# In the Supreme Court of the State of California



In re

**GREGORY GADLIN,**

**On Habeas Corpus.**

Case No. S254599

Court of Appeal, Second Appellate District, Case No. B289852
Los Angeles County Superior Court, Case No. BA165439
The Honorable William C. Ryan, Judge

## CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION'S SUPPLEMENTAL MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF CHARLES CHUNG

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TO GREGORY GADLIN AND HIS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that respondent California Department of Corrections and Rehabilitation moves this Court to take judicial notice, under rules 8.252(a) and 8.520(g) of the California Rules of Court, of the following documents in support of the Department's consolidated answer to the amicus curiae briefs filed in this case:

**Exhibit F**: The Department's Standard Response number 15, page numbers 21 through 24 of the April 30, 2018 Final Statement of Reasons for the proposed regulations implementing Proposition 57.

**Exhibit G**: September 1, 2017 letter submitted on behalf of the California Public Defenders Association commenting on the proposed regulations implementing Proposition 57.

**Exhibit H**: The Department's summary of, and responses to, the California Public Defenders Association's comments on page numbers 1,069 and 1,070 of the April 30, 2018 Final Statement of Reasons.

This supplemental motion for judicial notice is based on this notice of motion, the accompanying memorandum of points and authorities, the declaration of Charles Chung, and the attached exhibits, which are true and correct copies of the documents described.

Dated: March 4, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
LANCE E. WINTERS
Chief Assistant Attorney General
PHILLIP J. LINDSAY
Senior Assistant Attorney General
AMANDA J. MURRAY
Supervising Deputy Attorney General

/S/ **CHARLES CHUNG**

CHARLES CHUNG
Deputy Attorney General
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## MEMORANDUM OF POINTS AND AUTHORITIES

Under Evidence Code section 459, a reviewing court may take judicial notice of any matter that would be subject to discretionary judicial notice by the trial court, but that is not part of the record on appeal. (See Evid. Code, § 459, subds. (a), (b); see also *Fitz v. NCR Corp.* (2004) 118 Cal.App.4th 702, 719, fn. 4.) Here, the documents attached to the motion as exhibits F, G, and H were not presented to the court below and do not relate to any proceeding that occurred after the Court of Appeal issued its decision on January 28, 2019.

Courts may take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments . . . of any state of the United States," (Evid. Code, § 452, subd. (c)), which this Court recognized as "allow[ing] judicial notice of administrative agency records" (*Associated Builders and Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 375, fn. 4; see also *PG&E Corp. v. Public Utilities Com.* (2004) 118 Cal.App.4th 1174, 1220, fn. 38 [taking judicial notice of briefs filed during the Public Utilities Commission's rulemaking proceedings]).

The documents described in this motion as Exhibits F, G, and H are portions of the administrative rulemaking record for the Department's regulations implementing Proposition 57, as set out in its April 30, 2018 Final Statement of Reasons.

During the public comment periods of the rulemaking process, the Department responded to approximately 41,000 comments. The Department prepared 30 "standard responses" to the most frequently submitted comments that were included in the April 30, 2018 Final Statement of Reasons. Exhibit F is the Department's "Standard Response #15," which responds to the comment that inmates convicted of a nonviolent sex offense should be eligible for Proposition 57's nonviolent parole program.

Exhibit G is the September 1, 2017 letter submitted on behalf of the California Public Defenders Association (CPDA) commenting on the Department's proposed regulations. Exhibit H is a portion of an attachment to the April 30, 2018 Final Statement of Reasons in which the Department summarized the CPDA's comments and responded to them.

Exhibits F, G, and H are part of the administrative rulemaking record, are proper matters for judicial notice under Evidence Code section 452, subdivision (c), and are relevant to this matter for the reasons explained in the Department's consolidated answer to the amicus curiae briefs filed in this case. The Department respectfully requests this Court take judicial notice of the attached documents.

