



The Public Safety and Rehabilitation Act of 2016
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PROPOSITION 57

- "The Public Safety and Rehabilitation Act of 2016."
- Passed by 64.5% of total votes in November 2016.
- Added Section 32 to Article I of the California Constitution.
- Amended Welfare & Institutions Code sections 602 & 707.
- Effective Nov 9, 2016.

PURPOSE & INTENT

- Protect and enhance public safety.
- Save money by reducing wasteful spending on prisons.
- Prevent federal courts from indiscriminately releasing prisoners.
- Stop the revolving door of crime by emphasizing rehabilitation, especially for juveniles.
- Require a judge, not a prosecutor, to decide whether juveniles should be tried in adult court.

CALIFORNIA CONSTITUTION ART. 1, SEC. 32.

- (a) The following provisions are hereby enacted to enhance public safety, improve rehabilitation, and avoid the release of prisoners by federal court order, notwithstanding anything in this article or any other provisions of law:
- (1) **Parole consideration:** Any person convicted of a non-violent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.
- (A) For purposes of this section only, the full term for the primary offense means the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.

CALIFORNIA CONSTITUTION ART. 1, SEC. 32.

- (2) **Credit Earning:** The Department of Corrections and Rehabilitation shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements.
- (b) The Department of Corrections and Rehabilitation shall adopt regulations in furtherance of these provisions, and the Secretary of the Department of Corrections and Rehabilitations shall certify that these regulations protect and enhance public safety.

WHO IS ELIGIBLE FOR PAROLE CONSIDERATION UNDER PROP 57?

- Anyone serving time in state prison for a non-violent felony offense.
- Anyone serving time for a "serious felony" (PC 1192.7 (c)) that is not also a "violent felony" (PC 667.5 (c)) is eligible.
- PC 290 registrants are not *excluded* and therefore are eligible for parole consideration.
- Third-strike offenders serving time for non-violent felony offense are not *excluded* and therefore are eligible.

WHAT IS A "NON-VIOLENT FELONY OFFENSE" UNDER PROP 57?

- "Non-violent felony offense" is not defined in Prop 57.
- Principles of statutory interpretation suggest that, within the meaning of this ballot initiative, a "non-violent felony offense" is an offense that is *not enumerated as a violent felony* in Penal Code section 667.5, subdivision (c).
- The Rebuttal to Argument Against Prop 57 in the official ballot pamphlet states, "Violent criminals as defined in Penal Code 667.5(c) are excluded from parole."

PC § 667.5 (C) OFFENSES INCLUDE:

- Murder, attempted murder, voluntary manslaughter, mayhem
- Many forms of rape, sodomy, oral copulation, lewd act, sexual penetration
- Assault (PC 220), child sexual assaults
- Extortion & witness/victim intimidation related to gangs
- Robbery, some forms of arson, kidnapping, carjacking
- Any felony where GBI is inflicted or where a firearm is used or violation of PC 12022.53
- Any felony punishable by death or life imprisonment
- Residential burglary with person present
- Using exploding device, or using weapons of mass destruction

FELONIES THAT ARE ELIGIBLE FOR PAROLE CONSIDERATION:

- Human trafficking, elder abuse, pimping, pandering, child abuse, hate crimes, animal cruelty, sale of controlled substance.
- Serious felonies (PC 1192.7 (c)) that are not also PC 667.5 (c) felonies, including:
 - ADW by inmate, arson w/o GBI or of non-residence, residential burglary w/o person present, exploding destructive device
 - Holding hostage in state prison, felony with dangerous/deadly weapon (non-firearm), selling certain narcotics to minors, grand theft of firearm.
 - Some felonies w/ gang allegations, assault w/ caustic chemicals.
 - ADW on peace officer or firefighter, public transit employee, custodial officer or school employee, w/o firearm.
 - Shooting at car or house, intimidation of witness or victim (non gang).
 - Rape when victim incapable of consenting, intoxicated, or unconscious, or rape under color of authority.
 - Criminal threats, attempts to commit serious felony

HOW PAROLE ELIGIBILITY IS DETERMINED OUTSIDE OF PROP 57?

- Inmates with an indeterminate sentence must serve the minimum term and then the state Board of Parole Hearings (BPH) conducts a parole consideration hearing to determine whether the inmate is ready to be released.
- Inmate with a determinate sentence do not need to have a parole consideration hearing to be released from prison at the end of their sentence.
- In response to a Federal Court's November 14, 2014 Order, CDCR implemented the "Second-Strike Parole" process which offers second-strike offenders who commit non-violent offenses the opportunity to be eligible for parole hearing after serving 50% of their actual sentence. Sex-registrant offenders are not eligible.

WHEN IS AN INMATE ELIGIBLE FOR PAROLE CONSIDERATION UNDER PROP 57?

