34 conviction.

35 (b) ~~(1) Except as provided in Section 2933.1 and paragraph~~
36 ~~(2), subject~~ *Subject* to the provisions of subdivision (d), for each
37 ~~four-day~~ *six-day* period in which a prisoner is confined in or
38 committed to a facility as specified in this section, one day shall
39 be deducted from his or her period of confinement unless it appears
40 by the record that the prisoner has refused to satisfactorily perform

1 labor as assigned by the sheriff, chief of police, or superintendent
2 of an industrial farm or road camp.

3 ~~(2) If the prisoner is required to register as a sex offender~~
4 ~~pursuant to Chapter 5.5 (commencing with Section 290), was~~
5 ~~committed for a serious felony, as defined in Section 1192.7, or~~
6 ~~has a prior conviction for a serious felony, as defined in Section~~
7 ~~1192.7, or a violent felony, as defined in Section 667.5, subject to~~
8 ~~the provisions of subdivision (d), for each six-day period in which~~
9 ~~the prisoner is confined in or committed to a facility as specified~~
10 ~~in this section, one day shall be deducted from his or her period~~
11 ~~of confinement unless it appears by the record that the prisoner~~
12 ~~has refused to satisfactorily perform labor as assigned by the~~
13 ~~sheriff, chief of police, or superintendent of an industrial farm or~~
14 ~~road camp.~~

15 (c) ~~(1) Except as provided in Section 2933.1 and paragraph (2),~~
16 ~~for~~ *For each four-day six-day* period in which a prisoner is confined
17 in or committed to a facility as specified in this section, one day
18 shall be deducted from his or her period of confinement unless it
19 appears by the record that the prisoner has not satisfactorily
20 complied with the reasonable rules and regulations established by
21 the sheriff, chief of police, or superintendent of an industrial farm
22 or road camp.

23 ~~(2) If the prisoner is required to register as a sex offender~~
24 ~~pursuant to Chapter 5.5 (commencing with Section 290), was~~
25 ~~committed for a serious felony, as defined in Section 1192.7, or~~
26 ~~has a prior conviction for a serious felony, as defined in Section~~
27 ~~1192.7, or a violent felony, as defined in Section 667.5, for each~~
28 ~~six-day period in which the prisoner is confined in or committed~~
29 ~~to a facility as specified in this section, one day shall be deducted~~
30 ~~from his or her period of confinement unless is appears by the~~
31 ~~record that the prisoner has not satisfactorily complied with the~~
32 ~~reasonable rules and regulations established by the sheriff, chief~~
33 ~~of police, or superintendent of an industrial farm or road camp.~~

34 (d) Nothing in this section shall be construed to require the
35 sheriff, chief of police, or superintendent of an industrial farm or
36 road camp to assign labor to a prisoner if it appears from the record
37 that the prisoner has refused to satisfactorily perform labor as
38 assigned or that the prisoner has not satisfactorily complied with
39 the reasonable rules and regulations of the sheriff, chief of police,
40 or superintendent of any industrial farm or road camp.

1 (e) No deduction may be made under this section unless the
2 person is committed for a period of ~~four~~ six days or longer, ~~or six~~
3 ~~days or longer for persons described in paragraph (2) of subdivision~~
4 ~~(b) or (e).~~

5 (f) It is the intent of the Legislature that if all days are earned
6 under this section, a term of ~~four~~ six days will be deemed to have
7 been served for every ~~two~~ four days spent in actual custody, ~~except~~
8 ~~that a term of six days will be deemed to have been served for~~
9 ~~every four days spent in actual custody for persons described in~~
10 ~~paragraph (2) of subdivision (b) or (e).~~

11 *SEC. 3. No reimbursement is required by this act pursuant to*
12 *Section 6 of Article XIII B of the California Constitution because*
13 *the only costs that may be incurred by a local agency or school*
14 *district will be incurred because this act creates a new crime or*
15 *infraction, eliminates a crime or infraction, or changes the penalty*
16 *for a crime or infraction, within the meaning of Section 17556 of*
17 *the Government Code, or changes the definition of a crime within*
18 *the meaning of Section 6 of Article XIII B of the California*
19 *Constitution.*

20 *SEC. 4. This act is an urgency statute necessary for the*
21 *immediate preservation of the public peace, health, or safety within*
22 *the meaning of Article IV of the Constitution and shall go into*
23 *immediate effect. The facts constituting the necessity are:*

24 *In order to protect the citizens of California from crimes*
25 *committed by persons released from county facilities, it is necessary*
26 *that this legislation take effect immediately.*

27 ~~SECTION 1. Section 3005 is added to the Penal Code, to read:~~

28 ~~3005. (a) Notwithstanding any other provision of law, any~~
29 ~~inmate released on parole on or after June 1, 2009, who is not~~
30 ~~required to register as a sex offender pursuant to Chapter 5.5~~
31 ~~(commencing with Section 290) of Title 9 of Part 1, who was not~~
32 ~~committed to prison for a serious felony, as defined in Section~~
33 ~~1192.7, a violent felony, as defined in Section 667.5, or any other~~
34 ~~felony that directly or indirectly involved violence, and who does~~
35 ~~not have a prior conviction for a serious or violent felony, shall be~~
36 ~~released on parole with only two conditions; that he or she agree~~
37 ~~in writing to be subject to search or seizure by a parole officer or~~
38 ~~other peace officer at any time of the day or night, with or without~~
39 ~~a search warrant and with or without cause, and that he or she~~
40 ~~agree in writing to submit to random drug testing by a parole officer~~

1 ~~or other peace officer at any time of the day or night, with or~~
2 ~~without a search warrant and with or without cause.~~
3 ~~(b) Any inmate subject to release pursuant to subdivision (a)~~
4 ~~who does not agree in writing to those conditions shall lose~~
5 ~~worktime credit earned pursuant to Article 2.5 (commencing with~~
6 ~~Section 2930) of Chapter 7 on a day-for-day basis and shall not~~
7 ~~be released until he or she either agrees in writing to that condition~~
8 ~~or has no remaining worktime credit, whichever occurs first.~~
9 ~~(c) Nothing in this section prohibits or limits any authority to~~
10 ~~prosecute and punish a person released pursuant to subdivision (a)~~
11 ~~for the commission of a new crime while released on parole.~~