Dated: March 4, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
LANCE E. WINTERS
Chief Assistant Attorney General
PHILLIP J. LINDSAY
Senior Assistant Attorney General
AMANDA J. MURRAY
Supervising Deputy Attorney General

/S/ **CHARLES CHUNG**

CHARLES CHUNG
Deputy Attorney General
*Attorneys for California Department of Corrections and Rehabilitation*

## DECLARATION OF CHARLES CHUNG

I, Charles Chung, declare:

1. I am a deputy attorney general in the California Attorney General's Office, which serves as counsel for the California Department of Corrections and Rehabilitation in this matter. I have personal knowledge of the contents of, and may competently testify concerning, this declaration.

2. I execute this declaration under rules 8.252 and 8.54(a)(2) of the California Rules of Court, which require a motion for judicial notice of matters outside the record to be accompanied by a supporting declaration.

3. The documents attached to the motion for judicial notice as exhibits F, G, and H are true and accurate copies of the electronic records obtained from the Department's rulemaking file relating to the April 30, 2018 Final Statement of Reasons supporting the regulations that the Department promulgated to implement Proposition 57, and submitted in support of the Department's consolidated answer to the amicus curiae briefs filed in this case.

4. On February 12, 2020, I received from the Department an electronic copy of the April 30, 2018 Final Statement of Reasons, including all incorporated comments and the Department's responses thereto. The April 30, 2018 Final Statement of Reasons is 1,347 pages long. On information and belief, the April 30, 2018 Final Statement of Reasons is maintained by the Department in the regular course of its business as part of the rulemaking file for the regulations implementing Proposition 57. Exhibit F is a true and accurate copy of page numbers 21 through 24 of the April 30, 2018 Final Statement of Reasons. Exhibit H is a true and accurate copy of page numbers 1,069 and 1,070 of the April 30, 2018 Final Statement of Reasons.

5. On February 14, 2020, I received an electronic copy of the September 1, 2017 letter submitted to the Department on behalf of the California Public Defenders Association, in response to the Department's invitation for public comment on the proposed regulations implementing Proposition 57. On information and belief, the California Public Defenders Association's September 1, 2017 letter is maintained by the Department in the regular course of its business as part of the rulemaking file for the regulations implementing Proposition 57. The April 30, 2018 Final Statement of Reasons identifies the California Public Defenders Association as commenter E1488. Exhibit G is a true and accurate copy of the September 1, 2017 letter that is summarized on page numbers 1,069 and 1,070 of the April 30, 2018 Final Statement of Reasons and attributed to commenter E1488.

I declare under penalty of perjury that the foregoing is true and correct and that I executed this declaration in Los Angeles, California on March 4, 2020.

/s/ **Charles Chung**
CHARLES CHUNG

# Exhibit F

not be protected or enhanced by making third strike offenders eligible for nonviolent parole consideration. As noted above, third strike inmates remain eligible for parole consideration under Penal Code section 3041 and are eligible to earn credits for good conduct and rehabilitative achievements consistent with other regulations in this rulemaking.

The commenter suggests that only those inmates incarcerated for a violent felony as defined in Penal Code section 667.5, subdivision (c), may be excluded from the Proposition 57 parole consideration process. Nothing in the Act limits the department's discretion in such way. The term "nonviolent offense" is undefined, but the voters delegated implementation of the Act's provisions to the department, which must adopt regulations that "protect and enhance public safety." (Cal. Const., art. I, § 32, subd. (b).) If the drafters of the Proposition wanted to limit the parole consideration process to only those inmates incarcerated for a violent felony as defined in Penal Code section 667.5, subdivision (c), they could have done so. But they did not.

