

ASSEMBLY BILL

No. 570

Introduced by Assembly Members Battin and Leonard
(Coauthor: Senator Peace)

February 25, 1997

An act to amend Sections 2932 and 2933.6 of the Penal Code, relating to prisoners.

LEGISLATIVE COUNSEL'S DIGEST

AB 570, as introduced, Battin. Prisoners: misconduct: credits.

(1) Existing law requires the Department of Corrections to notify a prisoner in writing within 15 days after the discovery of information leading to charges that may result in the denial of worktime credit. The department is authorized to delay giving that notice beyond 15 days under specified circumstances. One of those circumstances is that the prisoner is accused of an act of misconduct that could be prosecuted as murder, attempted murder, or assault on a prison employee.

This bill would authorize the department to delay giving that notice by no more than 90 days, and would add to the acts of misconduct authorizing that delay a controlled substance violation, extortion, or conspiracy to commit one of those felonies.

(2) Under existing law, a state prison inmate who is placed in a Security Housing Unit or an Administrative Segregation Unit for committing any of several specified offenses considered to be misconduct is ineligible to earn work credits

or good behavior credits during the time of placement in that unit.

This bill would delete the enumeration of those specified offenses, and would apply that provision to any person removed from general prison population housing for engaging in any misconduct.

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

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

1 SECTION 1. Section 2932 of the Penal Code is
2 amended to read:

3 2932. (a) (1) For any time credit accumulated
4 pursuant to Section 2931 or to Section 2933, not more than
5 360 days of credit may be denied or lost for a single act of
6 murder, attempted murder, solicitation of murder,
7 manslaughter, rape, sodomy, or oral copulation
8 accomplished against the victim's will, attempted rape,
9 attempted sodomy, or attempted oral copulation
10 accomplished against the victim's will, assault or battery
11 causing serious bodily injury, assault with a deadly
12 weapon or caustic substance, taking of a hostage, escape
13 with force or violence, or possession or manufacture of a
14 deadly weapon or explosive device, whether or not
15 prosecution is undertaken for purposes of this paragraph.
16 Solicitation of murder shall be proved by the testimony
17 of two witnesses, or of one witness and corroborating
18 circumstances.

19 (2) Not more than 180 days of credit may be denied or
20 lost for a single act of misconduct, except as specified in
21 paragraph (1), ~~which~~ that could be prosecuted as a felony
22 whether or not prosecution is undertaken.

23 (3) Not more than 90 days of credit may be denied or
24 lost for a single act of misconduct ~~which~~ that could be
25 prosecuted as a misdemeanor, whether or not
26 prosecution is undertaken.

27 (4) Not more than 30 days of credit may be denied or
28 lost for a single act of misconduct defined by regulation
29 as a serious disciplinary offense by the Department of



1 Corrections. Any person confined due to a change in
2 custodial classification following the commission of any
3 serious disciplinary infraction shall, in addition to any loss
4 of time credits, be ineligible to receive participation or
5 worktime credit for a period not to exceed the number of
6 days of credit ~~which~~ *that* have been lost for the act of
7 misconduct or 180 days, whichever is less. Any person
8 confined in a secure housing unit for having committed
9 any misconduct specified in paragraph (1) in which great
10 bodily injury is inflicted upon a nonprisoner shall, in
11 addition to any loss of time credits, be ineligible to receive
12 participation or worktime credit for a period not to
13 exceed the number of days of credit which have been lost
14 for that act of misconduct, or for the period that the
15 prisoner is confined in a secure housing unit, whichever
16 is less. In unusual cases, an inmate may be denied the
17 opportunity to participate in a credit qualifying
18 assignment for up to six months beyond the period
19 specified in this subdivision if the Director of Corrections
20 finds, after a hearing, that no credit qualifying program
21 may be assigned to the inmate without creating a
22 substantial risk of physical harm to staff or other inmates.
23 At the end of the six-month period and of successive
24 six-month periods, the denial of the opportunity to
25 participate in a credit qualifying assignment may be
26 renewed upon a hearing and finding by the director.

27 The prisoner may appeal the decision through the
28 department's review procedure, which shall include a
29 review by an individual independent of the institution
30 who has supervisory authority over the institution.

31 (b) For any credit accumulated pursuant to Section
32 2931, not more than 30 days of participation credit may be
33 denied or lost for a single failure or refusal to participate.
34 Any act of misconduct described by the Department of
35 Corrections as a serious disciplinary infraction if
36 committed while participating in work, educational,
37 vocational, therapeutic, or other prison activity shall be
38 deemed a failure to participate.

