Senate Committee on Public Safety
Hon. Nancy Skinner, Chair

Assembly Committee on Public Safety
Hon. Reginald Byron Jones-Sawyer, Sr., Chair

Joint Informational Hearing

Proposition 57:
Status of CDCR Regulations

Tuesday, August 22, 2017
1:30 p.m.
State Capitol, John L. Burton Hearing Room (4203)
Sacramento, CA 95814

Language of Proposition 57

Prevention Tobacco Tax Act of 2016 Fund created by the California Healthcare, Research and Prevention Tobacco Tax Act of 2016. No adjustment in the appropriations limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 Fund.

SEC. 7. Severability.

If the provisions of this act, or part thereof, are for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect and to this end the provisions of this act are severable.

SEC. 8. Conflicting Measures.

(a) It is the intent of the people that in the event that this measure and another measure relating to the taxation of tobacco shall appear on the same statewide election ballot, the provisions of the other measure or measures shall not be deemed to be in conflict with this measure, and if approved by the voters, this measure shall take effect notwithstanding approval by the voters of another measure relating to the taxation of tobacco by a greater number of affirmative votes.

(b) If this measure is approved by the voters but superseded by law by any other conflicting ballot measure approved by the voters at the same election, and the conflicting measure is later held invalid, this measure shall be self-executing and given the full force of law.

SEC. 9. Amendments.

(a) Except as hereafter provided, this act may only be amended by the electors as provided in subdivision (c) of Section 10 of Article II of the California Constitution.

(b) The Legislature may amend subdivisions (a) and (c) of Section 30130.55 and Section 30130.57 of the Revenue and Taxation Code to further the purposes of the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 by a statute passed in each house by roll-call vote entered in the journal, two-thirds of the membership concurring.

(c) The Legislature may amend subdivision (b) of Section 30130.55 of the Revenue and Taxation Code to further the purposes of the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 by a statute passed in each house by roll-call vote entered in the journal, four-fifths of the membership concurring.

SEC. 10. Effective Date.

This act shall become effective as provided in subdivision (a) of Section 10 of Article II of the California Constitution; provided, however, the amendment to Section 30121 of the Revenue and Taxation Code shall become effective April 1, 2017.

PROPOSITION 57

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds a section to the California Constitution and amends sections of the Welfare and Institutions Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

The Public Safety and Rehabilitation Act of 2016

SECTION 1. Title.

This measure shall be known and may be cited as "The Public Safety and Rehabilitation Act of 2016."

SEC. 2. Purpose and Intent.

In enacting this act, it is the purpose and intent of the people of the State of California to:

1. Protect and enhance public safety.

2. Save money by reducing wasteful spending on prisons.

3. Prevent federal courts from indiscriminately releasing prisoners.

4. Stop the revolving door of crime by emphasizing rehabilitation, especially for juveniles.

5. Require a judge, not a prosecutor, to decide whether juveniles should be tried in adult court.

SEC. 3. Section 32 is added to Article I of the California Constitution, to read:

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 provision of law:

(1) Parole Consideration: Any person convicted of a nonviolent 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.

SEC. 4. Judicial Transfer Process.

SEC. 4.1. Section 602 of the Welfare and Institutions Code is amended to read:

602. ~~(a)~~ Except as provided in ~~subdivision (b)~~ *Section 707*, any person who is under 18 years of age when he or she violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

~~(b) Any person who is alleged, when he or she was 14 years of age or older, to have committed one of the following offenses shall be prosecuted under the general law in a court of criminal jurisdiction.~~

~~(1) Murder, as described in Section 187 of the Penal Code, if one of the circumstances enumerated in subdivision (a) of Section 190.2 of the Penal Code is~~

~~alleged by the prosecutor, and the prosecutor alleges that the minor personally killed the victim.~~

~~(2) The following sex offenses, if the prosecutor alleges that the minor personally committed the offense, and if the prosecutor alleges one of the circumstances enumerated in the One Strike law, subdivision (d) or (e) of Section 667.61 of the Penal Code, applies:~~

~~(A) Rape, as described in paragraph (2) of subdivision (a) of Section 261 of the Penal Code.~~

~~(B) Spousal rape, as described in paragraph (1) of subdivision (a) of Section 262 of the Penal Code.~~

~~(C) Forcible sex offenses in concert with another, as described in Section 264.1 of the Penal Code.~~

~~(D) Forcible lewd and lascivious acts on a child under 14 years of age, as described in subdivision (b) of Section 288 of the Penal Code.~~

~~(E) Forcible sexual penetration, as described in subdivision (a) of Section 289 of the Penal Code.~~

~~(F) Sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code, by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.~~

~~(G) Lewd and lascivious acts on a child under 14 years of age, as defined in subdivision (a) of Section 288, unless the defendant qualifies for probation under subdivision (d) of Section 1203.066 of the Penal Code.~~

SEC. 4.2. Section 707 of the Welfare and Institutions Code is amended to read:

707. (a) (1) In any case in which a minor is alleged to be a person described in ~~subdivision (a) of~~ Section 602 by reason of the violation, when he or she was 16 years of age or older, of any *felony* criminal statute, ~~or ordinance except those listed in subdivision (b),~~ *or of an offense listed in subdivision (b) when he or she was 14 or 15 years of age, the district attorney or other appropriate prosecuting officer may make a motion to transfer the minor from juvenile court to a court of criminal jurisdiction.* ~~upon~~ *The* motion ~~of the petitioner~~ *must be* made prior to the attachment of jeopardy. *Upon such motion,* the *juvenile* court shall ~~cause~~ *order* the probation officer to ~~investigate and~~ submit a report on the behavioral patterns and social history of the minor. ~~being considered for a determination of unfitness.~~ *The report shall include any written or oral statement offered by the victim pursuant to Section 656.2.*

(2) Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the juvenile court *shall decide whether the minor should be transferred to a court of criminal jurisdiction. In making its decision, the court shall consider the criteria specified in subparagraphs (A) to (E). If the court orders a transfer of jurisdiction, the court shall recite the basis for its decision in an order entered upon the minutes. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the transfer hearing, and no plea that may have been entered already shall constitute evidence at the hearing.* ~~may find that the minor is not a fit and proper subject to be dealt with under the juvenile court law if it concludes that the minor would not be amenable to the care, treatment, and training program available through the facilities of the juvenile court, based upon an evaluation of the criteria specified in clause (i) of subparagraphs (A) to (E), inclusive.~~

(A) (i) The degree of criminal sophistication exhibited by the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.

(B) (i) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.

(C) (i) The minor's previous delinquent history.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.

(D) (i) Success of previous attempts by the juvenile court to rehabilitate the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.

(E) (i) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.

(ii) When evaluating the criterion specified in clause (i), the juvenile court may give weight to any relevant factor, including but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.

~~A determination that the minor is not a fit and proper subject to be dealt with under the juvenile court law may be based on any one or a combination of the factors set forth in clause (i) of subparagraphs (A) to (E), inclusive, which shall be recited in the order of unfitness. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing, and no plea that may have been entered already shall constitute evidence at the hearing.~~

~~(2) (A) This paragraph shall apply to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she has attained 16 years of age, of any felony offense when the minor has been declared to be a ward of the court pursuant to Section 602 on one or more prior occasions if both of the following apply:~~

~~(i) The minor has previously been found to have committed two or more felony offenses.~~

~~(ii) The offenses upon which the prior petition or petitions were based were committed when the minor had attained 14 years of age.~~

~~(B) Upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of the criteria specified in subclause (I) of clauses (i) to (v), inclusive.~~

~~(i) (I) The degree of criminal sophistication exhibited by the minor.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.~~

~~(ii) (I) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.~~

~~(iii) (I) The minor's previous delinquent history.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.~~

~~(iv) (I) Success of previous attempts by the juvenile court to rehabilitate the minor.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.~~

~~(v) (I) The circumstances and gravity of the offense alleged in the petition to have been committed by the minor.~~

~~(II) When evaluating the criterion specified in subclause (I), the juvenile court may give weight to any relevant factor, including, but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.~~

~~A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth in subclause (I) of clauses (i) to (v), inclusive, and findings therefore recited in the order as to each of those criteria that the minor is fit and proper under each and every one of those criteria. In making a finding of fitness, the court may consider extenuating and mitigating circumstances in evaluating each of those criteria. In any case in which the hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea that may have been entered already shall constitute evidence at the hearing. If the minor is found to be a fit and proper subject to be dealt with under the juvenile court law pursuant to this subdivision, the minor shall be committed to placement in a juvenile hall, ranch camp, forestry camp, boot camp, or secure juvenile home pursuant to Section 730, or in any institution operated by the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.~~

~~(3) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.~~

(b) Subdivision ~~(c)~~ *(a)* shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation of one of the following offenses *when he or she was 14 or 15 years of age*:

(1) Murder.

(2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.

(3) Robbery.

(4) Rape with force, violence, or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) A lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) An offense specified in subdivision (a) of Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purposes of robbery.

(11) Kidnapping with bodily harm.

(12) Attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

(16) An offense described in Section 1203.09 of the Penal Code.

(17) An offense described in Section 12022.5 or 12022.53 of the Penal Code.

(18) A felony offense in which the minor personally used a weapon described in any provision listed in Section 16590 of the Penal Code.

(19) A felony offense described in Section 136.1 or 137 of the Penal Code.

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(20) Manufacturing, compounding, or selling one-half ounce or more of a salt or solution of a controlled substance specified in subdivision (e) of Section 11055 of the Health and Safety Code.

(21) A violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, which also would constitute a felony violation of subdivision (b) of Section 186.22 of the Penal Code.

(22) Escape, by the use of force or violence, from a county juvenile hall, home, ranch, camp, or forestry camp in violation of subdivision (b) of Section 871 if great bodily injury is intentionally inflicted upon an employee of the juvenile facility during the commission of the escape.

(23) Torture as described in Sections 206 and 206.1 of the Penal Code.

(24) Aggravated mayhem, as described in Section 205 of the Penal Code.

(25) Carjacking, as described in Section 215 of the Penal Code, while armed with a dangerous or deadly weapon.

(26) Kidnapping for purposes of sexual assault, as punishable in subdivision (b) of Section 209 of the Penal Code.

(27) Kidnapping as punishable in Section 209.5 of the Penal Code.

(28) The offense described in subdivision (c) of Section 26100 of the Penal Code.

(29) The offense described in Section 18745 of the Penal Code.

(30) Voluntary manslaughter, as described in subdivision (a) of Section 192 of the Penal Code.

~~(c) With regard to a minor alleged to be a person described in Section 602 by reason of the violation, when he or she was 14 years of age or older, of any of the offenses listed in subdivision (b), upon motion of the petitioner made prior to the attachment of jeopardy the court shall cause the probation officer to investigate and submit a report on the behavioral patterns and social history of the minor being considered for a determination of unfitness. Following submission and consideration of the report, and of any other relevant evidence that the petitioner or the minor may wish to submit, the minor shall be presumed to be not a fit and proper subject to be dealt with under the juvenile court law unless the juvenile court concludes, based upon evidence, which evidence may be of extenuating or mitigating circumstances, that the minor would be amenable to the care, treatment, and training program available through the facilities of the juvenile court based upon an evaluation of each of the criteria specified in subparagraph (A) of paragraphs (1) to (5), inclusive.~~

~~(1) (A) The degree of criminal sophistication exhibited by the minor.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's age, maturity, intellectual capacity, and physical, mental, and emotional health at the time of the alleged offense, the minor's impetuosity or failure to appreciate risks and consequences of criminal behavior, the effect of familial, adult, or peer pressure on the minor's actions, and the effect of the minor's family and community environment and childhood trauma on the minor's criminal sophistication.~~

~~(2) (A) Whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the minor's potential to grow and mature.~~

~~(3) (A) The minor's previous delinquent history.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the seriousness of the minor's previous delinquent history and the effect of the minor's family and community environment and childhood trauma on the minor's previous delinquent behavior.~~

~~(4) (A) Success of previous attempts by the juvenile court to rehabilitate the minor.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the adequacy of the services previously provided to address the minor's needs.~~

~~(5) (A) The circumstances and gravity of the offenses alleged in the petition to have been committed by the minor.~~

~~(B) When evaluating the criterion specified in subparagraph (A), the juvenile court may give weight to any relevant factor, including, but not limited to, the actual behavior of the person, the mental state of the person, the person's degree of involvement in the crime, the level of harm actually caused by the person, and the person's mental and emotional development.~~

~~A determination that the minor is a fit and proper subject to be dealt with under the juvenile court law shall be based on a finding of amenability after consideration of the criteria set forth in subparagraph (A) of paragraphs (1) to (5), inclusive, and findings therefore recited in the order as to each of those criteria that the minor is fit and proper under each and every one of those criteria. In making a finding of fitness, the court may consider extenuating or mitigating circumstances in evaluating each of those criteria. In any case in which a hearing has been noticed pursuant to this section, the court shall postpone the taking of a plea to the petition until the conclusion of the fitness hearing and no plea which may have been entered already shall constitute evidence at the hearing. If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.~~

~~(d) (1) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading in a court of criminal jurisdiction against any minor 16 years of age or older who is accused of committing an offense enumerated in subdivision (b).~~

~~(2) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading against a minor 14 years of age or older in a court of criminal jurisdiction in any case in which any one or more of the following circumstances apply:~~

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~~(A) The minor is alleged to have committed an offense that if committed by an adult would be punishable by death or imprisonment in the state prison for life.~~

~~(B) The minor is alleged to have personally used a firearm during the commission or attempted commission of a felony, as described in Section 12022.5 or 12022.53 of the Penal Code.~~

~~(C) The minor is alleged to have committed an offense listed in subdivision (b) in which any one or more of the following circumstances apply.~~

~~(i) The minor has previously been found to be a person described in Section 602 by reason of the commission of an offense listed in subdivision (b).~~

~~(ii) The offense was committed for the benefit of, at the direction of, or in association with any criminal street gang, as defined in subdivision (f) of Section 186.22 of the Penal Code, with the specific intent to promote, further, or assist in criminal conduct by gang members.~~

~~(iii) The offense was committed for the purpose of intimidating or interfering with any other person's free exercise or enjoyment of a right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the minor perceives that the other person has one or more of those characteristics, as described in Title 11.6 (commencing with Section 422.55) of Part 1 of the Penal Code.~~

~~(iv) The victim of the offense was 65 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that disability was known or reasonably should have been known to the minor at the time of the commission of the offense.~~

~~(3) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading in a court of criminal jurisdiction against any minor 16 years of age or older who is accused of committing one or more of the following offenses, if the minor has previously been found to be a person described in Section 602 by reason of the violation of a felony offense, when he or she was 14 years of age or older.~~

~~(A) A felony offense in which it is alleged that the victim of the offense was 65 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that disability was known or reasonably should have been known to the minor at the time of the commission of the offense.~~

~~(B) A felony offense committed for the purposes of intimidating or interfering with any other person's free exercise or enjoyment of a right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the minor perceived that the other person had one or more of those characteristics, as described in Title 11.6 (commencing with Section 422.55) of Part 1 of the Penal Code.~~

~~(C) The offense was committed for the benefit of, at the direction of, or in association with any criminal street gang as prohibited by Section 186.22 of the Penal Code.~~

~~(4) In any case in which the district attorney or other appropriate prosecuting officer has filed an accusatory pleading against a minor in a court of criminal jurisdiction pursuant to this subdivision, the case shall then proceed according to the laws applicable to a criminal case. In conjunction with the preliminary hearing as provided in Section 738 of the Penal Code, the magistrate shall make a finding that reasonable cause exists to believe that the minor comes within this subdivision. If reasonable cause is not established, the criminal court shall transfer the case to the juvenile court having jurisdiction over the matter.~~

~~(5) For an offense for which the prosecutor may file the accusatory pleading in a court of criminal jurisdiction pursuant to this subdivision, but elects instead to file a petition in the juvenile court, if the minor is subsequently found to be a person described in subdivision (a) of Section 602, the minor shall be committed to placement in a juvenile hall, ranch camp, forestry camp, boot camp, or secure juvenile home pursuant to Section 730, or in any institution operated by the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.~~

~~(6) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.~~

~~(e) A report submitted by a probation officer pursuant to this section regarding the behavioral patterns and social history of the minor being considered for a determination of unfitness shall include any written or oral statement offered by the victim, the victim's parent or guardian if the victim is a minor, or if the victim has died, the victim's next of kin, as authorized by subdivision (b) of Section 656.2. Victims' statements shall be considered by the court to the extent they are relevant to the court's determination of unfitness.~~

SEC. 5. Amendment.

This act shall be broadly construed to accomplish its purposes. The provisions of Sections 4.1 and 4.2 of this act may be amended so long as such amendments are consistent with and further the intent of this act by a statute that is passed by a majority vote of the members of each house of the Legislature and signed by the Governor.

SEC. 6. Severability.

If any provision of this act, or part of this act, or the application of any provision or part to any person or circumstances, is for any reason held to be invalid, the remaining provisions, or applications of provisions, shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

SEC. 7. Conflicting Initiatives.

(a) In the event that this act and another act addressing credits and parole eligibility for state prisoners or adult court prosecution for juvenile defendants shall appear on the same statewide ballot, the provisions of the other act or acts shall be deemed to be in conflict with this act. In the event that this act receives a greater number of affirmative votes than an act deemed to be in conflict with it, the provisions of this act shall prevail in their entirety, and the other act or acts shall be null and void.

(b) If this act is approved by voters but superseded by law by any other conflicting act approved by voters at the same election, and the conflicting ballot act is later held invalid, this act shall be self-executing and given full force and effect.

SEC. 8. Proponent Standing.

Notwithstanding any other provision of law, if the State, government agency, or any of its officials fail to defend the constitutionality of this act, following its approval by the voters, any other government employer, the proponent, or in their absence, any citizen of this State shall have the authority to intervene in any court action challenging the constitutionality of this act for the purpose of defending its constitutionality, whether such action is in any trial court, on appeal, or on discretionary review by the Supreme Court of California or the Supreme Court of the United States. The reasonable fees and costs of defending the action shall be a charge on funds appropriated to the Department of Justice, which shall be satisfied promptly.

SEC. 9. Liberal Construction.

This act shall be liberally construed to effectuate its purposes.

PROPOSITION 58

This law proposed by Senate Bill 1174 of the 2013–2014 Regular Session (Chapter 753, Statutes of 2014) is submitted to the people in accordance with Section 10 of Article II of the California Constitution.

This proposed law amends and repeals sections of the Education Code; therefore, provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. This measure shall be known, and may be cited, as the "California Ed.G.E. Initiative" or "California Education for a Global Economy Initiative."