This overarching theme of public safety was presented to the voters in the arguments and rebuttals for and against Proposition 57. And while the commenter suggests that all inmates who do not fall under Penal Code section 667.5, subdivision (c), should be eligible for parole consideration, the proponents reassured the voters, "no one is automatically released, or entitled to release from prison under Prop. 57." (Proposition 57, Voter Guide, Arguments and Rebuttals, at Argument in Favor of Proposition 57.) Moreover, proponents repeatedly emphasized that Proposition 57 requires the Secretary to certify that the regulations adopted in furtherance of the Proposition are consistent with protecting and enhancing public safety.

For all the above reasons, the department promulgated regulations that provide for a nonviolent parole consideration process that expressly excludes inmates who are incarcerated for a term of life with the possibility of parole, and the Secretary certified that those regulations protect and enhance public safety. Inmates sentenced under the Three Strikes Law for a third strike are, therefore, ineligible for nonviolent parole consideration.

**Standard Response #15**

**Comment:** Inmates convicted of a felony offense that requires registration as a sex offender but is not listed in Penal Code section 667.5, subdivision (c), should be eligible for the Proposition 57 nonviolent parole consideration process.

**Response:** The Public Safety and Rehabilitation Act of 2016 ("the Act") authorizes the California Department of Corrections and Rehabilitation to develop regulations that establish a process for nonviolent offenders who have served the full term for their primary offense in state prison to be considered for parole. The Act grants broad rulemaking authority to the department to "adopt regulations in furtherance of these provisions" and requires the Secretary of the

Department of Corrections and Rehabilitation to certify that these regulations protect and enhance public safety. (Cal. Const., art. I, § 32, subd. (b)).

One of the overriding purposes of the Act is to establish a parole consideration process for nonviolent offenders in a manner that protects and enhances public safety. The Act emphasizes this public safety purpose in two important ways. First, the Act's introductory paragraph specifies its overriding purpose: to establish parole consideration in a way that "enhance[s] public safety, improve[s] rehabilitation, and avoid[s] the release of prisoners by federal court order." (Cal. Const., art. I, §32, subd. (a).) Second, the Act requires the department to establish a new regulatory parole scheme to implement its provisions. Stressing its public safety purpose, the Act requires the Secretary of the department to certify that regulations adopted in accordance with its provisions must "protect and enhance public safety." (*Ibid.*)

Consistent with this constitutional grant of authority, the department submitted and certified emergency regulations that establish a new parole consideration process for "nonviolent offenders." The regulatory definition of the term "nonviolent offender" expressly excludes inmates who are "convicted of a sexual offense that requires registration as a sex offender under Penal Code section 290." (Cal. Code Regs., tit. 15, §§ 3490, subd. (a)(3) and 2449.1, subd. (a)(3).)

During the public comment period on the emergency regulations, the department received comments asserting that an inmate who is required to register as a sex offender and who is currently serving a term for a nonviolent offense should not be excluded from the definition of "nonviolent offender" for purposes of the parole consideration process. After considering these comments, the department amended the regulatory definition of "nonviolent offender". For purposes of clarification, on December 8, 2017, the department revised the regulatory text at section 3490, subdivision (a)(3) and section 2449.1, subdivision (a)(3). As a result, an individual who is currently incarcerated for an offense that is not listed as a "violent" offense in the Penal Code is no longer specifically excluded from the definition of a "nonviolent offender."

However, in making these amendments, the department did not alter its decision to exclude all inmates who are required to register as a sex offender from the nonviolent parole consideration process. The department modified section 3491, subdivision (b)(3) to provide that an inmate is not eligible for parole consideration if the inmate "is convicted of a sexual offense that currently requires or will require registration as a sex offender under the Sex Offender Registration Act, codified in sections 290 through 290.024 of the Penal Code." Taking the modified regulations at section 2449.1, subdivision (a)(3), section 3490, subdivision (a)(3), and section 3491, subdivision (b)(1) together, all inmates who are, or will be, required to register as a sex offender are excluded from the nonviolent parole consideration process.

