



ASSOCIATION OF DEPUTY DISTRICT ATTORNEYS PROPOSITION 57 FACT SHEET

There are three main PSRA provisions – two relating to adults and one to juveniles:

- Adults:
 1. Parole Eligibility Changes
 2. Credit Awards Changes
- Juveniles
 3. Direct Filing Eliminated

Direct Results:

- Offenders who commit multiple crimes against multiple victims will be eligible for release at the same time as offenders who commit a single crime against a single victim.
- Repeat offenders will be eligible for release after the same period of incarceration as first time offenders.
- Offenders whose sentence was enhanced for especially egregious conduct will be eligible for release at the same time as those who did not engage in the egregious conduct.
- CDCR will have unlimited authority to award credits to *all* inmates, in excess of the current 15%, 20% and 50% conduct credit limitations.
- Juvenile offenders who commit violent crimes like murder, rape and carjacking cannot be filed on as adults. They must be filed on in juvenile court and can only be found unfit by a judge.



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The language relating to adult sentencing:

Section 32 is added to Article I of the California Constitution to read:

(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 provision 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.

(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 Rehabilitation shall certify that these regulations protect and enhance public safety.



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The language parsed out:

Language of Prop. 57.	Analysis
<p>(a) The following provisions are hereby enacted to</p> <ul style="list-style-type: none"> • enhance public safety, • improve rehabilitation, and • avoid the release of prisoners by federal court order, <p>notwithstanding anything in this article or any other provision of law:</p>	<p>How is public safety enhanced by the early release of felons?</p>
<p>(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.</p>	<p>What qualifies as a “non-violent” felony is not defined in the initiative, nor does any existing code section define or list what crimes qualify as “non-violent.”</p> <p>The only existing definition of what constitutes a “violent” felony is contained within P.C. 667.5. That section states that sentences for the crimes on that list are only eligible for 15% good behavior credits, rather than the usual 50%.</p> <p>See list on page 6 of “violent” felonies, and a list of crimes that are not defined as “violent.”</p> <p>It would have been simple enough to list the crimes that this provision was intended to apply to or exempt. Many existing code sections, such as Penal Code Section 12022.53, do just that to avoid confusion and ambiguity.</p> <p>“Shall” is mandatory language, not discretionary.</p> <p>What is the “primary offense?” see (A), on the next page.</p>



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(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.

“Primary offense” is defined as “the longest term of imprisonment imposed by the court for any offense.” In other words, the single charge with the longest sentence.

And, the “full term” means the longest sentence for that crime *without* the addition of:

- Enhancements;
- Consecutive sentences; or
- Alternative sentences.

Examples of sentence enhancements:

- Weapons use (+1)
- Prior prison term (+1 to +5)
- Gang allegation (+2 to +10)
- Excessive loss (+1 to +4)
- Drug quantity (+3 to +25)
- Elderly or vulnerable victim (+1 to +5)
- Sex crime with AIDS (+3)
- Hate crime (+2 to +4)

Examples of circumstances that result in consecutive sentences:

- All charges for additional crimes;
- Crimes committed on separate occasions;
- Crimes committed against additional victims.

Examples of “alternative” sentences: (where a fact, if proved, doesn’t add more time, but rather, changes the sentence for the underlying crime – usually to a life sentence.)

- Three Strikes (25-Life)
- Gang enhancement (7-Life to 15-Life)
- Habitual sexual offenders (25-Life)

* *Why is there a subsection “A” but no subsection “B”?*



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<p>(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.</p>	<p>Subsection (1) is limited to “non-violent” felonies.</p> <p>Subsection (2) – which is a separate subsection – contains no such limiting language and therefore applies to <i>all</i> felonies.</p> <p>“Approved rehabilitative achievements” is not defined. It can be anything CDCR wants it to be. It can be participation in physical education.</p> <p>Current Penal Code sections limit the amount of credits CDCR can award to 50% for ordinary felonies, 20% for second strikers with a current serious offense, and 15% for violent felonies.</p> <p>This subsection – which is a Constitutional amendment that will trump the current Penal Code sections – gives CDCR authority to award credits for all felonies up to and including murder, <i>without limitation</i>.</p>
<p>(b) The Department of Corrections and Rehabilitation shall adopt regulations in furtherance of these provisions, and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety.</p>	<p>Enabling language.</p>



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“Violent” felonies per P.C. 667.5	Not “Violent” felonies
<ul style="list-style-type: none"> ▪ Murder ▪ Attempt Murder ▪ Voluntary Manslaughter ▪ Mayhem ▪ Forcible sex offenses ▪ Rape in concert ▪ Robbery ▪ Arson ▪ Kidnapping ▪ Carjacking ▪ Certain gang offenses ▪ First degree burglary where victim is present ▪ Any felony punishable by death or life in prison ▪ Any felony where D inflicts GBI ▪ Any felony in which a gun is “used” 	<ul style="list-style-type: none"> ▪ ADW - deadly weapon & force likely [245(a)(1) and 245(a)(4)] ▪ Battery with Serious Bodily Injury [243(d)] ▪ Solicitation to Commit Murder [653f(b)] ▪ Domestic violence [273.5] ▪ Inflicting corporal injury on a child [PC 273d] ▪ First degree burglary [PC 459] ▪ Rape/sodomy/oral copulation of unconscious person or by use of date rape drugs. [261(a)(3) & (4), 286(f), 288a(f)] ▪ Human trafficking involving a minor [PC236.1(c)] ▪ Hate crimes [PC 422.7] ▪ Arson of forest land [PC 451(c)] causing physical injury ▪ Assault w/ deadly weapon on Peace officer [245(c)] ▪ Active participation in a street gang [186.22] ▪ Exploding destructive device w/ intent to cause injury [18740]



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Section 32(a)(1) Sentencing Example 1

A defendant is convicted of three counts of burglary with one prior strike conviction and a prison prior per P.C. 667(a).