SEC. 2. Section 300 of the Education Code is amended to read:

300. The ~~People~~ *people* of California find and declare as follows:

(a) Whereas, The English language is the national public language of the United States of America and of the State of California, is spoken by the vast majority of California residents, and is also the leading world language for ~~science, technology, and international business,~~ *science and technology,* thereby being ~~the~~ *an important* language of economic opportunity; and

(b) Whereas, ~~Immigrant~~*All* parents are eager to have their children ~~acquire a good knowledge of English, thereby allowing~~ *master the English language and obtain a high-quality education, thereby preparing* them to fully participate in the American Dream of economic and social advancement; and

(c) Whereas, California is home to thousands of multinational businesses that must communicate daily with associates around the world; and

(d) Whereas, California employers across all sectors, both public and private, are actively recruiting multilingual employees because of their ability to forge stronger bonds with customers, clients, and business partners; and

(e) Whereas, Multilingual skills are necessary for our country's national security and essential to conducting diplomacy and international programs; and

(f) Whereas, California has a natural reserve of the world's largest languages, including English, Mandarin, and Spanish, which are critical to the state's economic trade and diplomatic efforts; and

(g) Whereas, California has the unique opportunity to provide all parents with the choice to have their children educated to high standards in English and one or more additional languages, including Native American languages, thereby increasing pupils' access to higher education and careers of their choice; and

~~(c)~~ *(h)* Whereas, The government and the public schools of California have a moral obligation and a constitutional duty to provide all of California's children, regardless of their ethnicity or national ~~origins,~~ *origin,* with the skills necessary to become productive members of our society, and of these skills, literacy in the English language is among the most important; and

~~(d)~~ *(i)* Whereas, The ~~public schools of California currently do a poor job of educating immigrant children, wasting financial resources on costly experimental language programs whose failure over the past two decades is demonstrated by the current high drop-out rates and low English literacy levels of many immigrant children,~~ *California Legislature approved, and the Governor signed, a historic school funding reform that restructured public education funding in a more equitable manner, directs increased resources to improve English language acquisition, and provides local control to school districts, county offices of education, and schools on how to spend funding through the local control funding formula and local control and accountability plans;* and

(j) Whereas, Parents now have the opportunity to participate in building innovative new programs that will offer pupils greater opportunities to acquire 21st century skills, such as multilingualism; and

(k) Whereas, All parents will have a choice and voice to demand the best education for their children, including access to language programs that will improve their children's preparation for college and careers, and allow them to be more competitive in a global economy; and

(l) Whereas, Existing law places constraints on teachers and schools, which have deprived many pupils of opportunities to develop multilingual skills; and

~~(e)~~ *(m)* Whereas, ~~Young immigrant children can easily acquire full fluency in a new language, such as English, if they are heavily exposed to that language in the classroom at an early age.~~ *A large body of research has demonstrated the cognitive, economic, and long-term academic benefits of multilingualism and multiliteracy.*

~~(f)~~ *(n)* Therefore, It is resolved that: *amendments to, and the repeal of, certain provisions of this chapter at the November 2016 statewide general election will advance the goal of voters to ensure that* all children in California public schools shall ~~be taught English as rapidly and effectively as possible.~~ *receive the highest quality education, master the English language, and access high-quality, innovative, and research-based language programs that provide the California Ed.G.E. (California Education for a Global Economy).*

SEC. 3. Section 305 of the Education Code is amended to read:

Voter Guide:

Arguments in Favor and Against Proposition 57

PROP 57 CRIMINAL SENTENCES. PAROLE. JUVENILE CRIMINAL PROCEEDINGS AND SENTENCING. INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

ARGUMENT IN FAVOR OF PROPOSITION 57

VOTE YES on PROPOSITION 57

California public safety leaders and victims of crime support Proposition 57—the Public Safety and Rehabilitation Act of 2016—because Prop. 57 focuses resources on keeping dangerous criminals behind bars, while rehabilitating juvenile and adult inmates and saving tens of millions of taxpayer dollars.

Over the last several decades, California's prison population exploded by 500% and prison spending ballooned to more than $10 billion every year. Meanwhile, too few inmates were rehabilitated and most re-offended after release.

Overcrowded and unconstitutional conditions led the U.S. Supreme Court to order the state to reduce its prison population. Now, without a common sense, long-term solution, we will continue to waste billions and risk a court-ordered release of dangerous prisoners. This is an unacceptable outcome that puts Californians in danger—and this is why we need Prop. 57.

Prop. 57 is straightforward—here's what it does:

• Saves taxpayer dollars by reducing wasteful spending on prisons. • Keeps the most dangerous offenders locked up. • Allows parole consideration for people with non-violent convictions who complete the full prison term for their primary offense. • Authorizes a system of credits that can be earned for rehabilitation, good behavior and education milestones or taken away for bad behavior. • Requires the Secretary of the Department of Corrections and Rehabilitation to certify that these policies are consistent with protecting and enhancing public safety. • Requires judges instead of prosecutors to decide whether minors should be prosecuted as adults, emphasizing rehabilitation for minors in the juvenile system.

We know what works. Evidence shows that the more inmates are rehabilitated, the less likely they are to re-offend. Further evidence shows that minors who remain under juvenile court supervision are less likely to commit new crimes. Prop. 57 focuses on evidence-based rehabilitation and allows a juvenile court judge to decide whether or not a minor should be prosecuted as an adult.

No one is automatically released, or entitled to release from prison, under Prop. 57.

• To be granted parole, all inmates, current and future, must demonstrate that they are rehabilitated and do not pose a danger to the public. • The Board of Parole Hearings—made up mostly of law enforcement

ARGUMENT AGAINST PROPOSITION 57

Proposition 57 will allow criminals convicted of RAPE, LEWD ACTS AGAINST A CHILD, GANG GUN CRIMES and HUMAN TRAFFICKING to be released early from prison.

That's why *Proposition 57 is OPPOSED by California Law Enforcement—District Attorneys, Sheriffs, Police, Courtroom Prosecutors, Crime Victims and local community leaders.*

Here are the facts:

The authors of Proposition 57 claim it only applies to "non-violent" crimes, but their poorly drafted measure deems the following crimes "non-violent" and makes the perpetrators eligible for EARLY PAROLE and RELEASE into local communities:

• Rape by intoxication • Rape of an unconscious person • Human Trafficking involving sex act with minors • Drive-by shooting • Assault with a deadly weapon • Hostage taking • Attempting to explode a bomb at a hospital or school • Domestic violence involving trauma • Supplying a firearm to a gang member • Hate crime causing physical injury • Failing to register as a sex offender • Arson • Discharging a firearm on school grounds • Lewd acts against a child 14 or 15 • False imprisonment of an elder through violence. *partial list

Here are five more reasons to VOTE NO on 57:

1) 57 authorizes *state government bureaucrats to reduce many sentences for "good behavior," even for inmates convicted of murder, rape, child molestation and human trafficking.* 2) 57 *permits the worst career criminals to be treated the same as first-time offenders,* discounting strong sentences imposed by a judge. 3) "57 effectively *overturns key provisions of Marsy's Law, '3-Strikes and You're Out,' Victims' Bill of Rights, Californians Against Sexual Exploitation Act*—measures enacted by voters that have protected victims and made communities *safer"—Susan Fisher, Former Chairwoman State Parole Board* 4) 57 *forces victims trying to put their lives back together to re-live the crimes committed against them over and over again,* with every new parole hearing. 5) 57 *will likely result in higher crime rates as at least 16,000 dangerous criminals, including those previously convicted of murder and rape, would be eligible for early release.*

Finally, *Prop. 57 places all these new privileges and rights for convicted criminals into the California Constitution,* where they cannot be changed by the Legislature.

officials—determines who is eligible for release. • Any individuals approved for release will be subject to mandatory supervision by law enforcement.

And as the California Supreme Court clearly stated: parole eligibility in Prop. 57 applies *"only to prisoners convicted of non-violent felonies."*

Prop. 57 is long overdue.

Prop. 57 focuses our system on evidence-based rehabilitation for juveniles and adults because it is better for public safety than our current system.

Prop. 57 saves tens of millions of taxpayer dollars.

Prop. 57 keeps the most dangerous criminals behind bars.

VOTE YES on Prop. 57

www.Vote4Prop57.com

(http://www.Vote4Prop57.com)

EDMUND G. BROWN JR., Governor of California

MARK BONINI, President

Chief Probation Officers of California

DIONNE WILSON, widow of police officer killed in the line of duty

REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 57

The authors of Prop. 57 are not telling you the truth. IT APPLIES TO VIOLENT CRIMINALS, will increase crime and make you less safe. Vote NO.

FACT: Prop. 57 authorizes EARLY PAROLE for a RAPIST who drugs and rapes a victim, because its authors call him non-violent.

FACT: Prop. 57 AMENDS CALIFORNIA'S CONSTITUTION to give these new early parole rights to criminals who are convicted of many violent and horrible crimes, including:

RAPE of an unconscious victim; HUMAN SEX TRAFFICKING; ASSAULT with a deadly weapon; LEWD ACTS against a 14-year-old; HOSTAGE TAKING; HATE CRIMES causing injury.

More FACTS:

• Thousands of dangerous criminals have already been released early. We are paying the price. The violent crime rate was up 10% last year and Rape up 37%. • Prop. 57 would authorize the IMMEDIATE RELEASE of thousands of dangerous criminals. • Those previously convicted of MURDER, RAPE and CHILD MOLESTATION would be eligible for early parole. • *Releasing thousands of dangerous criminals will not save money.* In addition to the human costs of increased crime, counties and cities will be forced to hire more police, sheriff deputies, victim counselors and expand courts. • *Prop. 57* overturns important provisions of the Crime Victims Bill of Rights, our 3-Strikes Law and Marsy's Law—strong measures enacted by voters.

The weakening of California's anti-crime laws has gone too far. Don't amend California's Constitution to give even more rights to criminals.

Make no mistake. If Prop. 57 passes, every home, every neighborhood, every school will be less safe than it is today.

Ask yourself these questions:

Should a criminal who RAPES AN UNCONSCIOUS PERSON be allowed early release from prison? How about a 50-year old child molester who preys on a child?

Should criminals convicted of HUMAN TRAFFICKING involving sex acts with a child, be allowed back on the streets before serving their full sentence?

Should a criminal who attempts to EXPLODE A BOMB at a hospital, school or place of worship, be allowed to leave prison early?

If you answered NO to these questions, then join District Attorneys, Courtroom Prosecutors, Police, Sheriffs, Crime Victims, Superior Court Judges and community leaders in voting NO on 57.

Violent crime was up 10% last year in California. Don't allow more violent and dangerous criminals to be released early. VOTE NO on 57.

MARTIN HALLORAN, President

San Francisco Police Officers Association

GEORGE HOFSTETTER, President

Association of Los Angeles Deputy Sheriffs

STEPHEN WAGSTAFFE, President

California District Attorneys Association

REBUTTAL TO ARGUMENT AGAINST PROPOSITION 57

YES on Proposition 57

Opponents of Prop. 57 are wrong.

Prop. 57 saves tens of millions of taxpayer dollars by reducing wasteful prison spending, breaks the cycle of crime by rehabilitating deserving juvenile and adult inmates, and keeps dangerous criminals behind bars.

Don't be misled by false attacks. Prop. 57:

• Does NOT automatically release anyone from prison. • Does NOT authorize parole for violent offenders. The California Supreme Court clearly stated that parole eligibility under Prop. 57 applies, *"only to prisoners convicted of non-violent felonies."* (Brown v. Superior Court, June 6, 2016). Violent criminals as defined in Penal Code 667.5(c) are excluded from parole. • Does NOT and will not change the federal court order that excludes sex offenders, as defined in Penal Code 290, from parole. • Does NOT diminish victims' rights. • Does NOT prevent judges from issuing tough sentences.

Prop. 57:

• WILL focus resources on keeping dangerous criminals behind bars. • WILL save tens of millions of taxpayer dollars. • WILL help fix a broken system where inmates leave prison without rehabilitation, re-offend and cycle back into the system. • WILL be implemented through Department of Corrections and Rehabilitation regulations developed with public and victim input and certified as protecting public safety.

Legislative Analyst's Office Report and Handout

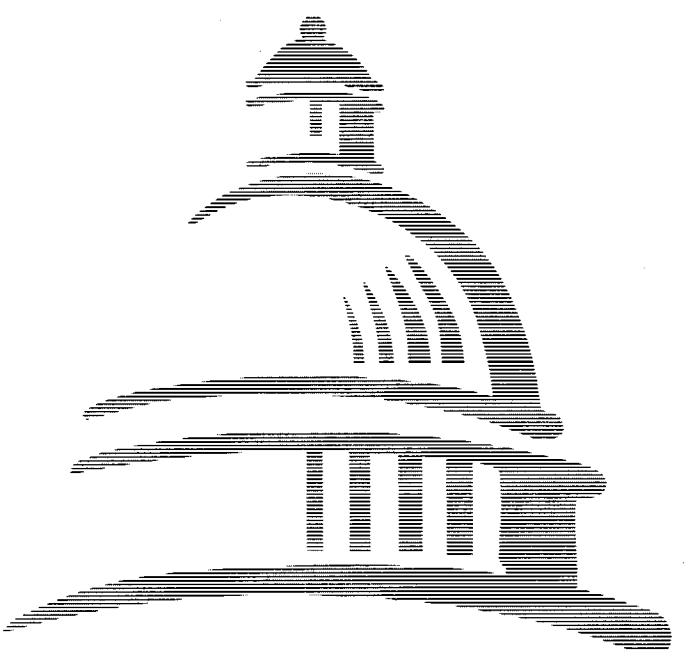
LAO
LEGISLATIVE ANALYST'S OFFICE

April 24, 2017

Implementation of Proposition 57

LEGISLATIVE ANALYST'S OFFICE

Presented to:
Assembly Budget Subcommittee No. 5 on Public Safety
Hon. Shirley N. Weber, Chair



April 24, 2017

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Major Provisions of Proposition 57

☑ Makes All Nonviolent Offenders Eligible for Parole Consideration

- Amended the State Constitution to specify that individuals convicted of a nonviolent felony offense shall be eligible for parole consideration after completing the term for their primary offense.
- As a result, the Board of Parole Hearings (BPH) can release nonviolent offenders after they serve the longest term imposed excluding any additional terms added to their sentence, which include any sentencing enhancements (such as the additional time an inmate serves for having prior felony convictions).

☑ Expands the California Department of Corrections and Rehabilitation's (CDCR) Authority to Award Sentencing Credits

- Amended the State Constitution to specify that CDCR shall have the authority to award credits to inmates for good behavior and rehabilitative or educational achievements.
- As a result, CDCR can allow inmates to reduce their sentences through credits by more than is currently allowed in statute.

☑ Requires a Judge to Decide Whether Youths Should Be Tried in Adult Court

- Changed statute to require that all youths have a hearing in juvenile court before they can be transferred to adult court.
- As a result, prosecutors can no longer file charges directly in adult court and no youths can have their cases heard in adult court on a mandatory basis due to the circumstances of the offense.

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Implementation of Parole Consideration Process

☑ **Exclusion of Certain Offenders With Nonviolent Convictions**

- The emergency regulations define "nonviolent offenders" in such a way as to exclude nonviolent offenders required to register as sex offenders and those who are serving indeterminate sentences under the three strikes law from the new parole consideration process.

☑ **Inclusion of Certain Offenders With Violent Convictions**

- The definition would make eligible for parole consideration certain offenders who have completed a prison term for a violent felony but are still serving a prison term for a nonviolent felony of which they were convicted at the same time.

☑ **Inmate File Reviews Rather Than Actual Hearings**

- Rather than in-person hearings, a BPH deputy commissioner would review certain information about an inmate collected by CDCR. The inmate would be approved for parole if the deputy commissioner concluded the inmate does not pose an unreasonable risk of violence.

☑ **Review Initiated After Primary Term Served**

- The administration interprets Proposition 57 to prohibit deputy commissioners from reviewing inmates' files until they have served the terms for their primary offenses. As a result, inmates that are granted parole would not be released until after reentry planning is completed—about 60 days after completing their primary terms.

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LAO Assessment of New Parole Consideration Process

☑ **Direct Administration to Justify Definition of Nonviolent Offender**

- The exclusion of certain offenders (such as sex registrants) convicted of nonviolent offenses and inclusion of certain offenders convicted of violent offenses may violate Proposition 57.
- Accordingly, we recommend directing the administration to justify the legal and policy basis for its definition of nonviolent offender.

☑ **Assess Whether BPH Could Initiate Parole Consideration Earlier**

- Rather than waiting until their primary terms are served, BPH could make a *preliminary* release decision before inmates complete their primary terms. A *final* parole consideration decision would be made upon the completion of their terms. As a result, those approved could be released up to 60 days earlier, potentially resulting in several millions of dollars in savings annually.
- Accordingly, we recommend seeking an opinion from Legislative Counsel on whether this approach is allowable.

☑ **Direct BPH to Investigate Using Structured Decision-Making Tools**

- Because the parole decision-making process is inherently subjective and decisions may lack consistency and transparency, several states use statistically validated, structured decision-making tools to improve accuracy and objectivity of such decisions.
- We recommend directing BPH to report on available structured decision-making tools and the estimated costs, opportunities, and challenges associated with adapting such tools for use in California.

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Implementation of New Sentencing Credits

Inmates Affected	Current	Planned
Good Conduct Credits		
Most violent offenders	Up to 15%	Up to 20%
Nonviolent third strikers	—	Up to 33.3%
Inmates in fire camps, firehouses, or who have completed training for these assignments		
• Violent	Up to 15%	Up to 50%
• Nonviolent second strikers	Up to 33.3%	Up to 66.6%
Milestone Credits		
Non-sex registrant, nonviolent, non-third strikers	Up to 6 weeks per year	Up to 12 weeks per year
All other inmates except those sentenced to death and life without the possibility of parole	—	Up to 12 weeks per year
New Educational Merit Credits		
All inmates except those sentenced to death and life without the possibility of parole	—	3 to 6 months per achievement
New Participation Credits		
All inmates except those sentenced to death and life without the possibility of parole	—	Up to 4 weeks per year

☑ **Expands Sentencing Credits**

- As shown above, the administration plans to increase the number of credits inmates earn for good behavior (effective May 1, 2017) and for participation in rehabilitation programs (effective August 1, 2017).

☑ **Codifies Court-Ordered Credits**

- A federal court order to reduce prison overcrowding required CDCR to implement certain credits. The administration included these court-ordered changes in the emergency regulations so that inmates will continue to receive these credits once the court order is lifted.

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LAO Assessment of New Sentencing Credits

☑ **Direct Department to Assess Effect of Program Capacity on Population Impact of New Credit Policies**

- The population effect of the credit expansions will depend on inmates' access to rehabilitation programs. However, the administration has not done an analysis of how the availability of these programs will impact credit earning.
- Accordingly, we recommend directing the department to report at budget hearings on the number and type of programs through which inmates would receive credits, their current capacity and attendance rates, and the effect they may have on the inmate population.