Inmates who have been convicted of a registerable sex offense are ineligible for the nonviolent parole consideration process for several reasons. First, in approving Proposition 57, the voters never intended for sex offenders to be eligible for nonviolent parole consideration. Proposition 57 granted the department broad authority to implement a parole consideration process through a regulatory scheme guided by the mandate to protect and enhance public safety. If the drafters wanted to limit parole consideration to only those inmates incarcerated for a violent felony as defined in Penal Code section 667.5, subdivision (c), they could have done so. But they did not. Instead, voters were aware that under a prior federal court order, the department established a parole consideration process for nonviolent second-strike offenders and voters were reassured that Proposition 57 "does not change the federal court order that excludes sex offenders, as defined in Penal Code 290, from parole." (Proposition 57, Voter Guide, at Argument in Favor of Prop. 57.)

Second, public safety requires that sex offenders be excluded from nonviolent parole consideration. As explained in the Initial Statement of Reasons, the crimes listed in Penal Code section 290 reflect the determination of the People of the State of California (through initiatives and the Legislature) that "[s]ex offenders pose a potentially high risk of committing further sex offenses after release from incarceration or commitment, and that protection of the public from reoffending by these offenders is a paramount public interest." (See the Initial Statement of Reasons, p. 15, citing Pen. Code, § 290.03, subd. (a)(1).) The increased risk of sex offenders was also noted by the U.S. Supreme Court in *McKuny v. Lily*, "[w]hen convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault." (*McKuny v. Lily* (2002) 536 U.S. 24, 33.) The department also notes that when the People of the State of California approved Proposition 35 in 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 35, Text of Proposed Laws, Sec. 2, Findings and Declarations.)

Of the approximately 22,400 state prison inmates required to register for a sex offense based on a current or prior felony conviction, the vast majority (18,087) are convicted of a violent offense listed under Penal Code section 667.5, subdivision (c). An additional 1,076 inmates are convicted of a serious felony listed under Penal Code section 1192.7, subdivision (c), and include such crimes as rape of an unconscious person, and lewd and lascivious acts with a child under fourteen. An additional 3,256 inmates are convicted of sex offenses that are not listed as a violent or serious felony, but in which the offense involves some degree of physical force, coercion, or duress with the victim, often a minor. Examples include incest, pimping of a minor under sixteen, sexual battery, and lewd and lascivious acts with a fourteen or fifteen year old victim where the perpetrator is at least ten years older. The department has determined that these sex offenses demonstrate a sufficient degree of violence and represent an unreasonable risk to public safety to require that sex offenders be excluded from nonviolent parole consideration.

Accordingly, the regulations expressly exclude inmates who are "convicted of a sexual offense that requires registration as a sex offender under Penal Code section 290" from the nonviolent parole consideration process.

**Standard Response #16**

**Comment:** Do not exclude inmates from being referred to the Board of Parole Hearings for parole consideration just because they are within 180 days of their Earliest Possible Release Date or because their Nonviolent Parole Eligible Date is within 180 days from their Earliest Possible Release Date.

**Response:** Section 3492 of the emergency regulations identifies inmates eligible for referral to the Board of Parole Hearings for nonviolent parole consideration. Several conditions must be verified for an inmate to be eligible for referral for parole consideration. One condition is that the inmate's Nonviolent Parole Eligibility Date must fall at least 180 days prior to the inmate's Earliest Possible Release Date and the inmate is not expected to reach his or her Earliest Possible Release Date for at least 180 days.

On December 8, 2017, the department modified the regulatory text at section 3492 to exclude inmates from being referred to the Board of Parole Hearings if their Nonviolent Parole Eligibility Date is within 180 days prior to their Earliest Possible Release Date or if their Earliest Possible Release Date is within 210 days.