- After serving the full term for his/her primary offense.
- Primary offense = the longest term of imprisonment imposed by the court for any offense, **excluding** the imposition of an enhancement, consecutive sentence, or alternative sentence.
- Enhancements = "an additional term of imprisonment added to the base term" (See Cal. Rules of Court, Rule 4.405(3).)
- Common enhancements include:
 - Committing a felony to benefit a criminal street gang (PC § 186.22)
 - Use of a deadly weapon (e.g., a knife) (PC § 12022(b))
 - Taking of a large sum of money or property (PC § 12022.6)
 - Having previously served a term in state prison (PC § 667.5(b))
 - Having prior serious or violent felony convictions (PC § 667(a) and 1170.12)
- Consecutive sentence = sentences imposed for subordinate counts (different crimes or different victims).
- Alternative sentence = an alternate method to calculate either the determinate term or minimum term for an indeterminate sentence, such as California's Three Strikes law (People v. Superior Court (Romero) (1996) 13 Cal.4th 497, 527).

WHEN IS AN INMATE ELIGIBLE?

- D commits 4 residential burglaries (PC 459 – 1st) – person not present – and has a previous conviction for residential burglary.
- When is D eligible for parole consideration?
- Sentencing range is 2-4-6 state prison.
- Maximum sentence:
 - Count 1: 6 yrs x 2 = 12 yrs
 - Counts 2-4: (1.4 yrs x 3) x 2 = 8 yrs
 - Prior 667 (a) 5 = 5 yrs
 - Max. exposure = 25 yrs

ANSWER:

- If D gets low term on count 1: D is eligible after serving 2 years
- If D gets mid term on count 1: D is eligible after serving 4 years
- If D gets high term on count 1: D is eligible after serving 6 years!
- Under Prop 57,
 - Enhancements do not have to be served (second-striker & prison prior)
 - Subordinate counts don't have to be served (counts 2-4)

WHEN IS AN INMATE ELIGIBLE?

- D commits witness intimidation for money using a knife (PC 136.1 (c)(4) + 12022 (b)(1). D has no prior strikes.
- Sentencing range: 2-3-4 plus 1 for knife.
- When is D eligible for parole?

ANSWER:

- D is eligible after 2 or 3 or 4 years.
- Under Prop 57, Deft does not have to serve time for enhancements (knife) to be eligible.

JUDGE SAYS THE CASE IS WORTH 4 YEARS IN STATE PRISON AND YOU WANT TO DELAY PAROLE ELIGIBILITY.

- What is your sentencing recommendation?
- Sentencing range: 2-3-4 plus 1 for knife.

ANSWER:

- Recommend high term (4 years) (if appropriate) and stay the knife charge.

HOW CREDITS CAN BE EARNED UNDER PROP 57?

- The CDCR will have authority to award credits earned for good behavior and approved rehabilitative or educational achievements.
- According to the State Legislative Analyst, under Prop 57, the CDCR could award increased credits to those currently eligible for them and credits to those currently ineligible.
- As a result, CDCR could increase the amount of credits inmates can earn, which would reduce the amount of time served in prison; do not assume that the statutory limitations on the amount of credit will necessarily be respected by the CDCR.

STATUTORY CREDIT LIMITATIONS

- Compare with PC §§ 2933 (one-day-for-one-day credit), 2933.1 (no more than 15% if convicted of PC § 667.5 (c) (violent felony) offense), 2933.2 (no credit on murder conviction), 2933.3 (two days of credit for each day inmate is assigned to conservation camp), 2933.5 (no credit for certain offenses if deft has certain prison priors).
- Credits under § 2933 should be "awarded pursuant to regulations adopted by the secretary." (PC § 2933 (b).)
- Compare with PC § 2933.05: *in addition to credits awarded under §2933*, CDCR can award credit reductions for completion of specific program performance for approved rehabilitative programming.

HOW MUCH CREDIT CAN AN INMATE EARN?

- CDCR already has the right to administer statutory credit provisions and authority to adopt regulations.
- Prop 57 gives CDCR constitutional authority to award credits.
- It is still unclear whether, by putting the right of CDCR to make regulations regarding credits in the California Constitution, this empowers CDCR to award credits in excess of the limits imposed by statute.

WHO MAKES THE RULES AND REGULATIONS CONCERNING CREDITS?

- The CDCR.
- Compare with: legislators through the legislative process, § 2933 et seq.

WHO OVERSEES THE RULES?

- The Secretary of the CDCR.
- Secretary has to certify that the regulations protect and enhance public safety.

PRACTICE TIPS

- When making a sentencing recommendation, show the Parole Board the full picture of why Defendant is in state prison.
- Ensure that PC § 290 registration is ordered in an appropriate case.
- Victims must be proactive.
- Advise victims that even after Prop 57, under Marsy's Law, (Cal. Const., art. I § 28(b)(7)) they are still entitled to notice of any hearing to review or consider parole suitability 90 days before the hearing. Victims have a right to be present and heard at the hearings.

PRACTICE TIPS (CONTINUED)

- Have the court order restitution before Deft goes to state prison and complete the Restitution Orders.
- When reviewing a case for filing and the suspect is on parole, PRCS or mandatory supervision, consider sending the case to LADA's Parole Revocation Section for filing a parole violation and a new case.
- We continue to do our best to protect our victims.

**THANK YOU FOR YOUR
THOUGHTFUL ASSISTANCE!**

- LADA Appellate Division
- LADA Prop 57 Working Group
- California District Attorneys Association
- Santa Clara District Attorney's Office

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