39 (c) Any procedure not provided for by this section, but
40 necessary to carry out the purposes of this section, shall



1 be those procedures provided for by the Department of
2 Corrections for serious disciplinary infractions if those
3 procedures are not in conflict with this section.

4 (1) (A) The Department of Corrections ~~shall~~, using
5 reasonable diligence to investigate, *shall* provide written
6 notice to the prisoner. The written notice shall be given
7 within 15 days after the discovery of information leading
8 to charges that may result in a possible denial of credit,
9 except that if the prisoner has escaped, the notice shall be
10 given within 15 days of the prisoner's return to the
11 custody of the Director of Corrections. The written notice
12 shall include the specific charge, the date, the time, the
13 place that the alleged misbehavior took place, the
14 evidence relied upon, a written explanation of the
15 procedures that will be employed at the proceedings and
16 the prisoner's rights at the hearing. The hearing shall be
17 conducted by an individual who shall be independent of
18 the case and shall take place within 30 days of the written
19 notice.

20 (B) The Department of Corrections may delay
21 written notice beyond 15 days, *but not more than 90 days*,
22 when all of the following factors are true:

23 (i) An act of misconduct is involved ~~which~~ *that* could
24 be prosecuted as murder, attempted murder, ~~or~~ assault
25 on a prison employee, *extortion, a controlled substance*
26 *offense, or conspiracy to commit a felony listed in this*
27 *sentence*, whether or not prosecution is undertaken.

28 (ii) Further investigation is being undertaken for the
29 purpose of identifying other prisoners involved in the
30 misconduct.

31 (iii) Within 15 days after the discovery of information
32 leading to charges that may result in a possible denial of
33 credit, the investigating officer makes a written request
34 to delay notifying that prisoner and states the reasons for
35 the delay.

36 (iv) The warden of the institution approves of the
37 delay in writing.

38 The period of delay under this paragraph shall not
39 exceed 30 days. The prisoner's hearing shall take place
40 within 30 days of the written notice.



1 (2) The prisoner may elect to be assigned an employee
2 to assist in the investigation, preparation, or presentation
3 of a defense at the disciplinary hearing if it is determined
4 by the department that: ~~(i) the~~ *either of the following are*
5 *true:*

6 (A) *The prisoner is illiterate; or (ii).*

7 (B) *The* the complexity of the issues or the prisoner's
8 confinement status makes it unlikely that the prisoner
9 can collect and present the evidence necessary for an
10 adequate comprehension of the case.

11 (3) The prisoner may request witnesses to attend the
12 hearing and they shall be called unless the person
13 conducting the hearing has specific reasons to deny this
14 request. The specific reasons shall be set forth in writing
15 and a copy of the document shall be presented to the
16 prisoner.

17 (4) The prisoner has the right, under the direction of
18 the person conducting the hearing, to question all
19 witnesses.

20 (5) At the conclusion of the hearing the charge shall be
21 dismissed if the facts do not support the charge, or the
22 prisoner may be found guilty on the basis of a
23 preponderance of the evidence.

24 (d) If found guilty the prisoner shall be advised in
25 writing of ~~the guilty~~ *that* finding and the specific
26 evidence relied upon to reach this conclusion and the
27 amount of time-credit loss. The prisoner may appeal the
28 decision through the Department of Corrections' review
29 procedure, and may, upon final notification of appeal
30 denial, within 15 days of the notification demand review
31 of the department's denial of credit to the Board of Prison
32 Terms, ~~and the~~. *The* board may affirm, reverse, or modify
33 the department's decision or grant a hearing before the
34 board at which hearing the prisoner shall have the rights
35 specified in Section 3041.5.

36 (e) Each prisoner subject to Section 2931 shall be
37 notified of the total amount of good behavior and
38 participation credit which may be credited pursuant to
39 Section 2931, and his or her anticipated time-credit
40 release date. The prisoner shall be notified of any change



1 in the anticipated release date due to denial or loss of
2 credits, award of worktime credit, under Section 2933, or
3 the restoration of any credits previously forfeited.

4 (f) If the conduct the prisoner is charged with also
5 constitutes a crime, the Department of Corrections may
6 refer the case to criminal authorities for possible
7 prosecution. The department shall notify the prisoner,
8 who may request postponement of the disciplinary
9 proceedings pending the referral.

10 The prisoner may revoke his or her request for
11 postponement of the disciplinary proceedings up until
12 the filing of the accusatory pleading. In the event of the
13 revocation of the request for postponement of the
14 proceeding, the department shall hold the hearing within
15 30 days of the revocation.