The rule addresses the fact that determinately sentenced inmates can be released from incarceration two ways: upon approval by the Board of Parole Hearings or upon reaching their Earliest Possible Release Date, and therefore being automatically released from prison. If the inmate's Earliest Possible Release Date is imminent, a referral to the Board of Parole Hearings is unnecessary since the inmate will soon parole without any action by the board. As explained in the Initial Statement of Reasons, this subsection screens out any nonviolent offenders who are scheduled to be released on their earliest possible parole date if the date falls within 210 days of their screening date or within 180 days of their nonviolent parole eligibility date. Parole consideration (by the department) under this section is not necessary if the inmate is already going to be released by operation of law within 210 days of their screening date or within 180 days of their nonviolent parole eligibility date.

For this reason, inmates will not be referred to the Board of Parole Hearings if their Nonviolent Parole Eligibility Date is within 180 days prior to their Earliest Possible Release Date or if their Earliest Possible Release Date is within 210 days.

# Exhibit G

E 1400


# CPDA

*A Statewide Association of Public Defenders and Criminal Defense Counsel*

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September 1, 2017

Timothy M. Lockwood, Associate Director
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation

RE: California Public Defenders Association's (CPDA) Response to Invitation to Comment on Proposed Regulations Implementing Proposition 57

Dear Mr. Lockwood:

On behalf of the California Public Defenders Association, the largest statewide organization of criminal defense practitioners, please accept the following comments to the proposed regulations implementing the parole and enhanced credits provisions of Proposition 57.

On November 8, 2016, California voters, through the adoption of Proposition 57, amended the California Constitution to add section 32 to article 1. The purpose of the provisions of this section were *"to enhance public safety, improve rehabilitation, and avoid the release of prisoners by federal court order."* (CAL. CONST., art. I, § 32, subd. (a).)

Article 1, section 32, subdivision (a)(1) provides, "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." (Cal. Const., art. I, § 32.) Subparagraph (A) of subdivision (1) defines "full term for the primary offense" as "the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence." Subdivision (a)(1)(A)(2) awards to the California Department of Corrections and Rehabilitation (CDCR), "authority to award credits earned for good behavior and approved rehabilitative or educational achievements," superseding statutes which previously limited that authority. Subdivision (b) requires the CDCR to "adopt regulations in furtherance of these provisions".

**1. The Definition Of A "Nonviolent Offender," As Used In Regulations Governing Early Parole Release, Should Not Exclude <u>All</u> Inmates Previously Convicted Of A Crime For Which Sex Offender Registration Is Presently Required.**

CPDA urges the Department to amend section 2449.1 and 3490, to remove from the definition of "nonviolent offender" the exclusion of any inmate convicted of a sex offense that currently requires registration pursuant to Penal Code section 290. Excluding such inmates endorses a false assumption that one-size-fits-all when it comes to people who have been convicted of a crime which requires lifetime sex offender registration. California has among the broadest sex offender laws in the nation, and it is one of only four jurisdictions in the United States for which the period of mandatory registration is lifelong. Among those required to register in California are individuals convicted of misdemeanor nuisance-type offenses, like indecent exposure, individuals who, while an adolescent, engaged in mutually consensual sexual acts with another adolescent who was younger than eighteen, individuals required to register based on acts committed when they were children, with no lower age-limit to the requirement, and individuals who, either accidentally or intentionally, downloaded pornographic images off the internet and who were unsuccessful in permanently deleting them. In terms of the nature of past registerable offenses, treating these individuals as though all of them are violent, predatory rapists and child molesters is irrational.

Excluding all inmates convicted of crimes which presently require registration also makes no sense in terms of considerations of public safety. Research studies over the past thirty years have consistently yielded data demonstrating that, overall, sex offenders reoffend at rates considerably lower than any other category of inmate, except those convicted of murder. These already low recidivism rates decrease, in a nearly linear fashion, with advancement in age, and drop dramatically with offenders who are older than sixty. The myth of the "dangerous sexual predator" which drove the Department's policies a decade ago has been effectively debunked by science, as has been acknowledged repeatedly by state and federal courts.

