

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2331**

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**Introduced by Assembly Member Miller**

February 24, 2012

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An act to amend Section ~~2933~~ 2933.1 of the Penal Code, relating to ~~prisons~~ *sex offenses*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2331, as amended, Miller. ~~State prisons: credits on term of imprisonment. Sex offenses: rape: worktime credits.~~

*Existing law provides that any person convicted of a violent felony, as specified, shall accrue no more than 15% of worktime credit, as defined.*

*This bill would additionally provide that any person convicted of rape accomplished where a person is prevented from resisting by any intoxicating or anesthetic substance or where a person is at the time unconscious, as specified, shall accrue no more than 15% of worktime credit.*

~~Existing law provides that it is the intent of the Legislature that persons sentenced to prison for a determinate sentence serve the entire sentence imposed by the court, except for a reduction in the time served in the custody of the Secretary of the Department of Corrections and Rehabilitation, as specified. Existing law permits a prisoner to earn one day of credit for each day in custody, except when the prisoner commits a specified act of misconduct, including murder or manslaughter.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

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

1 SECTION 1. Section 2933.1 of the Penal Code is amended to  
2 read:

3 2933.1. (a) Notwithstanding any other law, any person who  
4 is convicted of a felony offense listed rape as defined in paragraph  
5 (3) or (4) of subdivision (a) of Section 261 or of a felony offense  
6 listed in subdivision (c) of Section 667.5 shall accrue no more than  
7 15 percent of worktime credit, as defined in Section 2933.

8 (b) The 15-percent limitation provided in subdivision (a) shall  
9 apply whether the defendant is sentenced under Chapter 4.5  
10 (commencing with Section 1170) of Title 7 of Part 2 or sentenced  
11 under some other law. However, nothing in subdivision (a) shall  
12 affect the requirement of any statute that the defendant serve a  
13 specified period of time prior to minimum parole eligibility, nor  
14 shall any offender otherwise statutorily ineligible for credit be  
15 eligible for credit pursuant to this section.

16 (c) Notwithstanding Section 4019 or any other provision of law,  
17 the maximum credit that may be earned against a period of  
18 confinement in, or commitment to, a county jail, industrial farm,  
19 or road camp, or a city jail, industrial farm, or road camp, following  
20 arrest and prior to placement in the custody of the Director of  
21 Corrections, shall not exceed 15 percent of the actual period of  
22 confinement for any person specified in subdivision (a).

23 (d) This section shall only apply to offenses listed in subdivision  
24 (a) that are committed on or after the date on which this section  
25 becomes operative.

26 ~~SECTION 1. Section 2933 of the Penal Code is amended to~~  
27 ~~read:~~

28 ~~2933. (a) It is the intent of the Legislature that persons~~  
29 ~~convicted of a crime and sentenced to the state prison under Section~~  
30 ~~1170 serve the entire sentence imposed by the court, except for a~~  
31 ~~reduction in the time served in the custody of the Secretary of the~~  
32 ~~Department of Corrections and Rehabilitation pursuant to this~~  
33 ~~section and Section 2933.05.~~

34 ~~(b) For every six months of continuous incarceration, a prisoner~~  
35 ~~shall be awarded credit reductions from his or her term of~~

1 confinement of six months. A lesser amount of credit based on  
2 this ratio shall be awarded for a lesser period of continuous  
3 incarceration. Credit should be awarded pursuant to regulations  
4 adopted by the secretary. Prisoners who are denied the opportunity  
5 to earn credits pursuant to subdivision (a) of Section 2932 shall  
6 be awarded no credit reduction pursuant to this section. Under no  
7 circumstances shall a prisoner receive more than six months of  
8 credit reduction for any six-month period under this section.

9 (e) Credit is a privilege, not a right. Credit must be earned and  
10 may be forfeited pursuant to the provisions of Section 2932. Except  
11 as provided in subdivision (a) of Section 2932, every eligible  
12 prisoner shall have a reasonable opportunity to participate.

13 (d) (1) Under regulations adopted by the Department of  
14 Corrections and Rehabilitation, which shall require a period of not  
15 more than one year free of disciplinary infractions, credit that has  
16 been previously forfeited may be restored by the secretary. The  
17 regulations shall provide for separate classifications of serious  
18 disciplinary infractions as they relate to restoration of credits, the  
19 time period required before forfeited credits or a portion thereof  
20 may be restored, and the percentage of forfeited credits that may  
21 be restored for these time periods. For credits forfeited as specified  
22 in paragraph (1) of subdivision (a) of Section 2932, the Department  
23 of Corrections and Rehabilitation may provide that up to 180 days  
24 of lost credit shall not be restored and up to 90 days of credit shall  
25 not be restored for a forfeiture resulting from conspiracy or  
26 attempts to commit one of those acts. No credits may be restored  
27 if they were forfeited for a serious disciplinary infraction in which  
28 the victim died or was permanently disabled. Upon application of  
29 the prisoner and following completion of the required time period  
30 free of disciplinary offenses, forfeited credits eligible for restoration  
31 under the regulations for disciplinary offenses other than serious  
32 disciplinary infractions punishable by a credit loss of more than  
33 90 days shall be restored unless, at a hearing, it is found that the  
34 prisoner refused to accept or failed to perform in a credit qualifying  
35 assignment, or extraordinary circumstances are present that require  
36 that credits not be restored. "Extraordinary circumstances" shall  
37 be defined in the regulations adopted by the secretary. However,  
38 in any case in which credit was forfeited for a serious disciplinary  
39 infraction punishable by a credit loss of more than 90 days,  
40 restoration of credit shall be at the discretion of the secretary.

1     ~~(2) The prisoner may appeal the finding through the Department~~  
2     ~~of Corrections and Rehabilitation's review procedure, which shall~~  
3     ~~include a review by an individual independent of the institution~~  
4     ~~who has supervisory authority over the institution.~~  
5     ~~(e) The provisions of subdivision (d) shall also apply in cases~~  
6     ~~of credit forfeited under Section 2931 for offenses and serious~~  
7     ~~disciplinary infractions occurring on or after January 1, 1983.~~