16 Notwithstanding the notification requirements in this
17 paragraph and subparagraphs (A) and (B) of paragraph
18 (1) of subdivision (c), in the event the case is referred to
19 criminal authorities for prosecution and the authority
20 requests that the prisoner not be notified so as to protect
21 the confidentiality of its investigation, no notice to the
22 prisoner shall be required until an accusatory pleading is
23 filed with the court, or the authority notifies the warden,
24 in writing, that it will not prosecute or it authorizes the
25 notification of the prisoner. The notice exceptions
26 provided for in this paragraph shall only apply if the
27 criminal authority requests of the warden, in writing, and
28 within the 15 days provided in subparagraph (A) of
29 paragraph (1) of subdivision (c), that the prisoner not be
30 notified. Any period of delay of notice to the prisoner shall
31 not exceed 30 days beyond the 15 days referred to in
32 subdivision (c). In the event that no prosecution is
33 undertaken, the procedures in subdivision (c) shall apply,
34 and the time periods set forth in that subdivision shall
35 commence to run from the date the warden is notified in
36 writing of the decision not to prosecute. In the event the
37 authority either cancels its requests that the prisoner not
38 be notified before it makes a decision on prosecution or
39 files an accusatory pleading, the provisions of this



1 paragraph shall apply as if no request had been received,
2 beginning from the date of the cancellation or filing.

3 In the case where the prisoner is prosecuted by the
4 district attorney, the Department of Corrections shall not
5 deny time credit where the prisoner is found not guilty
6 and may deny credit if the prisoner is found guilty, in
7 which case the procedures in subdivision (c) shall not
8 apply.

9 (g) If time credit denial proceedings or criminal
10 prosecution prohibit the release of a prisoner who would
11 have otherwise been released, and the prisoner is found
12 not guilty of the alleged misconduct, the amount of time
13 spent incarcerated, in excess of what the period of
14 incarceration would have been absent the alleged
15 misbehavior, shall be deducted from the prisoner's parole
16 period.

17 (h) Nothing in the amendments to this section made
18 at the 1981-82 Regular Session of the Legislature shall
19 affect the granting or revocation of credits attributable to
20 that portion of the prisoner's sentence served prior to
21 January 1, 1983.

22 SEC. 2. Section 2933.6 of the Penal Code is amended
23 to read:

24 2933.6. (a) Notwithstanding any other law, a person
25 who is ~~placed in a Security Housing Unit or an~~
26 ~~Administrative Segregation Unit for misconduct~~
27 ~~described in subdivision (b) removed from general~~
28 ~~prison population housing for engaging in misconduct~~
29 ~~pursuant to Title 15 of the California Code of Regulations~~
30 is ineligible to earn work credits or good behavior credits
31 during the time he or she is ~~in the Security Housing Unit~~
32 ~~or the Administrative Segregation Unit for that~~
33 ~~misconduct removed from general prison population~~
34 ~~housing.~~

35 (b) ~~This section applies to the following offenses:~~

36 ~~(1) Murder, attempted murder, and solicitation of~~
37 ~~murder. For purposes of this paragraph, solicitation of~~
38 ~~murder shall be proven by the testimony of two witnesses,~~
39 ~~or of one witness and corroborating circumstances.~~

40 ~~(2) Manslaughter.~~



- 1 ~~(3) Assault or battery causing serious bodily injury.~~
- 2 ~~(4) Assault or battery on a peace officer or other~~
- 3 ~~nonprisoner which results in physical injury.~~
- 4 ~~(5) Assault with a deadly weapon or caustic substance.~~
- 5 ~~(6) Rape, attempted rape, sodomy, attempted~~
- 6 ~~sodomy, oral copulation, or attempted oral copulation~~
- 7 ~~accomplished against the victim's will.~~
- 8 ~~(7) Taking a hostage.~~
- 9 ~~(8) Escape or attempted escape with force or violence.~~
- 10 ~~(9) Escape from any departmental prison or~~
- 11 ~~institution other than a camp or reentry facility.~~
- 12 ~~(10) Possession or manufacture of a deadly weapon or~~
- 13 ~~explosive device.~~
- 14 ~~(11) Arson involving damage to a structure.~~
- 15 ~~(12) Possession of flammable, explosive material with~~
- 16 ~~intent to burn any structure or property.~~
- 17 ~~(13) Solicitation of assault with a deadly weapon or~~
- 18 ~~assault by means of force likely to produce great bodily~~
- 19 ~~injury, arson, or a forcible sex act.~~
- 20 ~~(14) Intentional destruction of state property in excess~~
- 21 ~~of four hundred dollars (\$400) during a riot or~~
- 22 ~~disturbance.~~
- 23 ~~(e) This section does not apply if the administrative~~
- 24 ~~finding of the misconduct is overturned or if the person~~
- 25 ~~is criminally prosecuted for the misconduct and is found~~
- 26 ~~not guilty.~~