☑ **Direct Administration to Contract With Independent Researchers to Evaluate Credit-Yielding Programs**

- To protect public safety, it is critical that programs for which inmates receive credits are effective at reducing recidivism. However, CDCR currently has only done a limited analysis of the effectiveness of its programs.
- As such, we recommend directing CDCR to contract with independent researchers (such as a university) to evaluate the effectiveness of its programs and that it prioritize credit-yielding programs for evaluation.

☑ **Direct Administration to Explain Credit Reductions**

- The administration plans to reduce credits awarded for a few programs. It is unclear why the administration chose to reduce credits awarded for these programs.
- Accordingly, we recommend directing the administration to report during budget and policy hearings on its rationale for reducing milestone credits for specific programs.

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Fiscal Impacts Related to Proposition 57

(In Millions)

	2017-18
Staff and resources to implement new parole consideration process and credit policies	$6.5
Inmate population reduction	-47.8
Parolee population increase	7.1
Juvenile population increase	4.8
Grants to counties for increased post release community supervision population	6.4
Total	**-$23.0**

[a] Calculated based on administration's population estimates made before release of emergency regulations.

☑ **Various Budget Adjustments Related to Proposition 57 Implementation**

- As part of the Governor's January budget proposal for 2017-18, the administration outlined its plan to implement Proposition 57. This plan was revised somewhat and formalized in emergency regulations submitted to the Office of Administrative Law (OAL) on March 24, 2017.
- The January budget reflects the administration's estimates for how its initial plan would impact the state's inmate, parolee, and juvenile ward populations; and the number of offenders supervised by county probation departments. It does not reflect some changes made to the plan by the emergency regulations.

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LAO Assessment of Administration's Budget Requests

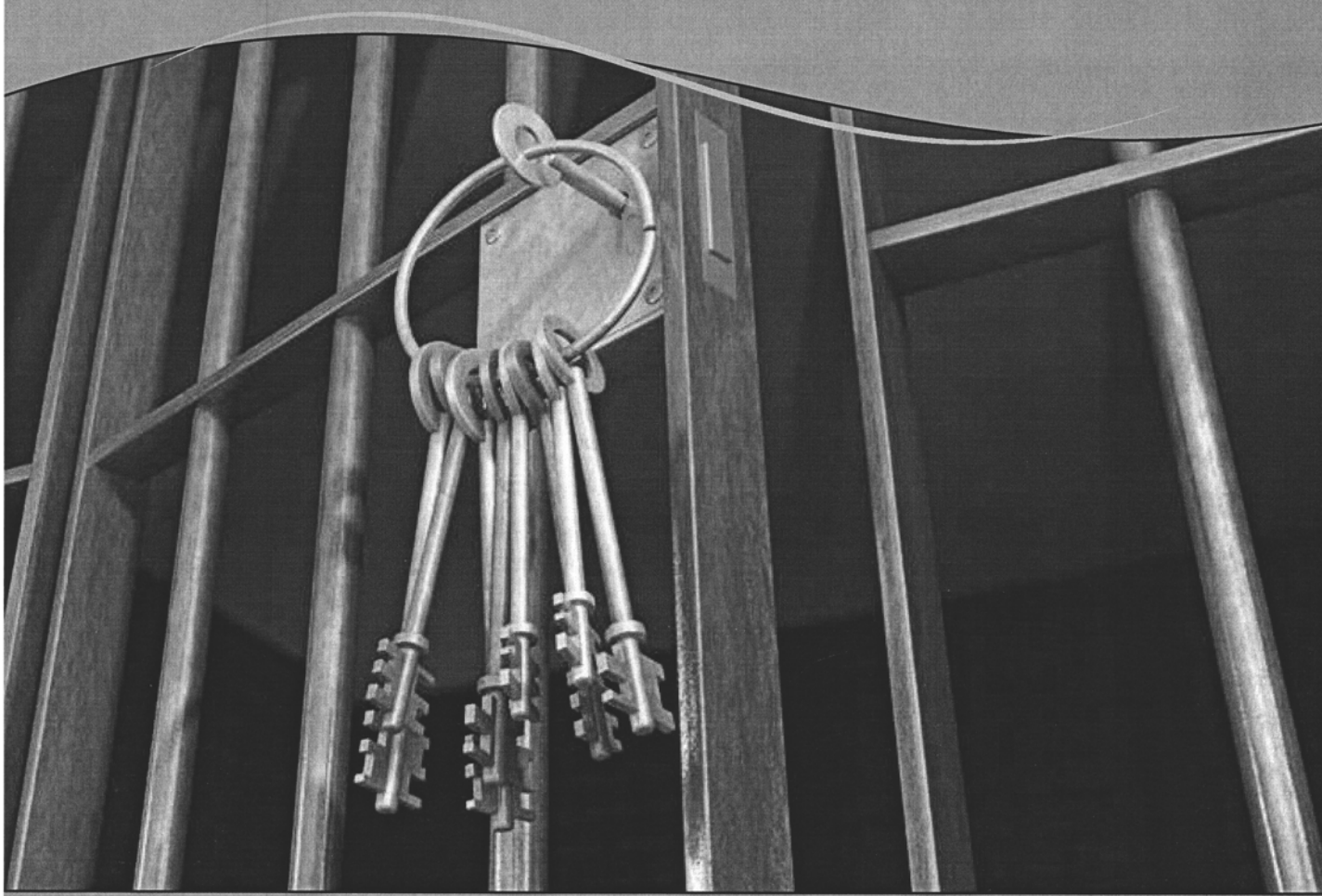
☑ **Withhold Action on Budget Adjustments Pending the May Revision**

- The administration indicates that it will propose budgetary changes to reflect its current implementation plan (as reflected in the emergency regulations) as part of the May Revision.
- As such, we recommend withholding action on all of the Governor's budget proposals related to Proposition 57 implementation costs and population impacts.

☑ **Direct Administration to Report on Final Regulations**

- The final regulations could ultimately be different than the emergency regulations if CDCR chooses to modify them, such as in response to public comments received through the rulemaking process.
- Accordingly, we recommend directing the administration to provide a report no later than 30 days after the regulations are finalized. This report should (1) summarize the final regulations, (2) discuss how the final regulations differ from the emergency regulations (including justification for any differences), and (3) identify how the changes affect CDCR's budget and populations.

The 2017-18 Budget:
Implementation of Proposition 57



MAC TAYLOR • LEGISLATIVE ANALYST • APRIL 2017

LAO

EXECUTIVE SUMMARY

Proposition 57

In November 2016, voters approved Proposition 57, which made various changes to the state's criminal justice system. Specifically, the measure (1) makes all nonviolent offenders eligible for parole consideration, (2) expands the authority of the California Department of Corrections and Rehabilitation (CDCR) to award sentencing credits to inmates to reduce their prison terms, and (3) requires that judges decide whether juveniles should be tried in adult court.

Administration's Plan to Implement Proposition 57

As a part of the Governor's January budget proposal for 2017-18 and through emergency regulations submitted by CDCR to the Office of Administrative Law on March 24, 2017, the administration outlined its plan to implement Proposition 57. Specifically, the administration proposes to:

- ***Implement New Nonviolent Offender Parole Consideration Process.*** On July 1, 2017, the administration plans to begin the parole consideration process for nonviolent offenders. The emergency regulations for the new process define "nonviolent offenders" in such a way as to exclude certain offenders convicted of nonviolent offenses (such as sex registrants) from parole consideration and allow certain offenders convicted of violent offenses to be considered for parole. Those found to not pose an unreasonable risk of violence by Board of Parole Hearings (BPH) deputy commissioners would be released around 60 days after completing the term for their primary offense (the longest term imposed excluding any additional time added, such as for enhancements).

- ***Expand Sentencing Credits.*** The administration plans to increase the number of credits inmates earn for good behavior (effective May 1, 2017) and for participation in rehabilitation programs (effective August 1, 2017).

- ***Make Various Budget Adjustments to Reflect Proposition 57 Implementation.*** The Governor's January budget reflects the administration's estimates for how its initial plan, which was released before the emergency regulations, would impact the state's inmate, parolee, and juvenile ward populations, as well as the number of offenders supervised by county probation departments.

LAO Recommendations

Direct Administration to Report on Final Regulations. The final regulations could ultimately be different than the emergency regulations. Accordingly, we recommend that the Legislature direct the administration to provide a report after the regulations are finalized. This report should

(1) summarize the final regulations, (2) discuss how the final regulations differ from the emergency regulations, and (3) identify how the changes affect CDCR's budget and populations.

Direct Administration to Justify Definition of Nonviolent Offender. The definition of nonviolent offender contained in the emergency regulations may violate Proposition 57. Accordingly, we recommend directing the administration to justify the legal and policy basis for its definition of nonviolent offender.

Seek Advice From Legislative Counsel on Timing of Parole Consideration. The administration's plan to release inmates approved for parole around 60 days after they complete their primary terms may be unnecessarily costly. As such, we recommend consulting with Legislative Counsel to determine whether Proposition 57 allows BPH to begin parole consideration earlier. If this is possible, we recommend directing the administration to report on how it could do so.

Direct BPH to Investigate Using a Structured Decision-Making Tool. Because the parole decision-making process is inherently subjective and decisions may lack consistency and transparency, several states use statistically validated, structured decision-making tools to improve the accuracy and objectivity of such decisions. We recommend directing BPH to report on available structured decision-making tools and the cost and benefits of adapting them for use in California.

Direct Department to Assess Program Capacity and Evaluate Rehabilitation Programs. The population impact of the administration's plans would depend on inmates' access to the programs that yield credits. We recommend that the Legislature direct CDCR to report on the number and type of programs through which inmates would receive credits, the current capacity and attendance rates for these programs, and the corresponding effect they may have on the inmate population. We further recommend directing CDCR to contract with independent researchers to evaluate the effectiveness of its rehabilitation programs, given that their effectiveness at reducing recidivism remains unclear.

Direct Administration to Explain Credit Reductions. The administration plans to reduce credits awarded for completing specific programs. We recommend directing the administration to report during budget and policy hearings on its rationale for such changes.

Withhold Action on Budget Items Pending the May Revision. We recommend withholding action on the administration's January budget adjustments related to Proposition 57 and its population impacts pending the receipt of revised adjustments as part of the May Revision.

INTRODUCTION

In November 2016, voters approved Proposition 57, which made various changes affecting the state's adult and youth correctional systems. In this report, we first describe state law and practice prior to the implementation of Proposition 57 and provide a description of the provisions of the measure. We then describe and assess the administration's proposals to implement Proposition 57 and provide various recommendations for legislative consideration.

BACKGROUND

Adult Sentencing and Parole Consideration. Individuals are placed in prison under an indeterminate sentence or a determinate sentence. Under indeterminate sentencing, individuals are sentenced for a term that includes a minimum but no specific maximum, such as 25-years-to-life. These individuals typically appear in-person before the state Board of Parole Hearings (BPH) for a parole consideration hearing in order to be granted release from prison.

Under determinant sentencing, individuals receive fixed prison terms with a specified release date. Most people in prison have received a determinate sentence. Certain determinately sentenced inmates can be considered for parole and released before they have served their entire sentence. For example, certain individuals convicted of nonviolent offenses who were previously convicted of a serious or violent offense are eligible for parole consideration part way through their prison sentence. These particular individuals are commonly referred to as "nonviolent second strikers" because they were sentenced under the state's three strikes law. (Please see the box on page 6 for more detailed information about the state's three strikes law.) Specifically, pursuant to a federal court order related to prison overcrowding, nonviolent second strikers are currently considered for parole after they have served half of their sentence. (As we discuss in the box on page 7, the federal court imposed several measures to keep the state's prison population below a certain limit.)

Sentencing Credits. The California Department of Corrections and Rehabilitation (CDCR) awards credits to inmates that reduce the time they must serve in prison. Credits are provided for good behavior or for participating in work, training, or education programs. Currently, inmates are limited in the types of credits that they can earn, as well as the amount that that their sentences can be reduced through credits. Existing state statutes allow inmates to reduce their prison terms primarily through two types of credits:

- ***Good Conduct Credits.*** Eligible inmates earn good conduct credits when they avoid violating prison rules and/or participate in certain workgroups, such as fire camps. Statute prohibits some inmates, such as third strikers, from earning good conduct credits. Statute also includes various limits on the rate at which inmates can earn such credits. For example, most violent offenders are eligible to reduce their prison term by up to 15 percent under current law. In addition, with certain exceptions (such as for nonviolent second strikers and violent offenders) inmates who work as fire fighters (or have completed training to do so) are eligible to reduce their sentence by up to

two-thirds. Good conduct credits can improve prison operations by incentivizing inmates to follow prison rules and participate in workgroups.

- ***Milestone Credits.*** CDCR awards milestone credits to inmates for completing certain rehabilitation, education, or work training programs. For example, inmates can earn two weeks off of their sentence for completing a three-month substance abuse program or two weeks off of their sentence for completing certain welding courses. Currently, only nonviolent, non-sex registrant, non-third strikers are eligible to earn milestone credits. These inmates can reduce their prison term by up to six weeks per year through milestone credits. To the extent that the specific programs for which inmates can earn milestone credits are effective in reducing recidivism, milestone credits can improve public safety by incentivizing inmates to participate in such programs.

In addition, certain inmates are eligible to earn credits at rates that exceed the limits specified in state law pursuant to the above federal court order to reduce prison overcrowding. For example, statute specifies that nonviolent second strikers can only reduce their terms by 20 percent through good conduct credits. However, the court order allows nonviolent, non-sex registrant second strikers to reduce their terms by up to 33 percent through such credits.

Criminal Court Proceedings for Youths. Individuals accused of committing crimes when they were under 18 are generally tried in juvenile court. Counties are generally responsible for the youths placed by juvenile courts. These youths are

Three Strikes Sentencing

In 1994, the California Legislature and voters (with the passage of Proposition 184) changed the state's criminal sentencing law to impose longer prison sentences for certain repeat offenders (commonly referred to as the "three strikes" law). Proposition 36, approved by voters in 2012, narrowed the type of repeat offenders subject to some of these longer sentences. Currently, state law requires that a person who is convicted of a felony and who previously has been convicted of one or more violent or serious felonies be sentenced to state prison as follows:

- ***Second Strike Offense.*** If the person had *one previous* serious or violent felony conviction, the sentence for *any new* felony conviction (not just a serious or violent felony) is *twice* the term otherwise required under law for the new conviction. Offenders sentenced by the courts under this provision are referred to as "second strikers."

- ***Third Strike Offense.*** If the person has *two or more previous* serious or violent felony convictions, the sentence for *any new serious or violent* felony conviction is a life term with the earliest possible parole after 25 years. In addition, an offender with *two or more previous* serious or violent offenses who commits *any new* felony (not just a serious or violent felony) can be similarly sentenced to a life term if he or she has committed certain new or prior offenses, including some drug-, sex-, and gun-related felonies. Offenders convicted under this provision are referred to as "third strikers."

typically allowed to remain with their families under the supervision of county probation, with some placed elsewhere (such as in county-run camps). However, judges can place youths that commit certain major crimes (such as murder, robbery, and certain sex offenses) in a facility operated by CDCR's Division of Juvenile Justice (DJJ).

Under certain circumstances, youths can be tried in adult court. Youths convicted in adult court can receive adult sentences and typically are first held in a state juvenile facility and then transferred to state prison after they turn age 18.

MAJOR PROVISIONS OF PROPOSITION 57

Proposition 57, which was approved by the voters in November 2016, made various changes related to the state's criminal justice system. Specifically, the measure (1) makes all nonviolent offenders eligible for parole consideration, (2) expands CDCR's authority to award sentencing credits to inmates, and (3) requires that judges decide whether juveniles should be tried in adult court. The measure states that these changes are intended to protect public safety, save money by reducing spending on prisons, prevent federal courts from releasing inmates, and reduce recidivism through rehabilitation.

Makes All Nonviolent Offenders Eligible for Parole Consideration. Proposition 57 amended the State Constitution to specify that individuals

Federal Court Ordered California to Limit Prison Population

In November 2006, plaintiffs in two ongoing class action lawsuits—now called *Plata v. Brown* (involving inmate medical care) and *Coleman v. Brown* (involving inmate mental health care)—filed motions for the courts to convene a three-judge panel pursuant to the U.S. Prison Litigation Reform Act. On August 4, 2009, the three-judge panel declared that overcrowding in the state's prison system was the primary reason that the California Department of Corrections and Rehabilitation (CDCR) was unable to provide inmates with constitutionally adequate health care. Specifically, the court ruled that in order for CDCR to provide such care, overcrowding would have to be reduced to no more than 137.5 percent of the design capacity of the prison system. (Design capacity generally refers to the number of beds that CDCR would operate if it housed only one inmate per cell.) The court ruling applies to the number of inmates in prisons operated by CDCR, and does not preclude the state from holding additional offenders in other public or private facilities.

To comply with the prison population cap, the state took a number of actions, including (1) housing inmates in contracted facilities, (2) constructing additional prison capacity, and (3) reducing the inmate population through several policy changes. For example, in 2011, the state shifted the responsibility for housing and supervising certain lower-level felons to counties. In 2014, to ensure that the state complied with the cap, the three-judge panel ordered CDCR to develop and implement several additional population reduction measures including a parole consideration process for nonviolent second strikers and expanded credit earning for minimum-custody inmates and certain second strikers.

convicted of a nonviolent felony offense shall be eligible for parole consideration after completing the term for their primary offense. The primary offense is defined as the longest term imposed excluding any additional terms added to an offender's sentence, which include any sentencing enhancements (such as the additional time an inmate serves for prior felony convictions). As a result, BPH could release nonviolent offenders after they serve the term for their primary offense—allowing some offenders to be released from prison and placed on parole earlier than otherwise. The measure requires CDCR to adopt regulations to implement this change.

Expands CDCR Authority to Award Sentencing Credits. Proposition 57 amended the State Constitution to specify that CDCR shall have the authority to award credits to inmates for good behavior and rehabilitative or educational achievements. Accordingly, CDCR may increase the number of inmates eligible to earn credits and allow inmates to reduce their sentences through credits by more than what is currently allowed in statute. The measure authorized CDCR to adopt regulations to implement changes to credits.

Requires Judges to Decide Whether Youths Should Be Tried in Adult Court. Proposition 57 changed statute to require that all youths have a hearing in juvenile court before they can be transferred to adult court. As a result, prosecutors can no longer file charges directly in adult court and no youths can have their cases heard in adult court on a mandatory basis due to the circumstances of the offense. Accordingly, there will likely be fewer youths tried in adult court, and, eventually, fewer youths sent to state prison. Instead, it is likely that more youths will be placed under county jurisdiction and/or in a DJJ facility.

ADMINISTRATION'S PLAN TO IMPLEMENT PROPOSITION 57

As part of the Governor's January budget proposal for 2017-18, the administration outlined its plan to implement Proposition 57. This plan was revised somewhat and formalized in emergency regulations submitted to the Office of Administrative Law (OAL) on March 24, 2017. The OAL must review these regulations within 20 calendar days of their submission. If approved by OAL, the emergency regulations will remain in effect for 160 days and can be extended for up to two additional 90 day periods. These emergency regulations will become finalized if CDCR adopts them through the regular rulemaking process within this time period.