Maximum sentence today:

1. 459 2-4-6	6 yrs.	x	2	=	12 yrs.
2. 459 2-4-6	16 mos.	x	2	=	32 mos.
3. 459 2-4-6	16 mos.	x	2	=	32 mos.
Prison Prior 667(a)	+5				<u>5 yrs.</u>
TOTAL SENTENCE:					22 yrs. 4 mos.

Eligible for parole after approx. 17.86 years. [20% credits on serious felony w/ 1 strike.]

Under Proposition 57:

1. 459 2-4-6	6 yrs.	x	2	=	12 yrs.
2. 459 2-4-6	16 mos.	x	2	=	32 mos.
3. 459 2-4-6	16 mos.	x	2	=	32 mos.
Prison Prior 667(a)	+5				<u>5 yrs.</u>
TOTAL SENTENCE:					22 yrs. 4 mos.

Consecutive sentences for additional burglaries are disregarded.

Alternative sentences (strikes) are disregarded.

Enhancements for prior prison commitments are disregarded.

Eligible for parole after 6 years.



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Section 32(a)(1) Sentencing Example 2

A defendant is convicted of assault with a knife, a gang allegation, a prison prior and a strike prior.

Maximum sentence today:

1. 245(a)(1) 2-3-4	4	x	2	=	8 yrs.
Gang enhancement	+5				5 yrs.
Prison Prior	+5				<u>5 yrs.</u>
TOTAL SENTENCE:					18 yrs.

Eligible for parole after **15 years 4 months.** [15% credit on violent felony.]

Under Proposition 57:

1. 245(a)(1) 2-3-4	4	x	2	=	8 yrs.
Gang enhancement	+5				5 yrs.
Prison Prior	+5				5 yrs.
TOTAL SENTENCE:					18 yrs.

Alternative sentences (strikes) are disregarded.

Enhancements for prior prison commitments are disregarded.

Eligible for parole after **4 years.**



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Section 32(a)(1) Sentencing Example 3

Defendant is convicted of rape by intoxicating substance PC 261(a)(3) and has a prior PC 261(a)(2) rape by force strike conviction and a prior residential burglary strike conviction.

Maximum sentence today:

1. 261(a)(3) 3-6-8	25-Life
Prior 261(a)(2) rape by force	Alt. S.S.
Prior 459 strike	<u>Alt. S.S.</u>
TOTAL SENTENCE:	25-Life

Eligible for parole after 25 years. [0% credit on life sentence.]

Under Proposition 57:

1. 261(a)(3) 3-6-8	25-Life
Prior 261(a)(2) rape by force	Alt. S.S.
Prior 459 strike	Alt. S.S.
TOTAL SENTENCE:	25-Life

Eligible for parole after 8 years.



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Section 32(a)(2) **Sentencing Examples?**

There is no prison term that does not fall under 32(a)(2). It would apply to all felonies including violent felonies and life sentences and would permit CDCR to award credits without limitation.

Because the provision would be made a part of the State Constitution, it would override existing Penal Code Sections limiting conduct credits to 50% for ordinary felonies, 15% for violent felonies and 0% for life sentences.



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Conflicts with other laws:

A well-drafted law acknowledges and resolves conflicts with pre-existing provisions. Proposition 57 makes no effort to do so, in fact, it directly contradicts the stated purpose of many other laws enacted by legislation and by the initiative process.

Examples of existing laws that will be nullified due to the conflicting provisions:

- Penal Code Sections limiting conduct credits to 50% for ordinary felonies, 20% for second strikes and 15% for violent felonies.
- Proposition 184 - Three Strikes law.
- Proposition 35 – Human Trafficking.
- Street Terrorism Enforcement & Prevention Act (Penal Code Section 186.20 et seq.).
- Proposition 8 – The Victims’ Bill of Rights & Proposition 9 - Marsy’s Law (Cal. Const. Art. I Section 28) including the following victims’ rights.

(b)(8) To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue.

(b)(16) To have the safety of the victim, the victim’s family, and the general public considered before any parole or other post-judgment release decision is made.

(f)(4) Use of Prior Convictions. Any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, shall subsequently be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding....

(f)(5) Truth in Sentencing. Sentences that are individually imposed upon convicted criminal wrongdoers based upon the facts and circumstances surrounding their cases shall be carried out in compliance with the trial courts’ sentencing orders, and shall not be substantially diminished by early release policies intended to alleviate overcrowding in custodial facilities. The legislative branch shall insure sufficient funding to adequately house inmates for the full terms of their sentences, except for statutorily authorized credits which reduce those sentences.