As the Department is well-aware, considerable scientific advances have been made over the past half-century in assessing the relative risk of recidivism by any person convicted of a sex offense, and probability estimates of risk vary dramatically based on a person's risk assessment score. To the extent the Department has based its decision to exclude *all* inmates previously convicted of *any* crime requiring sex offender registration on the assumption that *all* sex offenders pose "a potentially high risk of committing further sex offenses after release from incarceration" or on the electorate's laudable desire to protect everyone, particularly children, from sexual exploitation at the hands of everyone who was previously convicted of a sex crime, the decision is patently unreasonable.

Finally, regulations that exclude from parole eligibility tens of thousands of nonviolent non-dangerous inmates, many of whom can safely be released, discounts the expressed wishes of the electorate.

**2. The Definition Of A "Nonviolent Offender," As Used In Regulations Governing Early Parole Release, Should Not Exclude All Inmates Sentenced To An Indeterminate Term Of Life With Parole.**

The parole provision of subdivision (a), subparagraph (1) does not exclude any inmate convicted of a nonviolent felony offense by virtue of the fact that he received an indeterminate, vs. a determinate, sentence. Yet, the Department has drafted and circulated proposed regulations which exclude from early parole consideration all such inmates, regardless of the nature of their commitment offenses.

Consistent with the will of the voters, the Department, when drafting its regulations, properly considered the court-ordered nonviolent second strike process, which was already in place due to a 2014 order by a federal court requiring reduction of the inmate population, to be effectuated through early release of certain offenders. But, as stated in subdivision (a) of section 32, avoiding the release of prisoners by federal court order was not the *only* purpose of Prop 57's parole provision. The electorate adopted these provisions to enhance public safety *and* to improve rehabilitation

CPDA is in agreement with the comments of other organizations, such as Stanford's Justice Advocacy Project and the First District Appellate Project, with regard to the Department's decision to exclude, from the parole release provisions of Proposition 57, all nonviolent third strikers. We would like the Department to reconsider its decision to limit early parole consideration to those sentenced to a determinate term of imprisonment.

Accordingly, we respectfully urge the Department to remove from section 2449.1 and 3490 the exclusion for those who are convicted of a nonviolent felony offense and sentenced to a term of life with the possibility of parole. Nothing in the language of article I, section 32 restricts the early release of non-violent offenders to those who have been sentenced to a determinate term of imprisonment. Nonviolent "third strike" inmates, particularly those who are advanced in age, are some of the least dangerous inmates confined in California prisons. Due in part to the Department's rehabilitative programs, many of them are currently suitable for release on parole. At the same time, the continued confinement of elderly nonviolent non-dangerous inmates is costly to the taxpayers. The release of such inmates and the reallocation of funds used to address their many medical issues to rehabilitative programming for those who are *not* yet suitable for release, would appear to be exactly what the electorate had in mind when it passed Proposition 57 and added section 32 to article I of the California Constitution.

**3. The Regulations Should Permit A "Youth Offender" to Earn Enhanced Credits To Reduce His/Her Youth Offender Parole Eligibility Date.**

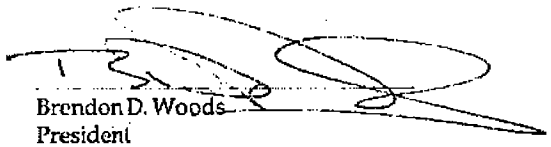
Finally, CPDA is in agreement with Human Rights Watch and the Pacific Juvenile Defender Center that the regulations do not fairly account for the unique circumstances of youth in their treatment of youthful offenders. The various regulations which allow for enhanced credits permit advancement of an inmate's release date, if he or she was sentenced to a determinate term, and "initial parole hearing date," if he or she was sentenced to an indeterminate term with the possibility of parole. CPDA urges the Department to provide, through its regulations, an opportunity for inmates eligible for Youth Offender Parole (Pen. Code, § 3051) to, through the earning of enhanced credits, advance their youth parole eligibility date.