Specifically, the administration proposes to:

- ***Implement New Nonviolent Offender Parole Consideration Process.*** On July 1, 2017, the administration plans to begin the parole consideration process for nonviolent offenders.
- ***Expand Sentencing Credits.*** The administration plans to increase the number of credits inmates earn for good behavior and participation in rehabilitation programs. It anticipates that changes to good conduct credits will go into effect on May 1, 2017 and that changes to credits inmates earn for participation in rehabilitation programs, such as modifications to milestone credits, will go into effect on August 1, 2017.
- ***Make Various Budget Adjustments to Reflect Proposition 57 Implementation.***

The Governor's January budget includes various funding adjustments to reflect the administration's initial plan for implementing the new nonviolent offender parole consideration process and changes to sentencing credits, as well as the requirement in Proposition 57 that all youths have a hearing in juvenile court before they can be transferred to adult court. The budget reflects the administration's estimates for how its initial plan would impact the state's inmate, parolee, and juvenile ward populations, and the number of offenders supervised by county probation departments. However, as indicated above, the administration's implementation plan subsequently changed as reflected in recently released emergency regulations. For example, the Governor's budget assumes an October 1, 2017 implementation date while the emergency regulations assume earlier implementation dates as described above. The administration indicates that it will propose budgetary changes to reflect its current implementation plan as part of the May Revision.

Below, we provide greater detail on each aspect of the administration's plan, assess its merits, and provide recommendations for legislative consideration.

IMPLEMENTATION OF PAROLE CONSIDERATION PROCESS

Administration's Plan

As authorized in Proposition 57, the administration plans to begin parole consideration of nonviolent offenders after they complete the term for their primary offense. The specific process outlined in the emergency regulations is modeled after the nonviolent second striker parole process ordered by the federal court.

Key components of the administration's plan include:

- ***Exclusion of Certain Offenders With Nonviolent Convictions.*** As previously indicated, Proposition 57 specifies that nonviolent offenders shall be eligible for parole consideration after completing the term for their primary offense. The emergency regulations define "nonviolent offenders" in such a way as to exclude certain offenders convicted of nonviolent offenses from the parole consideration process authorized in Proposition 57. Specifically, nonviolent offenders required to register as sex offenders (whether or not their current offense is a sex offense) and nonviolent "third strikers" who are serving indeterminate sentences under California's three strikes law would not be eligible for the new parole consideration process. The administration also plans to exclude nonviolent offenders who recently committed certain rule violations in prison.

- ***Inclusion of Certain Offenders With Violent Convictions.*** The administration's emergency regulations make certain offenders convicted of offenses defined in statute as violent eligible for the new parole consideration process. Specifically, the emergency regulations make eligible

certain offenders who have completed a prison term for a violent felony but are still serving a prison term for a nonviolent felony offense that they were convicted of at the same time.

- ***Inmate File Reviews Rather Than Actual Hearings.*** As part of the parole consideration of nonviolent offenders, BPH indicates that it does not plan to conduct in-person hearings. (Currently, BPH conducts in-person hearings primarily for inmates serving indeterminate sentences.) Instead, similar to the nonviolent second striker parole process, a BPH deputy commissioner would review certain information about an inmate collected by CDCR. The inmate would be approved for parole if the information reviewed by the deputy commissioner indicates that the inmate does not pose an unreasonable risk of violence. According to BPH, this determination would be based on the following factors: (1) circumstances surrounding the crime (such as whether a weapon was used); (2) prior criminal record; (3) institutional behavior and rehabilitation program participation; and (4) any input provided from victims, the district attorney, and the inmate.

- ***Review Initiated After Primary Term Served.*** While Proposition 57 states that nonviolent offenders shall be eligible for parole consideration after completing the term for their primary offense, it does not specify when BPH can begin the review process for an inmate. The administration, however, is interpreting Proposition 57 to prohibit deputy commissioners from beginning to review inmates' files until after they have served the full term for their primary offense. As a result, under the administration's plan, an inmate who is granted parole under the new process would not be released immediately following his or her primary term.

LAO Assessment

Administration's Plan Subject to Change. As indicated above, the administration recently released emergency regulations outlining the new parole consideration process for nonviolent offenders. These emergency regulations will become finalized if CDCR adopts them through the regular rulemaking process. However, the final regulations could ultimately be different than the emergency regulations if the department chooses to modify them, such as in response to public comments received through the regulatory process.

Exclusion of Certain Nonviolent Offenders Appears to Violate Measure. We find that the administration's plans to exclude nonviolent third strikers and sex registrants from the new parole consideration appears to violate the language of Proposition 57. This is because the proposition specifies that *all* inmates serving a prison term for a nonviolent offense shall be eligible for parole consideration. By automatically excluding nonviolent sex registrants and third strikers, the administration would not provide parole consideration to this subset of these offenders.

Uncertain Whether Including Certain Offenders With Violent Convictions Permitted. It is uncertain whether the administration's plan to include certain offenders who have completed a prison term for a violent felony but are still serving a prison term for a nonviolent felony offense that they were convicted of at the same time is consistent with the intent of Proposition 57. This is because the measure could be interpreted to limit eligibility to inmates who were sent to prison for nonviolent offenses.

Initiating Process After Primary Term Completed Appears Unnecessarily Costly. Based on the administration's plan not to initiate the parole consideration process until after nonviolent offenders have completed their primary term, inmates approved for parole would not be released immediately. Instead, inmates would have their case reviewed and decided on by a deputy commissioner after completing their primary term. While this particular process could be done relatively quickly, if approved for parole, the inmates would then go through reentry planning activities (such as receiving pre-release risk and needs assessments), which the administration reports take about 60 days to complete. As such, these inmates would not be released until around 60 days—in some cases more depending on the actual timing of the review process—after they have served the full term for their primary offense.

On the other hand, if BPH initiated the parole consideration process sometime *before* nonviolent offenders completed their primary term, CDCR could release inmates approved for parole shortly after their primary term and achieve the associated population reduction and savings. One way this could be done is for BPH to make a *preliminary* release decision 60 days before such inmates complete their primary terms. Reentry planning activities would then occur during the 60 days between the preliminary release decision and when inmates complete their primary terms. A *final* parole consideration decision—based on a review of inmates' behavior in the 60 days since the preliminary release decision and any other relevant new data available—would be made upon the completion of inmates' primary terms. We note that in some cases, this could result in reentry plans being made for some inmates who are ultimately not released under the new parole consideration process.

To the extent that such an alternative approach reduces the time nonviolent offenders serve in prison by two months, we estimate that this approach could potentially result in several millions of dollars in savings annually relative to the Governor's proposal depending on the actual number of offenders approved for parole. While a portion of these savings could be offset by the cost of reentry planning for inmates who are ultimately not released, these additional costs are likely to be minor.

Parole Consideration Process Inherently Subjective. Throughout an inmate's time in prison, CDCR records specific information on him or her, such as the extent to which the inmate participated in rehabilitation programs and rules violations. In preparation for the parole consideration process, BPH would supplement this information by soliciting input from victims, district attorneys, and the inmate. By the time the inmate is actually considered for parole, BPH would have a multitude of qualitative and quantitative data about the inmate. Deputy commissioners would use these various types and sources of information to make a release decision.

According to CDCR, deputy commissioners currently use their professional judgement to synthesize various sources and types of information about inmates to make a decision about whether to release an inmate for the nonviolent second striker parole process. However, this process is inherently subjective. For example, it is possible that deputy commissioners could over or under value various aspects of inmate data they review, such as criminal history or completion of rehabilitation programs. In addition, it can be difficult to ensure that different deputy commissioners make decisions in a consistent and completely transparent manner that is free from any unconscious biases.

In order to improve accuracy and reduce subjectivity of parole board decisions, several states

use statistically validated, structured decision-making tools as part of their parole consideration process. These tools guide commissioners through a process of weighing several different sources of information about an inmate. For example, Pennsylvania's Parole Decisional Instrument combines the results of several actuarial risk assessments and inmates' institutional behavior and programming history into a numerical score, yielding a parole recommendation that commissioners can supplement with their qualitative observations. Accordingly, decisions guided by such instruments weigh factors in a consistent manner; are transparent, as they can be shown to be based on specific factors; and are less likely to be subject to unconscious bias. In addition, research suggests that such actuarial tools can improve public safety by yielding better release decisions than professional judgment alone.

LAO Recommendations

Direct Administration to Report on Final Regulations. We recommend that the Legislature direct the administration to provide a report no later than 30 days after the regulations on the new parole consideration process for nonviolent offenders are finalized. This report should (1) summarize the final regulations, (2) discuss how the final regulations differ from the emergency regulations (including justification for any differences), and (3) identify how the changes affect CDCR's budget and populations.

Direct Administration to Justify Definition of Nonviolent Offender. We recommend that the administration report at budget and policy hearings on the following issues:

- The legal and policy basis for excluding nonviolent sex registrants and third strikers from the parole consideration process.
- The legal basis for including in the nonviolent offender parole consideration process certain offenders who have completed a prison term for a violent felony but are still serving a prison term for a nonviolent felony offense.

Seek Advice From Legislative Counsel on Timing of Parole Consideration. In order to ensure that the measure is implemented in the most effective and efficient manner, we recommend that the Legislature consult with Legislative Counsel to determine whether Proposition 57 allows BPH to initiate parole consideration before an inmate completes his or her primary term. If Legislative Counsel advises the Legislature that BPH can begin parole consideration as such, we recommend that the Legislature direct the administration to report, during spring budget hearings, on how it could begin to consider inmates for parole prior to completion of their primary terms.

Direct BPH to Investigate Using a Structured Decision-Making Tool. Given the potential benefits, we recommend that the Legislature direct BPH to investigate using a structured decision-making tool in the future. Specifically, we recommend that the Legislature direct BPH to report by December 1, 2018 on available structured decision-making tools and the estimated costs, opportunities, and challenges associated with adapting such tools for use in parole consideration reviews required by Proposition 57, as well as the other parole processes conducted by BPH. (This should give BPH time to focus on implementing the new parole consideration process before considering changes to it.) This report would allow the Legislature to determine whether to require BPH to use such a tool in the future.

IMPLEMENTATION OF NEW SENTENCING CREDITS

Administration's Plan

As authorized in Proposition 57, the administration plans to increase the amount of good conduct credits inmates can earn beginning on May 1, 2017 and to increase the number of credits inmates earn through participation in rehabilitation programs beginning on August 1, 2017. Figure 1 summarizes the administration's current plan relative to existing credits authorized in statute and by federal court order. We note that only good conduct credits subject to change are depicted in Figure 1 as the administration is not proposing to change all good conduct credits.

Specifically, CDCR plans to increase credit earning in the following ways:

- ***Increase Good Conduct Credits.*** Currently, violent offenders can generally reduce their prison terms by as much as 15 percent with good conduct credits. However, some violent offenders, such as third strikers, cannot reduce their prison terms through good conduct. CDCR plans to allow violent offenders—except condemned inmates and those sentenced to life without the possibility of parole—to reduce their prison term with good conduct credits by up to 20 percent. Nonviolent third strikers, who are currently ineligible for good conduct credits, would be able to reduce their terms by up to one-third. In addition, the administration plans to increase good conduct credits for certain offenders working or trained to work as firefighters. Specifically, violent offenders would receive one day of credit for every day served with good behavior and nonviolent second strikers would receive two. The administration expects these changes to go into effect on May 1, 2017.

Figure 1

Administration's Planned Changes to Inmate Credit Earning

Inmates Affected	Current	Planned
Good Conduct Credits		
Most violent offenders	Up to 15%	Up to 20%
Nonviolent third strikers	—	Up to 33.3%
Inmates in fire camps, firehouses, or who have completed training for these assignments		
• Violent	Up to 15%	Up to 50%
• Nonviolent second strikers	Up to 33.3%	Up to 66.6%
Milestone Credits		
Non-sex registrant, nonviolent, non-third strikers	Up to 6 weeks per year	Up to 12 weeks per year
All other inmates except those sentenced to death and life without the possibility of parole	—	Up to 12 weeks per year
New Educational Merit Credits		
All inmates except those sentenced to death and life without the possibility of parole	—	3 to 6 months per achievement
New Participation Credits		
All inmates except those sentenced to death and life without the possibility of parole	—	Up to 4 weeks per year

- ***Expand Milestone Credits.*** As previously discussed, currently only nonviolent, non-sex registrant, non-third strikers are eligible to earn milestone credits to reduce their prison term by up to six weeks per year. Effective August 1, 2017, CDCR plans to expand eligibility for milestone credits to all inmates except those serving life terms without the possibility of parole and condemned inmates. In addition, the administration plans to increase the amount of credits inmates earn for completing many programs and increase the limit on the annual amount of milestone credits that an inmate can earn to 12 weeks. However, we note that in a few cases the administration is planning to reduce the amount of credits that inmates will earn for specific programs. For example, the amount of credits earned for completing Guiding Rage Into Power (GRIP)—a program seeking to help inmates reduce violent behavior—will be decreased from four to two weeks.

- ***Create New Educational Merit Credits.*** Effective August 1, 2017, CDCR plans to offer new credits for specific educational achievements. The administration plans to reduce inmates' terms by between three and six months when they accomplish these achievements, such as earning a high school diploma, earning a bachelor's degree, or becoming certified to provide alcohol and drug counseling to other inmates. These credits would be applied retroactively, meaning that inmates who have completed these achievements before August 1, 2017 would be awarded the credits immediately.

- ***Provide Participation Credits for Certain Programs.*** Effective August 1, 2017, CDCR plans to offer credits (referred to as "rehabilitative achievement credits") to inmates who demonstrate sustained participation in particular programs and activities for which the department does not otherwise award credits. The department has not provided a list of these programs and activities but has indicated that they will be selected by wardens and will likely include inmate affinity and self-help groups, such as Alcoholics Anonymous and Toastmasters. Inmates would be allowed to earn up to four weeks of participation credits per year.

Codify Court-Ordered Credits in Regulation. As discussed earlier, the federal court required CDCR to implement certain credits that exceed limits specified in existing statutes, such as allowing nonviolent, non-sex registrant second strikers to reduce their terms by up to 33 percent through good behavior. The administration plans to include these court-ordered changes into its planned regulations. Accordingly, inmates will continue to receive these credits once the court order is lifted.

LAO Assessment

Administration's Plan Subject to Change. Similar to the regulations on parole consideration, the administration has only released emergency regulations for its planned changes to credit policies. The final regulations could ultimately be different than the emergency regulations if the department chooses to modify them, such as in response to public comments received through the regulatory process.

Lack of Information on Inmate Access to Programs. The population impact of CDCR's planned milestone and participation credits will

depend on inmates' access to the programs that yield credits. However, the administration indicates that it has not done an analysis of how the availability of these programs will impact credit earning under their plan. On the one hand, the changes in these credits could reduce the inmate population by less than the administration expects if there is not enough capacity in rehabilitative and educational programs to allow inmates to earn the number of credits assumed by the administration. On the other hand, to the extent there is more than enough capacity, the planned changes to credit earning could impact the population by more than the administration expects. This creates significant uncertainty about how Proposition 57 will actually impact the state's inmate population. Such uncertainty makes it difficult for the Legislature to evaluate the Governor's proposed budget adjustments.

Effectiveness of CDCR's Programs Remain Unclear. Inmates who participate in approved programs earn credits, which allow them to accelerate their release, regardless of whether the programs are effective in reducing their risks to public safety. In order to protect public safety, it is critical that the approved programs are effective at reducing recidivism. However, CDCR currently has only done a limited analysis of the effectiveness of its programs. This analysis found that the recidivism rates of offenders who received substance use disorder treatment reoffended at lower rates than those who had not. While many of the other programs offered in prisons have been shown to be effective elsewhere, analyses of California's current implementation of these programs have not been completed.

Unclear Rationale Behind Credit Reduction for Certain Programs. As discussed above, the administration plans to reduce credits awarded for a few programs, including GRIP and two theology programs. It is unclear why the administration chose to reduce credits awarded for these programs.

LAO Recommendations

Direct Administration to Report on Final Regulations. We recommend that the Legislature direct the administration to provide a report, no later than 30 days after the regulations on credit policies are finalized, that summarizes the final regulations. This report should (1) summarize the final regulations, (2) discuss how the final regulations differ from the emergency regulations (including justification for any differences), and (3) identify how the changes affect CDCR's budget and populations.

Direct Department to Assess Program Capacity. We recommend that the Legislature direct CDCR to report at budget hearings on the number and type of programs through which inmates would receive credits, the current capacity and attendance rates for these programs, and the corresponding effect they may have on the inmate population. This information would allow the Legislature to assess whether the current availability of programs is sufficient. The Legislature could then decide whether it needs to adjust funding for programs accordingly.

Direct Administration to Evaluate Credit-Yielding Programs. We recommend that the Legislature direct CDCR to contract with independent researchers (such as a university) to evaluate the effectiveness of its rehabilitation programs and that it prioritize credit-yielding programs for evaluation. We estimate that such evaluations would cost a few million dollars and could take a few years to complete. The outcomes of the evaluations would allow the Legislature in the future to prioritize funding for programs that have been shown to reduce recidivism.

Direct Administration to Explain Credit Reductions. We recommend that the Legislature direct the administration to report during budget and policy hearings on its rationale for reducing milestone credits for specific programs.

FISCAL IMPACTS OF PROPOSITION 57

Governor's Proposals

The Governor's January budget proposal for 2017-18 includes various adjustments that reflect the administration's initial plan to implement the provisions of Proposition 57. As indicated above, the administration plans to make further adjustments as part of the May Revision to reflect the March 2017 emergency regulations. Figure 2 summarizes the fiscal impacts of Proposition 57, which we discuss in more detail below.

Staff and Resources to Implement Parole Consideration Process and Credit Policies. The Governor's January budget proposes a $6.5 million General Fund augmentation and 20.9 positions in 2017-18 to implement the new parole consideration process and credit policies. Specifically, these resources include:

- ***Case Records Staff ($4.1 Million).*** The administration proposes funding for CDCR to support five additional case records positions and overtime for current staff to (1) process inmate release and parole eligibility date changes as a result of expanded credit earning and (2) screen inmates for eligibility for the nonviolent offender parole process. We note these funds would decline in future years as this workload decreases.
- ***BPH Staff ($1.2 Million).*** The administration proposes funding to support 2.3 additional positions at BPH to coordinate communications with victims and district attorneys for the new parole consideration process. The proposed funds would also allow BPH to hire an additional parole commissioner and 4.4 additional deputy commissioners to consider inmates for release. The administration also proposes budget trailer legislation that would allow the Governor to expand the number of BPH commissioners from 14 to 15.
- ***Pre-Release Planning and Parole Case Records Staff ($1.2 Million).*** The administration proposes these funds to support 8.2 additional positions at CDCR's Division of Adult Parole Operations to do pre-release planning and manage case records for the anticipated increase in the parolee population caused by Proposition 57.

Figure 2
Fiscal Impacts Related to Proposition 57[a]
(In Millions)

	2017-18
Staff and resources to implement new parole consideration process and credit policies	$6.5
Inmate population reduction	-47.8
Parolee population increase	7.1
Juvenile population increase	4.8
Grants to counties for increased post release community supervision population	6.4
Total	**-$23.0**

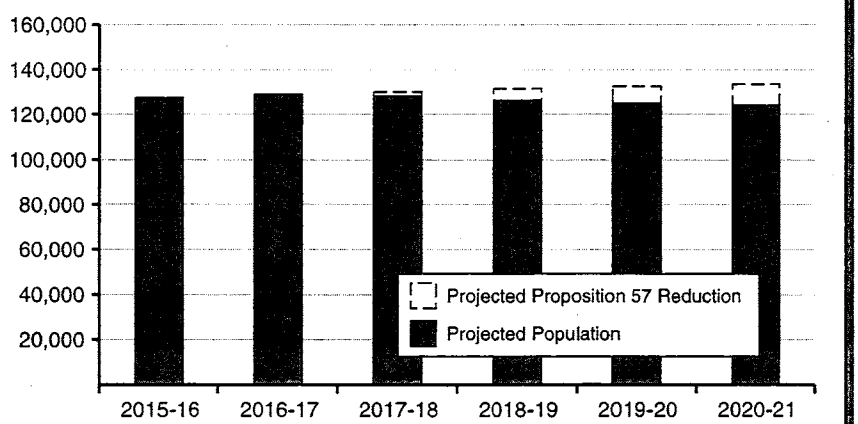
[a] Calculated based on administration's population estimates made before release of emergency regulations.

Inmate Population Reduction. By expanding inmates' opportunities to be released before they have served their full sentence, the administration's new parole consideration process and credit policies will reduce the state's inmate population. As shown in Figure 3,

the Governor's January budget projects that the administration's initial plan for implementing Proposition 57 would reduce the inmate population by about 2,000 in 2017-18. We estimate that this decrease would allow the department to avoid about $48 million in costs it would have incurred in the absence of the measure. The population impact of the measure is expected to grow to an average daily population reduction of about 9,500 by 2020-21. The administration expects that this decline in the inmate population will allow it to remove inmates from one of two out-of-state contract facilities in 2017-18 and from all out-of-state contract facilities by 2020-21.

Figure 3

January Projection of Inmate Population Reduction Under Proposition 57

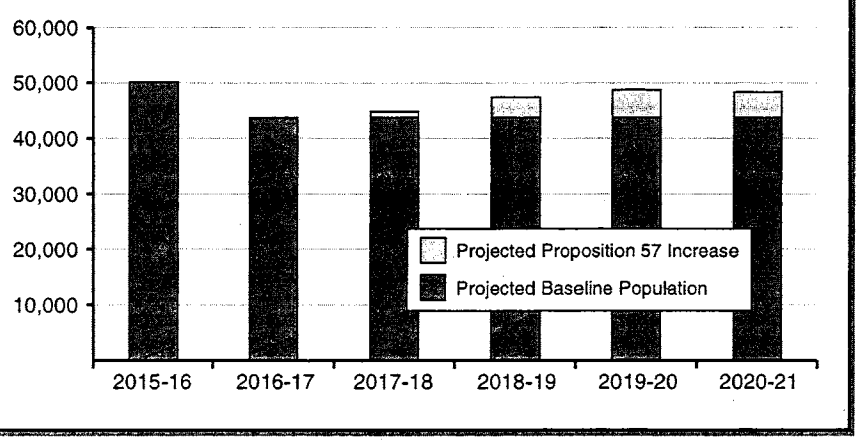


Parolee Population Increase. Because the administration's plan to implement Proposition 57 will increase the rate at which inmates will be released from prison, it will temporarily increase the parolee population. Specifically, as shown in Figure 4, the Governor's January budget projects that its initial plan for implementing Proposition 57 will temporarily increase the parolee population by about 1,000 in 2017-18. Accordingly, the Governor's budget reflects an increase in the parole budget of about $7.1 million in 2017-18. The parolee population impact is expected to grow to about 5,000 by 2019-20 and to generally decline thereafter.

Juvenile Population Increase. The administration expects that the new juvenile transfer hearing requirement will increase the number of youths committed to DJJ. Specifically, as shown in Figure 5 (see next page), the Governor's January budget projects that Proposition 57 will increase the DJJ ward population by 72 in 2017-18. Accordingly, the administration is proposing a $4.8 million General Fund augmentation in 2017-18 to accommodate this increase. Most of these funds

Figure 4

January Projection of Parolee Population Increase Under Proposition 57

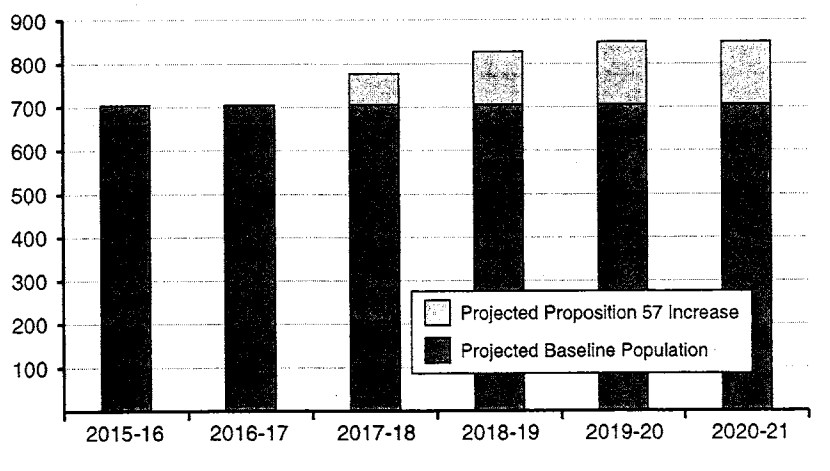


would be used to activate two additional living units, one at N.A. Chaderjian Youth Correctional Facility in Stockton and the other at Ventura Youth Correctional Facility in Camarillo. The population impact is expected continue to increase to about 145 wards by 2020-21.

Grants to Counties for Increased Post Release Community Supervision (PRCS) Population. Offenders whose current offense is nonserious and nonviolent are placed on PRCS and supervised by county probation departments rather than state parole agents when they are released from prison. Because Proposition 57 will increase the rate at which inmates will be released from prison, it will temporarily increase the PRCS population. Accordingly, the Governor's January budget proposes to provide counties with $6.4 million in 2017-18 on a one-time basis to offset some of the costs they will incur from the temporary increase in the PRCS population. The administration reports that counties will be provided with $10,250 to supervise each PRCS offender for a period of 18 months.

Figure 5

January Projection of Division of Juvenile Justice Ward Population Increase Under Proposition 57



LAO Assessment

Budgetary Impacts Subject to Change. As mentioned above, the administration's implementation plan changed somewhat between the release of the Governor's January budget proposal and the release of the emergency regulations in March 2017. These changes to the implementation plan will likely alter somewhat the administration's projected population impacts and budget requests, though at the time of this analysis the administration had not provided these updates.

In addition, as discussed previously, the regulations for the nonviolent offender parole consideration process and new credit earning policies are not yet finalized. Accordingly, the administration's implementation plans and timeline are subject to further change, which raises additional uncertainty about their budgetary effects.

Population Impacts of Proposition 57 Are Difficult to Predict. Even if the administration's regulations do not change, its projections of the Proposition 57 impacts would still be subject to uncertainty because of the inherent difficulty of projecting the effects of the measure. For example, the effects of the parole consideration process will depend on decisions made by deputy parole commissioners. Similarly, the effects of the proposed credit expansion will depend on how inmates respond to increased good conduct credit earning rates and credits for participating in programs and activities as well as the capacity of these

programs. Finally, the effect on DJJ will depend on decisions made by juvenile court judges.

LAO Recommendation

Withhold Action Pending the May Revision. Uncertainty in the population impacts of Proposition 57 makes it difficult to assess the Governor's population-related budget requests. In addition, uncertainty in the timing of and workload required to implement and operate the new parole process and credit policies make it difficult to assess the Governor's requested funding for implementation. Given these uncertainties, we recommend that the Legislature withhold action on the administration's January budget adjustments pending the receipt of revised adjustments from the administration.

LAO Publications

This report was prepared by Caitlin O'Neil and reviewed by Drew Soderborg. The Legislative Analyst's Office (LAO) is a nonpartisan office that provides fiscal and policy information and advice to the Legislature.

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Proposed Proposition 57 Regulations

[Secretary] may prescribe and amend rules and regulations for the administration of the prisons . . . ." The authority to do the same in Division 2 of Title 15 ("Board of Parole Hearings") is found in Penal Code section 3052, which states, "The Board of Parole Hearings shall have the power to establish and enforce rules and regulations under which inmates committed to state prisons may be allowed to go upon parole outside the prison buildings and enclosures when eligible for parole."

With the passage of the Act, Article 1 of the California Constitution was amended to include Section 32, subdivision (b), which states, "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." Accordingly, the Secretary has been granted broad authority under the California Constitution to adopt, amend, or repeal regulations in furtherance of the goals of the Act and hereby invokes that provision of law in support of this rulemaking action and affirmatively certifies that these regulations do protect and enhance public safety.

V. SPECIFIC PURPOSE AND RATIONALE FOR EACH PROPOSED REGULATORY SECTION PER GOVERNMENT CODE 11346.2(b)(1)

A. Parole Consideration for Determinately-Sentenced Nonviolent Offenders

The Act grants constitutional authority to the Secretary of the department to adopt regulations governing parole consideration for nonviolent offenders. Accordingly, through these regulations the Secretary proposes to create a parole consideration process for qualifying nonviolent offenders who have finished serving the full term for his or her primary offense. The Act does not create a right for nonviolent offenders to parole; rather, it authorizes the department to establish this parole consideration process and through it promote the public safety and rehabilitation goals of the Act.

The regulations establish the process through which the department identifies (1) which inmates qualify as nonviolent offenders, (2) when those nonviolent offenders may be screened for referral eligibility, and (3) the criteria from which to determine when the offender is eligible for referral to the board. Then, when a nonviolent offender is referred to the board for nonviolent parole consideration, these regulations direct the board to review the offender's record and determine whether the offender may be safely released at this time or continues to pose an unreasonable risk of violence to the community. In making those determinations, the regulations establish the information to be considered, clarify the standard of review, and provide a mechanism for the board to notify victims and prosecuting agencies and consider their input.

Title 15, Division 3, New Subchapter 5.5, Article 1, Parole Consideration for Determinately-Sentenced Nonviolent Offenders.

Section 3490. Definitions.[11]

This section is adopted to define key terms that will apply to the new parole consideration process for nonviolent offenders. First, this section defines a "nonviolent offender" as any inmate who is not (1) condemned, (2) currently incarcerated for a term of life without the possibility of parole, (3) currently incarcerated for a term of life with the possibility of parole, (4) currently serving a term for a violent felony as defined in Penal Code section 667.5, subdivision (c), or (5) convicted of a sex offense that currently requires registration pursuant to Penal Code section 290.

Condemned inmates, inmates currently serving a term of life without the possibility of parole, and inmates currently serving a term of life with the possibility of parole are excluded from parole consideration under this section because the people of the State of California (through initiatives and the legislature) determined that such inmates have been convicted of violent offenses or have repeatedly committed serious crimes that require the longest possible period of incarceration (life in prison with the possibility of parole), consistent with public safety.

Inmates currently serving a term for a violent felony offense, as defined in Penal Code section 667.5, subdivision (c), are excluded from parole consideration because the crimes listed in that section of the Penal Code involve physical violence. However, inmates who have completed a violent offense term but remain incarcerated for offenses that do not qualify as a violent felony will be eligible for parole consideration, in accordance with court decisions.

Inmates convicted of a sexual offense that currently requires or will require they register pursuant to Penal Code section 290 are also excluded from parole consideration because the crimes listed in that section of the Penal Code reflect the determination of the people of the State of California (through initiatives and the legislature) that, "Sex offenders pose a potentially high risk of committing further sex offenses after release from incarceration or commitment, and the protection of the public from reoffending by these offenders is a paramount public interest." (Penal Code section 290.03.) Also, when the people of the State of California approved Proposition 35 on November 6, 2012, they declared that "Protecting every person in our state, particularly our children, from all forms of sexual exploitation is of paramount importance." (See Proposition – Californians Against Sexual Exploitation Act, 2012 Cal. Legis. Serv. Prop. 35 (Proposition 35) (WEST), section 2, paragraph 1.)

[11] The text of this section which is adopted for Division 3 appears below in new section 2449.1 of Division 2. The definitions are repeated in each section because Division 3 is applicable to the department and Division 2 is applicable to the board, yet clarity and consistency in their application by both entities is essential.

Next, this section defines the term "primary offense" to mean the single crime with the longest sentence imposed by any court, excluding all enhancements, alternative sentences, or consecutive sentences, and defines "full term" to mean the actual number of years, months, and days the sentencing court imposed for that primary offense, not including any sentencing credits. Taken together, this means that an eligible inmate will only be considered for parole after serving the actual number of years, months, and days imposed by the sentencing court for the crime with the longest sentence. That date, less any pre-sentence credits awarded by the sentencing court, represents the inmate's "nonviolent parole eligible date," which shall be used to schedule the inmate's initial parole consideration.

Section 3491. Eligibility Determination.
This section is adopted to describe how the department will review each inmate to determine whether the inmate meets the definition of nonviolent offender contained in section 3490. The purpose of this process is to determine which inmates are eligible for parole consideration so that these inmates can be properly scheduled for review.

Subsection 3491(a) establishes that on June 1, 2017, the department began the eligibility determination process for all nonviolent offenders currently in the custody of the department.

Subsection 3491(b) clarifies that the department, after completing the process described in subsection 3491(a) above, shall begin the eligibility determination process for all nonviolent offenders upon their admission to the department.

Subsection 3491(c) clarifies that the department shall conduct another eligibility determination for nonviolent offenders once a sentencing court issues a new or amended abstract of judgment affecting their conviction or term of incarceration. This ensures that inmates are identified and tracked as nonviolent offenders as quickly as possible, but that inmates are reviewed again when changes to their convictions or terms of incarceration imposed by the court occur to determine the impact of those changes on their nonviolent offender status.

Subsection 3491(d) establishes the three required steps of the eligibility determination process, which includes determining if the inmate meets the definition for inclusion as a nonviolent offender, identifying the inmate's primary offense, and calculating the inmate's nonviolent parole eligible date by determining when the inmate will complete the full term of his or her primary offense.

Subsection 3491(e) clarifies that eligibility determinations are subject to the department's inmate appeal process so that inmates understand the proper channel through which to challenge an eligibility determination they feel was made in error.

Section 3492. Public-Safety Screening.

This section is adopted to describe how the department will screen each inmate beginning July 1, 2017, to determine whether a nonviolent offender should be referred to the board for parole consideration or instead be deferred for one year due to recent institutional misconduct, indicating that they pose an unreasonable risk to the community. Under the screening process set forth in this section, the department will review the inmate's current case factors as his or her nonviolent parole eligible date approaches to determine whether the inmate has committed a listed offense. Only inmates who pass this public-safety screening are referred to the board. Such screening protects public safety and ensures that the board focuses its resources on inmates who are more likely to be found suitable for parole.

Subsection 3492(a) clarifies that nonviolent offenders must be screened for potential referral at least 35 days prior to their nonviolent parole eligible date. This is to ensure that eligible inmates are referred to the board early enough for the board to complete its jurisdictional review (see section 2449.3 below) prior to the inmate reaching his or her nonviolent parole eligible date.

Subsection 3492(b) contains the eight screening criteria the department will apply to determine whether a nonviolent offender will be referred to the board. The department intends to use the same criteria established by the federal court when it ordered the department to establish a parole consideration process for nonviolent second-strike offenders. The department believes that these criteria have served to protect public safety in the court-ordered process and have therefore adopted them in the new parole consideration process.

Under these criteria, nonviolent offenders will automatically be screened out if their prison records establish they have recently committed serious misconduct indicating they pose an unreasonable risk of violence.

First, those inmates who engage in serious misconduct while in prison such that they must be segregated from the general population because they pose an unreasonable risk of violence to other inmates or staff are often placed in security housing units. Placement in a security housing unit is reserved for the most serious offenses committed in prison, clearly indicating that the nonviolent offender continues to pose a risk to public safety. Thus, nonviolent offenders who are currently placed in a security housing unit or have been placed in a security housing unit in the past five years will be screened out of the parole consideration process given that their prison record contains clear evidence that they are not suitable for parole.

Second, nonviolent offenders are similarly screened out if their prison record indicates they have been placed in a security housing unit for any involvement with a Security Threat Group (i.e., prison gang) in the past five years.

Third, nonviolent offenders will be screened out if, in the past five years, they have been found guilty of one Division A-1 or Division A-2 rules violation, which amount to in-prison felony offenses, or if they have been found guilty of two or more serious rules violations of any kind in the past year. This subsection also screens out any nonviolent offenders who have been placed in Work Group C within the last year because placement in this work group indicates the inmate has had his or her privileges revoked for disciplinary reasons.

Furthermore, this subsection screens out any nonviolent offenders who are scheduled to be released on their earliest possible release date if that date falls within 180 days of their screening date or their nonviolent parole eligible date. Parole consideration under this section is not necessary if the inmate is already going to be released by operation of law within 180 days of their screening date or their nonviolent parole eligible date.

Subsection 3492(c) clarifies that nonviolent offenders who are deemed eligible under subsection 3492(b) above shall be referred to the board for parole consideration consistent with this section.

Subsection 3492(d) clarifies that nonviolent offenders who are not screened out under this section shall be referred to the board for parole consideration. However, nonviolent offenders who are screened out must be screened again one year later and each year thereafter until they are referred to the board, no longer deemed eligible for referral, or released from prison by operation of law. This is to ensure that nonviolent offenders who are screened out of the parole consideration process are reviewed regularly to determine if their current prison record no longer demonstrates an unreasonable risk of violence to the community.

Subsection 3492(e) requires the department to notify inmates of the results of their public-safety screenings for the sake of transparency and to ensure they can appeal the department's decision if they believe it was made in error. This subsection also requires the department provide information to the nonviolent offender about his or her opportunity to submit a written statement to the board.

Subsection 3492(f) clarifies that public-safety screening determinations are also subject to the department's Inmate Appeal Process so inmates understand the proper channel through which to challenge a determination they feel was made in error.

Section 3493. Processing for Release.

This section is adopted to establish that the department shall parole an approved nonviolent offender no later than 60 days from the date of the board's decision approving parole. This section provides the board and the department with sufficient time to conduct all necessary pre-

release reviews and notifications, including statutorily-required notifications. This subsection further clarifies that nonviolent offenders approved for parole remain subject to all laws that affect the release of inmates, including laws governing holds, warrants, or detainers, and any notification requirements to victims and law enforcement agencies. Finally, this subsection clarifies that inmates subject to additional terms of confinement for in-prison offenses will still be required to serve those terms beginning on the date they would have otherwise been released from prison following parole approval by the board, in accordance with Penal Code section 1170.1, *In re Tate* (2006) 135 Cal.App.4th 756, and *In re Thompson* (1985) 172 Cal.App.3d 256.

Title 15, Division 2, Chapter 3, Article 1, Parole Consideration for Determinately-Sentenced Nonviolent Offenders.

Section 2449.1. Definitions.

This section is adopted to define key terms that will apply to the new parole consideration process for nonviolent offenders. First, this section defines a "nonviolent offender" as any inmate who is not (1) condemned, (2) currently incarcerated for a term of life without the possibility of parole, (3) currently incarcerated for a term of life with the possibility of parole, (4) currently serving a term for a violent felony as defined in Penal Code section 667.5, subdivision (c), or (5) convicted of a sex offense that currently requires registration pursuant to Penal Code section 290.

Condemned inmates, inmates currently serving a term of life without the possibility of parole, and inmates currently serving a term of life with the possibility of parole are excluded from parole consideration under this section because the people of the State of California (through initiatives and the Legislature) determined that such offenders have been convicted of violent offenses or have repeatedly committed serious crimes that require the longest possible period of incarceration (life in prison with the possibility of parole), consistent with public safety.

Inmates currently serving a term for a violent felony as defined in Penal Code section 667.5, subdivision (c), are excluded from parole consideration because the crimes listed in that section of the Penal Code involve physical violence. However, inmates who have completed a violent offense term but remain incarcerated for offenses that do not qualify as a violent felony will be eligible for parole consideration, in accordance with court decisions.

Inmates convicted of a sex offense that currently requires they register pursuant to Penal Code section 290 are also excluded from parole consideration because the crimes listed in that section of the Penal Code reflect the determination of the people of the State of California (through initiatives and the legislature) that, "Sex offenders pose a potentially high risk of committing further sex offenses after release from incarceration or commitment, and the protection of the public from reoffending by these offenders is a paramount public interest." (Penal Code section 290.03.) Also, when the people of the State of California approved Proposition 35 on November

6, 2012, they declared that "Protecting every person in our state, particularly our children, from all forms of sexual exploitation is of paramount importance." (See Proposition – Californians Against Sexual Exploitation Act, 2012 Cal. Legis. Serv. Prop. 35 (Proposition 35) (WEST), section 2, paragraph 1.)

Next, this section defines the term "primary offense" to mean the single crime with the longest sentence imposed by any court, excluding all enhancements, alternative sentences, or consecutive sentences, and defines "full term" to mean the actual number of years, months, and days the sentencing court imposed for that primary offense, not including any sentencing credits. Taken together, this means that an eligible inmate will be considered for parole after serving the actual number of years, months, and days imposed by the sentencing court for the crime with the longest sentence. That date, less any pre-sentence credits awarded by the sentencing court, represents the inmate's "nonviolent parole eligible date," which shall be used to schedule the inmate's initial parole consideration.

Section 2449.2. Notification Process.
This section is adopted to describe the board's processes for notifying the appropriate registered victims and prosecuting agencies when an inmate has been referred to the board for parole consideration under section 3492 above. The proposed process is the same notification process currently in place under the court-ordered nonviolent second-strike offender parole consideration process, which provides registered victims and prosecuting agencies with advance notice and 30 calendar days to provide written comment for the board's consideration.

Subsections 2449.2(a)(1) and (2) establish a deadline of five business days for the board to generate the notifications described above and a deadline of 30 calendar days for any response to be postmarked or electronically stamped. The department believes this will provide the board with the time necessary to determine which registered victims and prosecuting agencies are entitled to receive notifications and to generate the notification letters. The department also believes this will provide the responding participants with adequate time to respond to the board.

Subsections 2449.2(b) and (c) define registered victims and prosecuting agencies in accordance with statutes and case law that currently control the board's notification processes for parole hearings held pursuant to Penal Code sections 3041 and 3041.5. This subsection further requires the board to provide registered victims and prosecuting agencies with the opportunity to submit a written statement regarding the nonviolent offender to be considered when determining if the offender should be approved for parole. Finally, this subsection establishes the deadline for a notified person to submit a written response at 30 calendar days following the date of the board's notification. This provides the participants with sufficient time to receive the notification and develop a statement for the board's consideration.

Section 2449.3. Jurisdictional Review.

This section is adopted to describe the board's process for conducting a jurisdictional review prior to conducting parole consideration for nonviolent offenders to ensure that the inmate who has been referred to the board qualifies as a nonviolent offender under proposed section 3491 above and is currently eligible for referral to the board under proposed section 3492. The purpose of this section is to provide a second review to confirm that the referred nonviolent offender is eligible before the board uses its resources to conduct a full nonviolent parole consideration review on the merits.

Subsection 2449.3(a) clarifies that jurisdictional reviews shall be conducted by hearing officers employed by the board. These hearing officers include administrative law judges and commissioners who have been trained to conduct a wide range of administrative law hearings and reviews for the board and have been specially trained on the legal standards that apply and on the due process rights of all participants. This subsection further clarifies that jurisdictional reviews shall not be initiated until registered victims and prosecuting agencies have had an opportunity to submit their written statements for consideration. Since a jurisdictional review will be conducted prior to a full review on the merits, this process ensures that victims and prosecuting agencies have the opportunity to submit their statements before a hearing officer determines if the offender should be approved for parole.

Subsection 2449.3(b) defines the process used by the board to determine if it has jurisdiction to consider parole for a nonviolent offender. In accordance with proposed sections 3491 and 3492 above, a hearing officer must determine whether the offender referred to the board is currently (1) scheduled for release no earlier than 180 calendar days after the date of referral, (2) eligible as a nonviolent offender under the department's eligibility determination process, and (3) qualified for referral to the board under the department's public-safety screening criteria. If the answer to all three of the above inquiries is "yes," then the board has jurisdiction and shall consider the offender for parole. This process helps ensure that public safety is protected and the board uses its limited resources on those cases that are meritorious.

Subsection 2449.3(c) establishes the board's procedures following a jurisdictional review, depending on whether the hearing officer finds the board has jurisdiction. Specifically, if a hearing officer finds the board lacks jurisdiction, subsection (1) requires that the hearing officer issue a written decision, including a statement of reasons explaining that decision. Subsection (1) also requires the board to notify the inmate, registered victims, and prosecuting agencies of the board's jurisdictional decision to ensure transparency among all of the participants and provide the inmate with an opportunity to seek review of the board's decision pursuant to section 2449.5 below. On the other hand, if the hearing officer finds the board does have jurisdiction over the case, subsection (2) requires that the hearing officer advance the case to a full review on the merits pursuant to section 2449.4 below.

Subsection 2449.3(d) clarifies that board's jurisdictional determinations under this section are not subject to the department's Inmate Appeal Process, but are instead subject to the board's decision review process established in section 2449.5 below. This subsection ensures that inmates are afforded a means to raise any concerns they may have regarding the results of a jurisdictional determination and for the board to correct any errors.

Section 2449.4. Review on the Merits.

This section is adopted to describe the board's processes when considering parole for a nonviolent offender. This section describes the scope of the information to be considered by the board, the legal standard to be applied by the board, the circumstances that will result in an automatic review of the hearing officer's decision, and the proper means for an inmate to seek review of the board's final decision. Each of these attributes is explained in greater detail in the subsections that follow.

Subsection 2449.4(a) clarifies that a review on the merits shall be conducted by a hearing officer employed by the board, the same hearing officers responsible for the jurisdictional reviews described in section 2449.3 above. As discussed in that section, these hearing officers include administrative law judges and appointed commissioners who are highly qualified to conduct a wide range of administrative law hearings and reviews for the board.

Subsection 2449.4(b) establishes that the board's hearing officers must consider all relevant and reliable information when considering parole for a nonviolent offender. This requirement mirrors the requirements found in sections 2281 and 2402, applicable to parole suitability hearings for life-term inmates. This subsection further clarifies that relevant information includes all information in the inmate's central file, inmate's criminal history reports, and written statements submitted by the inmate, registered victims, and prosecuting agencies. In the event the inmate suffered a new criminal conviction following approval of nonviolent offender parole in the past, this subsection requires the hearing officer to consider that information as well. The purpose of this subsection is to ensure that hearing officers have access to all of the above information for their consideration when determining whether parole is appropriate for nonviolent offenders.

Subsection 2449.4(c) establishes the legal standard of review to be applied by the board's hearing officers when considering parole for nonviolent offenders. The department determined that the key question for hearing officers is whether the inmate poses an unreasonable risk of violence to the community, which follows well-established legal standards for parole consideration. This subsection further requires that hearing officers consider the circumstances of the conviction, including any mitigating or aggravating factors, as well as the nonviolent offenders' prior criminal record, institutional conduct, and written input from the

inmate, registered victims, and prosecuting agencies. This process ensures that the hearing officer makes a fully informed decision when considering parole.

Subsection 2449.4(d) directs that, if a hearing officer determines a nonviolent offender does not pose an unreasonable risk of violence to the community, he or she shall approve parole. This subsection also directs that, if the hearing officer determines the nonviolent offender does pose an unreasonable risk of violence to the community, he or she shall deny parole. In either case, this subsection requires that hearing officers reduce their findings to written decisions along with a statement of reasons in support thereof. This subsection further requires the board to notify the inmate, registered victims, and prosecuting agencies of the board's decision on the merits to ensure transparency among all of the participants and provide the inmate with an opportunity to seek review of the board's decision pursuant to section 2449.5 below.

Finally, this subsection contains an added safeguard for public safety in the form of a second-level review of a hearing officer's decision approving parole for a nonviolent offender if it would result in the inmate's release two or more years prior to his or her earliest possible release date. The second-level review shall be conducted by either an Associate Chief Deputy Commissioner or Chief Hearing Officer. The purpose of this provision is to ensure that the board scrutinizes any decision that would result in a nonviolent offender's approval for parole two or more years prior to their earliest possible release date.

Subsection 2449.4(e) clarifies that the board's parole decisions on the merits are not subject to the department's Inmate Appeal Process, but are instead subject to the board's decision-review process established in section 2449.5 below. This subsection ensures that inmates are afforded a means to raise any concerns they may have regarding the results of a board decision and afford the board a means to self-correct any errors in its parole determinations on the merits.

Section 2449.5. Decision Review.

This section is adopted to describe the board's process for administratively reviewing decisions made by one of its hearing officers. The types of decisions subject to review are limited to jurisdictional determinations and parole determinations on the merits. The purpose of this section is to provide inmates with the opportunity to raise concerns regarding such decisions and provide the board with an opportunity to administratively review those decisions in a timely fashion for any potential errors.

Subsection 2449.5(a) establishes that, within 30 calendar days of a hearing officer making a jurisdictional decision or a parole decision on the merits, an inmate may request review of that decision. The department believes that 30 calendar days is a reasonable amount of time

for an inmate to receive notification of the jurisdictional decision or parole decision on the merits, analyze the results, and seek review.

Subsection 2449.5(b) requires the board to complete its review of a jurisdictional decision or a parole decision on the merits within 30 calendar days of receipt of an inmate's request. The department believes that 30 calendar days is a reasonable amount of time for the board to analyze the hearing officer's decision and prepare a written response. Additionally, this subsection directs that review of such decisions be conducted by an Associate Chief Deputy Commissioner, the board's Chief Hearing Officer, or another hearing officer of the board who was not involved in the original decision at issue. This ensures that the review of the decision will be independent from the original hearing officer and that the affected inmate can be assured of a fair and impartial review.

Subsection 2449.5(c) requires the Associate Chief Deputy Commissioner, Chief Hearing Officer, or other hearing officer selected to conduct a review to document his or her findings in writing, whether the reviewing officer concurs with the original hearing officer's decision or disagrees with the original hearing officer's decision. In the latter case, the subsection requires the reviewing officer vacate the original hearing officer's decision and issue a new decision with a new statement of reasons. This ensures that the board and the affected inmate have a written record of the reviewing officer's decision and basis for that decision. This subsection further requires the board to notify the inmate, registered victims, and prosecuting agencies of the reviewing officer's decision to ensure transparency among all of the participants and provide the inmate with an opportunity to seek further review of the board's decision.

Subsection 2449.5(d) requires that the board vacate the decision approving parole for any nonviolent offender who is subsequently determined to be ineligible for parole consideration pursuant to section 3491 above or is subsequently disqualified under the public-safety screening process pursuant to section 3492 above. This may occur because the board becomes aware of a fact that makes the inmate no longer eligible for the nonviolent offender parole process pursuant to section 3491 above or because the inmate has engaged in subsequent misconduct that disqualifies the inmate pursuant to the public-safety screening criteria found in section 3492 above. When a decision is vacated for these reasons, this subsection requires that the board document in writing the grounds for the inmate's ineligibility or disqualification as described above. This subsection further requires the board to notify the inmate, registered victims, and prosecuting agencies if the decision is vacated for one of the reasons described above to ensure transparency among all of the participants and provide the inmate with an opportunity to seek review of the board's decision.

B. Credit Earning

With the passage of the Act, the Secretary of the department has been granted authority to adopt new regulations governing credit earning for inmates. Because of the extensive changes being adopted, the department has elected to delete, replace, relocate, and rewrite some existing sections rather than display the numerous changes to each existing sections. The department believes this will assist with readability and understanding of the changes. Each type of credit earning program will receive its own individual section rather than being embedded with other types of credit earning in the same section as is the case currently. Some existing sections are being relocated in their entirety and renumbered to make room for the new credit earning sections being adopted.

The types of credit an inmate may now earn under these new regulations are: (1) Good Conduct Credit, (2) Milestone Completion Credit, (3) Rehabilitative Achievement Credit, (4) Educational Merit Credit, and (5) Extraordinary Conduct Credit. Good Conduct Credit, Milestone Completion Credit, and Extraordinary Conduct Credit are existing inmate credit earning programs that are being modified and adopted in this rulemaking. Rehabilitative Achievement Credit and Educational Merit Credit are new credit earning programs being adopted under this rulemaking.

Specifically:

1. Good Conduct Credit is being adopted into its own section 3043.2, replacing the current section text titled "Loss of Participation Credit," which is deleted in its entirety.
2. Milestone Completion Credit is being adopted into its own section 3043.3, replacing the current section titled "Loss of Behavior, PC 2933, or PC 2933.05 Credit," which is deleted in its entirety.
3. Rehabilitative Achievement Credit is being adopted into its own section 3043.4, replacing repealed section titled "Non-Credit Earning." Existing section 3043.7, "Impact of 45 Notification on Credit Earning," is deleted in its entirety.
4. Educational Merit Credit is being adopted into section 3043.5, replacing the current section titled "Special Assignments," which is relocated in its entirety to new section 3043.7 retaining the same title.
5. Extraordinary Conduct Credit is being adopted into section 3043.6, replacing the current section titled "Impact on Transfer on Credit Earning," which is relocated to section 3043.8, retaining the same title.

Title 15, Division 3, Chapter 1, Article 3.5, Credits.

Section 3042. Penal Code 2933 Credits.
The existing text and title of this section are deleted in their entirety. Section 3042 was originally adopted by the department to implement, interpret, and make specific the provisions of Penal Code section 2933. Under the Secretary's authority granted by the California Constitution, new credit earning rules have been adopted and located in new sections 3043 through 3043.5 below.

Section 3043. Credit Earning.
The existing text in the preamble of this section and in subsections (a) through (i) are deleted in their entirety. The title of the section, "Credit Earning," remains the same. Under the Secretary's authority granted by the California Constitution to adopt a new credit earning system, many of the specific standards found in this section are no longer needed or have been revised. For example, "behavior" and "participation" credit given to inmates sentenced to an indeterminate term on or before June 30, 1977, or to a determinate term on or after July 1, 1977, will no longer be included under these new regulations. Instead, this small and diminishing population of inmates may continue to receive the older form of credit by direct application of the statute itself (see Penal Code section 2931). Because of the numerous changes proposed for existing section 3043, the department has elected to delete the text of this entire section and replace it with new individual sections setting the standards and conditions for each type of credit earning program. With the deletion of this section, CDCR Form 2233. "Inmate Declaration of General Education Development (GED) Eligibility," is deleted.

Subsection 3043(a) is adopted to make clear that inmates are expected to work or participate in rehabilitative programs in order to be eligible to earn Good Conduct Credit as defined in section 3043.2, Milestone Completion Credit as defined in section 3043.3, Rehabilitative Achievement Credit as defined in section 3043.4, and Educational Merit Credit as defined in section 3043.5. Inmates may also be awarded Extraordinary Conduct Credit as set forth in section 3043.6. These credit earning programs will allow inmates who seek rehabilitative opportunities while in prison and exhibit good conduct to reduce the length of their determinate term or advance their initial parole consideration hearing (as set forth in Penal Code section 3041(a)(2)) if sentenced to a term of life with the possibility of parole. By creating these credit incentives for inmates to participate in rehabilitative programming, the department believes that in-prison behavior will improve, inmates will be better prepared for a successful transition to parole, and communities will be safer.

Subsection 3043(b) is adopted to establish that all eligible inmates will have a reasonable opportunity to participate in credit earning programs depending on their in-prison behavior and custody level, as well as the availability of essential resources. For example, not all prisons can provide the same set of credit earning opportunities due to the varying availability of volunteers,

teachers, and space. The proposed regulations also explain that inmates will only get credit for complete and satisfactory participation in the programs as described in this article. The department is interested in more than mere attendance; instead, the goal is for inmates to complete educational and rehabilitative programs, engage in sustained good conduct, and participate in approved programs designed to further the educational, behavioral, or rehabilitative development of inmates. Further, this regulation clarifies that no credit will be awarded for diplomas, degrees, or certificates that cannot be verified after due diligence by department staff.

Subsection 3043(c) is adopted to ensure that under no circumstance shall inmates who have been awarded credit or have credit restored be released less than 60 days from the date the credit was awarded or restored. This rule is necessary to ensure that department staff has the ability to work with inmates on an individual basis to help them prepare a pre-release plan. The pre-release plan will aid in providing inmates with access to resources and services when they are released back into the community. This will assist in giving inmates the best opportunity to integrate back into society, as well as provide sufficient time for the department to provide notification to law enforcement, district attorneys, and victims when statutorily required.

Subsection 3043(d) is adopted to provide direction to staff and inmates that those inmates who are committed to the department but housed in another jurisdiction are eligible to participate in Good Conduct Credit, Educational Merit Credit, and Extraordinary Conduct Credit as described in subsection 3043(b). Inmates committed to the department may be housed elsewhere pursuant to the Western Interstate Corrections Compact; the Interstate Corrections Compact Agreement, or agreements with the California Department of State Hospitals or Federal Bureau of Prisons. The compacts described above are agreements between states allowing them to transfer inmates between jurisdictions. California is authorized to do so pursuant to Penal Codes sections 11189, 11190, and 11191. Pursuant to Penal Code section 2911, California is authorized to exchange prisoners with the Federal Bureau of Prisons in a similar manner. This regulation is necessary to clarify the credit earning status of inmates who are not physically housed in California State prisons, but are serving California prison terms. The proposed regulation also allows for inmates who are housed within a California Department of State Hospitals facility to participate in the credit earning programs described above.

Section 3043.1. Waiver.

The existing text in this section is deleted in its entirety. This waiver language permits certain inmates to earn credit under Penal Code sections 2933 and 2933.05. Instead, this small and diminishing population of inmates may continue to receive the older form of credit by direct application of the statute itself (see Penal Code section 2931) or opt to participate in these new credit earning programs. With the deletion of this section, CDCR Form 916, "Time Credit Waiver (PC 2934)," is deleted.

Section 3043.1. Pre-Sentence Credit.
This section is adopted to make clear that the award of any credit to an inmate prior to a sentencing hearing is performed by the sentencing court pursuant to Penal Code sections 2900.1, 2900.5, 2933.1, and 4019. These pre-sentence credits are applied to the inmate's term upon receipt of court documents. Thus, the department may only award credit to an inmate beginning the day after an inmate is sentenced by the court.

Section 3043.2. Loss of Participation Credit.
The existing text and title of this section is deleted in its entirety. Instead, this small and diminishing population of inmates may continue to receive the older form of credit by direct application of the statute itself (see Penal Code section 2931) or opt to participate in these new credit earning programs.

Section 3043.2. Good Conduct Credit.

Subsection 3043.2(a) is adopted to establish the criteria for the award of Good Conduct Credit, namely for inmates who comply with the rules and regulations of the prison on a daily basis and perform the duties as assigned to him or her, unless excluded from assignment. If an inmate fails to comply with the rules and regulations of the prison, they can forfeit Good Conduct Credit under existing regulations. Forfeited credit has the effect of lengthening an inmate's release date.

Inmates received on or after May 1, 2017, will be awarded this credit from the day after sentencing. Effective May 1, 2017, currently incarcerated inmates will be awarded this credit prospectively, based on the criteria found in subsections 3043.2(b)(1) through (b)(6). The credit will be applied to a determinately-sentenced inmate's earliest possible release date. For an inmate serving an indeterminate term, the credit awarded will advance his or her initial parole consideration hearing date as set forth by Penal Code section 3041(a)(2). Condemned inmates and inmates sentenced to life without the possibility of parole are excluded because their sentences cannot be reduced.

Subsection 3043.2(b) is adopted to establish that effective May 1, 2017, notwithstanding any other authority to award or limit credit, inmates will be awarded Good Conduct Credit based on the criteria provided in subsections 3043.2(b)(1) through (6). This regulation is necessary to establish the effective date of the Good Conduct Credit change. The award of Good Conduct Credit shall advance an inmate's earliest possible release date if sentenced to a determinate term and an inmate's initial parole consideration hearing date as set forth by Penal Code section 3041(a)(2) if sentenced to an indeterminate term. This proposed change to regulations is necessary to differentiate how Good Conduct Credit will be applied to inmates with determinate and indeterminate sentences, as listed in subsection 3043.2(b)(1) through (b)(6).

Subsection 3043.2(b)(1) is adopted to establish that condemned inmates and inmates who have been sentenced to life without the possibility of parole will remain ineligible to earn Good Conduct Credit. This inmate population is not eligible to earn Good Conduct Credit because their prison term cannot be reduced as a matter of law.

Subsection 3043.2(b)(2) is adopted to establish that inmates serving a determinate term or an indeterminate term for a violent felony as defined in Penal Code section 667.5(c) will be eligible to earn one day of credit for every four days of incarceration (20 percent). Currently, most inmates serving a determinate or an indeterminate term for a violent felony receive zero percent to 15 percent Good Time Credit, depending on when they committed their specific offense. In setting the Good Conduct Credit for inmates convicted of violent felonies at 20 percent, an increase of 5 to 20 percent depending on the inmate, the department balanced the need to provide these inmates with increased incentives to participate in rehabilitative programming and avoid misconduct with the recognition that inmates convicted of violent felonies should not be eligible for the same credit as nonviolent offenders because they bear culpability for greater harm to their communities. Nevertheless, these inmates will also be provided the opportunity to participate in all the other credit earning programs described further below. However, if they do not comply with the rules and regulations of the department, Good Conduct Credit may be forfeited which could negatively impact their release date.

Subsection 3043.2(b)(3) is adopted to establish that inmates serving a term under the Three Strikes Law (Penal Code section 1170.12(c) or 667(c)) and who are not serving a term for a violent felony as defined in Penal Code section 667.5(c) will be eligible to earn one day of credit for every two days of incarceration (33.3 percent). Currently, inmates that fall into this group receive zero percent to 20 percent Good Time Credit pursuant to statute, depending on when they committed their specific offense, or receive 33.3 percent Good Time Credit based on an order issued by the federal Three-Judge Court. In setting the Good Conduct Credit for nonviolent offenders sentenced under the Three Strikes Law at 33.3 percent, an increase of zero to 33.3 percent depending on the inmate, the department sought to establish a uniform credit for all inmates similarly sentenced and to provide those inmates with increased incentives to participate in rehabilitative programming and avoid misconduct. These inmates will also be provided with the opportunity to participate in all the other credit earning programs described further below. However, if they do not comply with the rules and regulations of the department, Good Conduct Credit may be forfeited which could negatively impact their release date.

Subsection 3043.2(b)(4) is adopted to establish that inmates who do not fall into subsections (b)(1) through (b)(3) above will be eligible to earn one day of credit for every day of incarceration (50 percent). This group of inmates currently receives 50 percent credit pursuant to Penal Code section 2933 and thus this subsection will result in no credit change for this group.

This subsection is also adopted to establish that inmates serving a determinate term for a violent felony as defined in Penal Code section 667.5(c) will be eligible to earn one day of credit for every day of incarceration once they have fulfilled the training requirements for assignment to a California Department of Forestry and Fire Protection camp or the training requirements for assignment as a firefighter to a department fire house. To be assigned to a fire camp or fire house inmates must, at a minimum, remain disciplinary free for sufficient time to be eligible for minimum custody placement, they must receive medical clearance pursuant to section 3355(c), and they must successfully complete a rigorous training program. Fire camps serve the public interest by providing millions of person hours responding to fires and other emergencies, including flood protection. Fire camps and fire house assignments carry significant risk of personal injury. The department believes these credit incentives are appropriate for inmates in these challenging assignments. However, if they fail to comply with the rules and regulations of the department they may be removed from the fire camp or fire house pursuant to section 3044(b)(7) discussed below and their Good Conduct Credit may be forfeited, and credit earning rate adjusted, or both; which could negatively impact their release date.

Subsection 3043.2(b)(5) is adopted to establish that inmates who are eligible to earn day for day credit (50 percent) and who are assigned to Minimum A Custody or Minimum B Custody pursuant to sections 3377.1(a)(8) and 3377.1(a)(9), or have fulfilled the training requirements for assignment to a California Department of Forestry and Fire Protection camp or the training requirements for assignment as a firefighter to a department fire house, will be eligible to earn two days of credit for every day of incarceration (66.6 percent). This proposed regulation will not change the current amount of Good Conduct Credit awarded to this inmate population because the federal Three-Judge Court previously ordered 66.6 percent credit to these inmates.

This subsection is also adopted to establish that inmates who are serving a determinate term for an offense that is not a violent felony as defined in Penal Code section 667.5(c) will be eligible to earn two days of credit for every day of incarceration once they have fulfilled the training requirements for assignment to a California Department of Forestry and Fire Protection camp or the training requirements for assignment as a firefighter to a department fire house. The reasons for awarding increased credits to inmate-firefighters discussed in subsection 3043.2(b)(4) above are applicable here too. Furthermore, this proposed regulation provides credit parity between nonviolent day-for-day credit earners who serve as firefighters and nonviolent 33.3 percent credit earners who serve as firefighters: both will earn 66.6 percent credit once they have fulfilled the training requirements for assignment as a firefighter. Similarly, if they fail to comply with the rules and regulations of the department then they may be removed from the fire camp or fire house pursuant to section 3044(b)(7) discussed below and their Good Conduct Credit may be forfeited, and credit earning rate adjusted, or both; which could negatively impact their release date.

Subsection 3043.2(c) is adopted to establish the criteria for credit forfeiture and restoration. While these proposed regulations allow for an overall increase in the credit that an inmate can be awarded, inmates are nevertheless expected to comply with the rules and regulations of the department at all times while incarcerated, as well as perform the duties assigned to them on a regular and satisfactory basis. If an inmate receives a serious disciplinary action or is placed on non-credit earning status, Good Conduct Credit will be forfeited in whole day increments pursuant to section 3323. The department believes that the forfeiture of credit is necessary to ensure that there are meaningful consequences for prison misconduct. However, for some low-level disciplinary actions, forfeited credit may be restored if the inmate remains disciplinary free for the requisite length of time described in Subchapter 4, Article 5.5 of these regulations. Forfeited credit may also be restored if the disciplinary action is reversed pursuant to an administrative appeal or by a court of law.

Section 3043.3. Loss of Behavior, PC 2933, or PC 2933.05 Credit.
The existing text in this section is being deleted in its entirety.

Section 3043.3. Milestone Completion Credit.
Milestone Completion Credit is an existing credit earning program first implemented by the department in 2010 following enactment of Penal Code section 2933.05. Existing Milestone Completion Credit programs, as described in subsection 3043(c), have performance measures that demonstrate an understanding of course curriculum (either academic or vocational) through completion of assignments, instructor evaluations, and standardized testing. As established, this program was limited to six weeks of credit per year and excludes condemned inmates, inmates serving a term of life without the possibility of parole, inmates sentenced under the Three Strikes Law (Penal Code section 1170.12, subdivision (c), or section 667, subdivisions (c) or (e)), inmates serving a term for a violent felony as defined in Penal Code section 667.5, subdivision (c), and inmates convicted of an offense that requires registration as a sex offender under Penal Code section 290.

Under the authority of Article 1, Section 32(b), of the California Constitution, the department has substantially revised, reorganized, and renumbered the existing text in subsection 3043(c) as new section 3043.3. These proposed regulations maintain the performance measures for Milestone Completion Credit set forth in Penal Code section 2933.05, but expand Milestone Completion Credit in two ways: first, these proposed regulations raise the current annual credit limit from six weeks to twelve weeks and, second, they allow all inmates to participate in Milestone Completion Credit programs, with the exception of condemned inmates and inmates serving a term of life without the possibility of parole.

With regard to the proposed increase in the annual credit limit, currently the maximum amount of Milestone Completion Credit an inmate can earn is capped statutorily at six weeks per year. (Penal Code section 2933.05.) However, in order to incentivize more inmates to seek out educational, rehabilitative, or vocational training programs, the department has determined that the maximum amount of credit an inmate can earn annually should double from six weeks to twelve weeks. The department believes that doubling the annual cap on Milestone Completion Credit is in keeping with the intent of the Act – to increase inmate participation in rehabilitative programming and thus reduce recidivism and enhance public safety upon release – and represents a prudent increase that should be studied in the years to come in order to determine whether further changes are appropriate.

With regard to the proposed expansion in the number of inmates that may participate, currently all of the following are excluded from Milestone Completion Credit: condemned inmates, inmates sentenced to a term of life without the possibility of parole, inmates sentenced under the Three Strikes Law (Penal Code section 1170.12, subdivision (c), or section 667, subdivisions (c) or (e)), inmates serving a term for a violent felony as defined in Penal Code section 667.5, subdivision (c), and inmates convicted of an offense that requires registration as a sex offender under Penal Code section 290. In keeping with the intent of the Act – to increase inmate participation in rehabilitative programming and thus reduce recidivism upon release – the department has determined that all inmates should participate in Milestone Completion Credit programs, except condemned inmates and inmates sentenced to a term of life without the possibility of parole (for whom credits have no effect on their sentence).

Subsection 3043.3(a) identifies the criteria necessary for a program to qualify for Milestone Completion Credit. The department believes that the award of Milestone Completion Credit should require the mastery of certain performance measures that demonstrate an understanding of course curriculum (either academic or vocational) through completion of assignments, instructor evaluations, and standardized testing. Each milestone credit is weighted based on the number of hours of classroom time and assignments. Thus, not all inmate programs will qualify for this credit.

Subsection 3043.3(b) is adopted to establish that Milestone Completion Credit will not be awarded to inmates who have previously achieved certain academic education levels prior to incarceration. The department's intent is to incentivize inmates who, while in custody, participate in educational programs to further their education. As discussed in a previous section regarding *Correctional Challenges in California* (see p. 4), research shows that inmates who participate in correctional education and vocational training programs are more likely to find employment than inmates who did not participate in such programs and are significantly less

likely to re-offend and return to prison.[12] The department has also proposed new section 3043.5, entitled Educational Merit Credit, which grants a credit award only once for each level of educational achievement inmates complete while incarcerated (i.e., a high school diploma, General Education Development certificate, associate's degree, bachelor's degree, and graduate degree) from a regionally accredited institution.

Subsection 3043.3(c) is adopted to establish that effective August 1, 2017, all inmates, except condemned inmates and inmates sentenced to a term of life without the possibility of parole, may earn up to twelve weeks of Milestone Completion Credit in a twelve month period. In this revised subsection, the department sets out to expand the number of inmates who can earn this credit and the number of weeks that can be earned in a single year for this credit for all of the reasons outlined in section 3043.3 above. This subsection also allows those inmates who earn more than twelve weeks of credit in a single year to have the excess credit preserved and applied on their next credit anniversary, defined as one year after the inmate is awarded his or her first Milestone Completion Credit. For these inmates who already have excess credit on August 1, 2017, they will not be awarded that credit until their next credit anniversary. The department believes that allowing inmates to preserve excess credits and apply them in future years will further incentivize inmates to participate in these educational and vocational rehabilitative programs in the near term. However, when an inmate is released from prison their excess credit is void.

Subsection 3043.3(d) is adopted to establish the joint responsibility of the department's Division of Rehabilitative Programs and Division of Adult Institutions to collaborate on maintaining and revising the Milestone Completion Credit Schedule as needed. The schedule (rev. 3/17) is incorporated by reference. This is necessary because the availability of educational and vocational classes, equipment, and practices fluctuates over time given resource, staff, and space limitations in the department.

The new schedule reflects one significant revision from the previous version (rev. 4/15) in that it establishes a closer link between the total number of hours required to complete each program (class time and homework) and the amount of credit awarded. For example, two Milestone Completion Credit programs may be eight weeks long, however, one program requires 80 hours of class time and homework in a four week period and another requires 40 hours in the same four week period. Rather than award each program the same amount of Milestone Completion Credit based on their similar duration, which was sometimes the case under the previous schedule, the program with the greater commitment of time and effort will now receive greater credit.

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[12] Davis, Lois M., Robert Bozick, Jennifer L. Steele, Jessica Saunders and Jeremy N. V. Miles. Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults. Santa Monica, CA: RAND Corporation, 2013. https://www.rand.org/pubs/research_reports/RR266.html.

Subsection 3043.3(e) is adopted to establish that inmates within the Enhanced Outpatient Program, Developmental Disabilities Program, or other mental health inpatient program may earn Milestone Completion Credit for their participation in structured group treatment programs. The department believes this approach will provide those inmates in the above programs with sufficient incentive to more fully participate in their structured group treatment programs, an essential part of their overall success in prison as well as after prison. Furthermore, the department has committed to the federal court in *Coleman v. Brown* to develop more inclusive practices for the inmate populations described above, and the department believes that allowing inmates who participate in structured group treatment programs to earn Milestone Completion Credit is consistent with that commitment. What follows is a more in depth look at how Milestone Completion Credit will impact each of the mental health programs enumerated above.

Enhanced Outpatient Program. Although Enhanced Outpatient Program inmates have opportunities to participate in program assignments, a critical and mandatory part of their programming consists of mental health treatment activities. They are likely to derive as much, if not more, benefit from participation in a treatment program geared toward addressing their mental illness than they would from learning rudimentary job skills. Management of symptoms of serious mental illness is a prerequisite for success upon release. Successful management of mental illness translates into improved chances for success upon release. Enhanced Outpatient Program treatment programs are designed to address symptoms of mental illness and modify behavior, including behaviors that may lead to recidivism. Inmates acquire skills necessary to facilitate re-entry into the community. The department is determined to enhance the success of eligible inmates who participate in the Mental Health Services Delivery System at the Enhanced Outpatient Program level of care. The department recognizes that in order to be successful in the community, inmates with severe mental illness must both learn skills to cope with and manage their mental illness, as well as address criminogenic needs.

Mental Health Inpatient Programs. Similar to the Enhanced Outpatient Program inmates, inmates placed in other mental health inpatient programs participate in intensive rehabilitative treatment programs. Inmates in these programs do not have an opportunity to work or attend school. Their primary focus is on learning to manage symptoms of mental illness and maintain stabilization, both of which are critical to successful community re-integration.

Developmental Disabilities Program. Inmates in the Developmental Disabilities Program may engage in different kinds of programming than other inmates. Due to the nature of their disabilities, programming opportunities must be tailored to their needs and target the issues they are likely to encounter upon release. For example, some inmates in the Developmental Disabilities Program will require instruction in basic self-care, hygiene, grooming, life skills and navigating the community. Inmates in the Developmental Disabilities Program must acquire

basic daily living skills that are a pre-requisite for successful community transitions. Acquisition of these skills serves to reduce conflict, provide increased opportunities for housing and possibly employment. When preparing for community transition, it is important to remember that certain individuals will require programs that are tailored to their specific needs rather than utilizing a one size fits all approach. The department is committed to utilizing a risk-needs responsivity model to rehabilitation, recognizing that for inmates with developmental disabilities, interventions and programming must be targeted to the individual's individual risk and needs.

Subsection 3043.3(f) has been adopted to provide ten business days for an instructor to verify the completion of a program and input it into the department's information technology system. An additional ten business days is provided for the system approver to verify the inmate's eligibility for awarded credit. This time is necessary to ensure accuracy in record keeping and account for staff time necessary to process all credits.

Subsection 3043.3(g) is amended to remove references to subsections that have been renumbered or amended and to establish that Milestone Completion Credit shall be forfeited in whole day increments upon a finding of guilt of a serious rule violation in accordance with section 3323, but only after all Good Conduct Credit has been forfeited. Furthermore, once forfeited, Milestone Completion Credit is not restorable unless the disciplinary action is reversed through an administrative appeal or by a court of law.

Section 3043.4. Non-Credit Earning.
The existing text and title of this section are deleted in their entirety.

Section 3043.4. Rehabilitative Achievement Credit.
Rehabilitative Achievement Credit is a new type of credit for inmates who participate in approved programs that further their educational, behavioral, or rehabilitative development. Examples of such programs include support groups for alcohol and narcotic abuse prevention, anger management, life skills, victim awareness, restorative justice, and parenting classes. All inmates eligible for Good Conduct Credit are eligible to earn up to four weeks of Rehabilitative Achievement Credit per year. The department believes that limiting Rehabilitative Achievement Credit to four weeks per year is reasonable because anything greater could dis-incentivize inmate participation in the Milestone Completion Credit programs, which are more structured and measurable in their results.

In order to qualify for Rehabilitative Achievement Credit, these programs must be organized to achieve educational or rehabilitative goals, be sponsored by department staff or volunteers, and be approved by the Warden at each institution where they are offered. These programs are not as rigorous as Milestone Completion Credit programs. Nevertheless, they fill an important niche for many inmates who may be on one or more wait lists to participate in Milestone Completion

Credit programs, may not be able to fully participate in Milestone Completion Credit programs due to medical or mental health issues, or may decide not to participate in Milestone Completion Credit programs due to other preferred activities such as work assignments or the pursuit of advanced educational degrees.

Subsection 3043.4(a) is adopted to establish uniform criteria for inmate participation and institutional approval of programs that qualify for Rehabilitative Achievement Credit. This subsection makes clear that to earn these credits inmate attendance must be verified, inmate participation must be satisfactory, and inmate programming must be consistent with his or her custodial classification, work group assignment, privilege group, and any applicable safety and security considerations. This subsection also makes clear that institutional pre-approval is necessary for all rehabilitative programs. Pre-approval requires institutional review of the purpose, expected rehabilitative benefit, program materials, and membership criteria of each program. The proposed meeting frequency and location of each program, as well as any affiliations, shall also be reviewed by the institution prior to approval. The department believes that these measures are necessary to ensure that inmate participation in these programs will have tangible rehabilitative benefits and are appropriately supervised.

Subsection 3043.4(b) is adopted to establish that effective August 1, 2017, all inmates, except condemned inmates and inmates sentenced to a term of life without the possibility of parole, may earn up to four weeks of Rehabilitative Achievement Credit in a twelve month period. An inmate who participates successfully in one or more approved Rehabilitative Achievement Credit programs shall be awarded one week of credit (seven days credit) for each 52 hours of participation, up to a maximum of four weeks credit per year (28 days credit) for 208 hours of participation. For example, if an inmate completes their first 52 hours of participation in Rehabilitative Achievement Credit programs by November 1st then they shall be awarded one week of credit at that time. During the next twelve months that inmate may earn additional weeks of credit, one week for every 52 hours of participation in Rehabilitative Achievement Credit programs, so long as they reach or surpass 208 hours of participation by October 30th of the following year. Thereafter, the inmate may earn up to four weeks of Rehabilitative Achievement Credit each year so long as the inmate completes at least 208 hours of participation in approved Rehabilitative Achievement Credit programs by October 30th of the following year. This annual limitation is established to ensure program availability for as many inmates as possible given the likelihood of space limitations in various programs and at various institutions.

Subsection 3043.4(c) is adopted to require that the Warden at each institution publish a local rule listing all of the programs that qualify for Rehabilitative Achievement Credit at that institution. Prior to approving a program or activity the Community Records Manager at that institution will conduct a review to ensure that all of the criteria described in subsection 3043.4(b) above have been met. The Warden shall also consult with the Director of the Division

of Adult institutions and the Secretary, if requested, prior to disapproving any Rehabilitative Achievement Credit program or activity. The list of approved programs shall be published as a local rule no less than once per year. Given the wide discrepancy in available programs at each institution based on their geographic remoteness and corresponding availability of volunteer organizers, the department believes it is important that a comprehensive list of the unique programs available at each prison be published locally to ensure effective communication to the affected inmate population.

Subsection 3043.4(d) is adopted to require a staff member designated by the Warden at each institution shall ensure that within ten business days of an inmate's completion of 52 hours of qualifying programs, the inmate's completion of the hours necessary for this credit are verified and the inmate's eligibility to receive this credit is confirmed. Once it has been confirmed that the inmate has completed the 52 hours of qualifying programs, the information will be entered into and saved in the department's information technology system to ensure accurate record keeping, confirm inmate eligibility, and timely award of credit.

Subsection 3043.4(e) is adopted to establish that Rehabilitative Achievement Credit shall be forfeited in whole day increments upon a finding of guilt of a serious rule violation in accordance with section 3323, but only after all Good Conduct Credit has been forfeited. Furthermore, once forfeited, Rehabilitative Achievement Credit is not restorable unless the disciplinary action is reversed through an administrative appeal or by a court of law.

Section 3043.5. Special Assignments.
The existing text and title of this section are deleted in their entirety and relocated in their entirety to new section 3043.7.

Section 3043.5. Educational Merit Credit.

Subsection 3045.5(a) identifies a new Educational Merit Credit for eligible inmates who successfully complete, while incarcerated, a high school diploma or equivalent, an associate of arts or science degree, a bachelor's of arts or science degree, a graduate degree, or an alcohol and drug counselor certification. Attainment of these degrees requires sustained multi-year effort. This credit may be awarded for each level of educational achievement only once, but must be earned from a regionally accredited institution during the inmate's current term of incarceration. Effective August 1, 2017, Educational Merit Credit shall be applied upon verification of the certificate, diploma or college degree from the granting institution. In the case of associate, bachelor, or graduate degrees, the Educational Merit Credit shall only be applied if at least 50 percent of the units necessary to earn the degree were gained during the inmate's current term of incarceration.

Under existing Milestone Completion Credit programs, inmates receive credit as they incrementally achieve milestones in their educational and vocational training. The department believes, however, that achieving a General Education Development certificate, High School diploma, or a college level degree is deserving of additional Educational Merit Credit in recognition of the inmate's sustained commitment to their educational development, increased prospects for employment, and reduced risk of recidivism.[13] By creating this credit, the department intends to encourage inmates to not only engage in education programs, but increase the number of inmates who complete them with a certificate, diploma or degree.

For college degrees, at least 50 percent of the college course credit must have been earned during the inmate's current term to qualify for Educational Merit Credit. This is necessary to ensure that Educational Merit Credit for college degrees is awarded to inmates that have gained their educational rehabilitation after incarceration, when it is most needed, rather than to those who completed the vast majority of their courses before they entered prison. The "50 percent rule" does not apply to General Education Development certificates and High School diplomas.

The Educational Merit Credit schedule is presented in subsection 3043.5(a).

Subsection 3043.5(b) is adopted to incorporate the Educational Merit Credit. By awarding the Educational Merit Credit, this advances an inmate's estimated release date if sentenced to a determinate term. For an inmate sentenced to an indeterminate term with the possibility of parole, the Educational Merit Credit advances the inmate's initial parole hearing date, pursuant to Penal Code section 3041(a)(2). The Education Merit Credit Schedule lists five categories:

- Category 1 describes that the achievement of a High School diploma, General Education Development certificate, or equivalent, is awarded a one-time credit of 90 days of Educational Merit Credit. This gives an inmate an additional incentive to complete their basic education while incarcerated. Because inmates receive Milestone Completion Credit as they progress through academic programs in route to a General Education Development certificate or High School diploma, the department determined that a one-time Educational Merit Credit of 90 days upon completion is appropriate.

- Category 2 describes that an inmate who obtains an Alcohol and Other Drug Counselor Certification warrants a one-time credit of 180 days of Educational Merit Credit. Unlike education and vocational training, there are no Milestone Completion Credit

[13] Davis, Lois M., Robert Bozick, Jennifer L. Steele, Jessica Saunders and Jeremy N. V. Miles. Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults. Santa Monica, CA: RAND Corporation, 2013. https://www.rand.org/pubs/research_reports/RR266.html.

opportunities for inmates who are working toward this certification. Yet this certification requires a 4,000 hour internship which includes closely supervised counseling, written examinations, and self-help on addiction issues. Therefore, the department believes that a one-time credit of 180 days upon completion of the certification program is justified. This program within the department's In Prison Programs, allows inmates to earn their mentor certification through the California Association for Alcohol and Drug Educators and utilize this certification to obtain employment as a mentor upon release. In addition, inmates who gain their certificate while incarcerated serve as valuable trainers and mentors to other inmates participating in alcohol and drug abuse programs inside prison. The department believes this Educational Merit Credit will encourage more inmates to seek certification as an Alcohol and Other Drug Counselor.

- Category 3 describes that an inmate who achieves an Associate of Arts (AA) or Associate of Science (AS) degree will receive a one-time credit of 180 days of Educational Merit Credit. It is intended that this incentive will encourage inmates to pursue their education beyond high school despite the many challenges faced by inmates doing so in a prison environment. For example, the number of college partners that offer such programs on-site at prisons is limited, as are the opportunities for participation in distance learning programs. As a result, the time that inmates must devote in order to complete college degree programs can be twice or three times what ordinary students devote. Therefore, the department believes a larger one-time credit of 180 day is justified for inmates who successfully complete an accredited two-year college degree program.

- Category 4 describes that an inmate who achieves a Bachelor of Arts (BA) or Bachelor of Science (BS) degree will receive credit of 180 days of Educational Merit Credit. This award is on top of the credit of 180 days received for completion of the associate degree that is typically a pre-requisite for a bachelor degree. The department believes a one-time 180 day Educational Merit Credit is justified for inmates who successfully complete an accredited four-year college degree program.

- Category 5 describes that an inmate who achieves a graduate degree (including a Master's degree or Ph.D.) will receive a single credit of 180 days of Educational Merit Credit. The department believes a one-time 180 day Educational Merit Credit is justified for inmates who successfully complete a regionally accredited graduate degree program.

Subsection 3043.5(c) is adopted to clarify that the Educational Merit Credit shall be awarded only once per category to each inmate. This limitation to one degree per category is based on the ease with which a second or third degree may be earned using the same basic coursework as the first degree. This subsection also sets forth the criteria that Educational Merit Credit will only be awarded for a college level degree that has been achieved through a

regionally accredited institution and that the inmate earn at least 50 percent of the units necessary for that degree while serving his or her current term. This rule reinforces the department's goal of ensuring that an inmate's educational rehabilitation occurs after the inmate's current conviction while allowing inmates to build on some of their prior academic work. The 50 percent rule shall not be applied to inmates who achieve a General Education Development certificate or High School diploma during their current term.

Subsection 3043.5(d) is adopted to set the criteria that upon proof of achievement, departmental education staff shall verify the completion of the Educational Merit Credit and enter it into the department's electronic data system within 30 days

Subsection 3043.5(e) is adopted to clarify that when an inmate receives Educational Merit Credit, any excess Educational Merit Credit remaining upon release from prison is void. However, if an inmate is serving a consecutive term and remains in the custody of the department, the excess Educational Merit Credit shall be applied to the next term. This is necessary because under this subsection, determinate inmates can have Educational Merit Credit applied which can result in an earlier release date to state parole supervision or Post Release Community Supervision, and indeterminate inmates may have an earlier initial parole suitability hearing date. In the event an inmate is committed back to the department on a new commitment, no previous Educational Merit Credit would be applied to the inmate's new term.

Subsection 3043.5(f) is adopted to establish that educational merit credit may not be forfeited for any reason. The intent of this rule is that the inmate's individual Educational Merit Credit achievement was duly earned, was awarded by an accredited educational institution and deserves to be preserved. Instead, the department will take Good Conduct Credit, Milestone Completion Credit, and Rehabilitative Achievement Credit as sanctions for inmate misconduct as determined in a disciplinary action.

Section 3043.6. Impact of Transfer on Credit.
The existing text and title of this section are deleted in their entirety and relocated in their entirety to new section 3043.8.

Section 3043.6. Extraordinary Conduct Credit.
The department has existing regulations that govern the award of credit for heroic acts and exceptional assistance (see section 3043(g)). Because the entire existing section 3043 is being deleted in this rulemaking action, the rules for this type of credit are being adopted into a new section 3046.6.

The department's rules governing the award of credit for heroic acts and exceptional assistance were originally based on Penal Code section 2935. First enacted in 1982, the department completed adoption of regulations implementing Penal Code section 2935 the following year.

The department intends to continue awarding such credit, renamed Extraordinary Conduct Credit. The proposed regulations give the Director of the Division of Adult Institutions broad discretion to grant up to twelve months of Extraordinary Conduct Credit for heroic acts in a life-threatening situation or for providing exceptional assistance in maintaining the safety and security of a prison. The award of such credit must be based on exceptional inmate conduct.

Subsection 3043.6(a) is adopted to establish the criteria for application of Extraordinary Conduct Credit. The proposed regulations provide a process that allows the Director of the Division of Adult Institutions to award up to twelve months of credit to any inmate, excluding condemned inmates and inmates sentenced to life without the possibility of parole whose term cannot be reduced, for heroic acts and exceptional assistance. Cross references are made to existing regulations in sections 3376 and 3376.1 to establish that Institution Classification Committees are responsible for the preliminary review of inmate requests for Extraordinary Conduct Credit and that the Department Review Board at headquarters is responsible for the final review. This is necessary to ensure that both staff and inmates understand the administrative process for requesting and reviewing Extraordinary Conduct Credit requests and the administrative authority empowered to grant or deny a request for Extraordinary Conduct Credit.

Subsection 3043.6(b) is adopted to make clear how Extraordinary Conduct Credit will be applied to inmates with indeterminate and determinate sentences. Inmates with indeterminate sentences are subject to review by the board for consideration for parole. Extraordinary Conduct Credit may result in an earlier initial hearing date before the board for indeterminate sentenced inmates. Determinate sentenced inmates will have their earliest possible release date advanced making them eligible for transition to state parole supervision or Post Release Community Supervision at an earlier date.

Subsection 3043.6(c) is adopted to clarify that when an inmate receives Extraordinary Conduct Credit, any excess Extraordinary Conduct Credit remaining upon release from prison is void. However, if an inmate is serving a consecutive term and remains in the custody of the department, the excess Extraordinary Conduct Credit shall be applied to the next term. This is necessary because under this subsection, inmates can have Extraordinary Conduct Credit applied which can result in an earlier release date to state parole supervision or Post Release Community Supervision or an earlier initial hearing date before the board depending on their commitment offense. In the event an inmate may be committed back to the department on a new commitment, no previous Extraordinary Conduct Credit would be applied to the inmate's new term. This is

necessary, because the intent is for an inmate to receive credit for participating in extraordinary acts of heroism during their current term.

Subsection 3043.6(d) is adopted to establish that if an Extraordinary Conduct Credit is awarded it shall not be forfeited due to misconduct or disciplinary action. This type of awarded credit is held in high regard by the department because the inmate must have been found to have gone well beyond what would be expected. Instead, the department will take Good Conduct Credit, Milestone Completion Credit, and Rehabilitative Achievement Credit as sanctions for inmate misconduct as determined in a disciplinary action.

Section 3044. Inmate Work Groups.
Subsections 3044(a) and 3044(b) remain unchanged but for clarity and simplicity the department has elected to repeal and replace subsections 3044(b)(1) through 3044(b)(8).

Subsection 3044(b)(1) is amended to establish the criteria that an inmate willing and able to perform an assignment on a full-time basis shall be placed in Work Group A-1. Provisions regarding Work Group A-1 were previously under subsection 3044(b)(2). Subsections (A), (B), and (C) are existing provisions (formerly subsections 3044(b)(2)(A), (B), and (C)) and remain unchanged. However, subsections (D) and (E) (formerly subsections 3044(b)(2)(D) and (E)) are amended to make clear that physicians or psychiatrists can diagnose an inmate as totally or partially disabled, respectively.

Subsection 3044(b)(2) (formerly subsection 3044(b)(3)) is amended to establish the criteria that an inmate willing but unable to perform an assignment shall be placed in Work Group A-2 if either of the following is true: the inmate is placed on a waiting list for an assignment or awaiting an adverse transfer to another institution. Subsections (A) and (B) are existing provisions (formerly subsections 3044(b)(3)(A) and (B)) and remain unchanged.

Subsection 3044(b)(3) (formerly subsection 3044(b)(4)) is amended to establish the criteria that an inmate who is willing and able to perform an assignment on a half-time basis shall be placed in Work Group B.

Subsection 3044(b)(4) (formerly subsection 3044(b)(5)) is amended to establish the criteria that an inmate who twice refuses to accept assigned housing, refuses to accept or perform in an assignment, or is a program failure shall be placed in Work Group C and thus earn zero credit. Subsection (A) (formerly subsection 3044(b)(5)(A)) remains unchanged. Subsection (B) (formerly subsection 3044(b)(5)(B)) is amended to make clear that an inmate in this work group shall not be awarded Good Conduct Credit for a period not to exceed the number of disciplinary credits forfeited.

Subsection 3044(b)(5) (formerly subsection 3044(b)(6)) is amended to establish the criteria that an inmate assigned to a segregated housing program shall be placed in Work Group D-1. Subsections (A) through (D) are existing provisions (formerly 3044(b)(6)(A) through (D)) and remain unchanged.

Subsection 3044(b)(6) (formerly subsection 3044(b)(7)) is amended to establish that an inmate who is placed on lockup status based on the criteria identified in this section shall be placed in Work Group D-2 and thus earn zero Good Conduct Credit. Subsection (A) is amended to make clear that an inmate assigned to a determinate term in a security housing unit shall not receive Good Conduct Credit during the period of credit forfeiture or for up to 360 days, whichever is less, depending on the severity of the administrative offense. Subsection (B) is amended to make clear that an inmate who cannot be placed in any other assignment without causing a substantial risk of physical harm to staff or others may remain in Work Group D-2 for six additional months. Subsection (C) is an existing provision (formerly subsection 3044(b)(7)(C)) and remains unchanged. Subsection (D) is amended to establish that Good Conduct Credit shall be restored if the administrative finding of misconduct is overturned or, if criminally prosecuted for the misconduct, the inmate is found not guilty.

Subsection 3044(b)(7) is adopted to establish the criteria by which an inmate shall be placed in Work Group F. Subsection (A) is adopted to establish that an inmate assigned to Minimum A Custody or Minimum B Custody who is statutorily eligible for day-for-day credit shall be placed in Work Group F. Subsection (B) is adopted to make clear that once they have fulfilled the training requirements for assignment as a firefighter to a California Department of Forestry and Fire Protection camp or department fire house they shall be placed in Work Group F. Subsection (C) is adopted to establish that an inmate who is commits a serious rule violation, as described in subsections 3323(b), (c), or (d), or where removal from a Work Group F assignment is necessary based on safety or security considerations, shall be removed from Work Group F.

Subsection 3044(b)(8) is amended to establish that an inmate undergoing reception center processing shall be placed in Work Group U from the date of reception until classified at their assigned institution.

VI. ANTICIPATED BENEFITS OF THE REGULATIONS

The proposed regulations regarding credit earning will benefit our criminal justice system and our communities by creating incentives and opportunities for inmates to take responsibility for their own conduct and rehabilitation while incarcerated. These regulations enhance public safety by encouraging inmates to pursue educational and vocational achievement opportunities, engage