Particularly with youthful offenders, those offering educational, vocational, and rehabilitative services must strike while the iron's hot. When received by the Department, these youngsters are likely at their most malleable – their personalities are not yet fixed, antisocial attitudes are not firmly in place, and there is a real possibility for meaningful change as their brains mature into adulthood. Yet, based on environmental and social factors, these youngsters are often skeptical about their prospects for early release and, separated so young for so long from whatever support system they may have had on the outside, they are very susceptible to peer pressure. Unless motivated effectively and early to change their past behavior patterns and incentivized to make good choices, these youngsters are at risk of joining prison gangs, succumbing to pressure from other, more "hardened" inmates, and, in order to fit in with immature peers, rejecting the Department's rehabilitative programming. As early as possible and as much as possible, youthful inmates must be incentivized to get an education, acquire job skills, address childhood trauma and self-regulation issues, and distance themselves from antisocial peers. By failing to provide that enhanced credits can advance a youth offender's parole eligibility date, the Department is missing out on a very powerful tool for managing the youth offender population and ensuring that the resources it is devoting toward the rehabilitation of these inmates yield the maximum benefit. This can and should be changed.

CONCLUSION:

The credits and parole release provisions of article 1, section 32 were not only adopted to enable the Department to comply with the federal court's order, but also to facilitate the earliest possible release of nonviolent non-dangerous inmates who are suitable for supervision in the community so the Department can dedicate its resources, as effectively and efficiently as possible, to those inmates who are not yet ready to return to society. Most of the regulations adopted by the Department clearly reflect these purposes. We urge the Department to modify the few that do not so that the regulations consistently reflect the electorate's desire to reduce prison populations, increase rehabilitative efforts and avoid wasteful government spending.

Respectfully Submitted,



Brendon D. Woods
President
California Public Defender's Association

# Exhibit H

"[a]ny 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." The final regulations should provide parole consideration for all those sentenced for nonviolent offenses, in accordance with the requirement of
Proposition 57.

**Response E1479.3: See Standard Response 14.**

**Comment E1479.4:** The proposed regulations exclude those who are serving a sentence of life without parole or who are sentenced to death from earning credits. There have been ongoing and recent efforts to abolish both the death penalty and life without parole sentences for juveniles in California. In light of these efforts, the regulations should make clear that the department will maintain records of credits accumulated by individuals serving life without parole or death sentences so that credits may be applied retroactively in the event that these individuals are resentenced.

**Response E1479.4: See Standard Response 9.**

**Commenter E1481**

**Comment E1481.1:** Commenter asks to please include three strikers, elderly, sickly, to receive good time credit, justice for all.

**Response E1481:** All these groups are eligible for Good Conduct Credit.

**Commenter E1488**

**General Comment:** Commenter represents the California Public Defenders Association (CPDA), the largest statewide organization of criminal defense practitioners. On November 8, 2016, California voters, through the adoption of Proposition 57, amended the California Constitution to add section 32 to article 1. The purposes of the provisions of this section were to "enhance public safety, improve rehabilitation, and avoid the release of prisoners by federal court order." CPDA urges the department to modify the following issues that do not consistently reflect the electorate's desire to reduce prison populations, increase rehabilitative efforts and avoid wasteful government spending:

**Response E1488: See Standard Response 29.**

**Comment E1488.1:** TCPDA urges the department to amend section 2449.1 and 3490, to remove from the definition of "nonviolent offender" the exclusion of any inmate convicted of a sex

offense that currently requires registration pursuant to Penal Code section 290. Excluding such inmates endorses a false assumption that on-size-fits-all when it comes to people who have been convicted of a crime which requires lifetime sex offender registration. California has among the broadest sex offender laws in the nation, and it is one of only four jurisdictions in the United States for which the period of mandatory registration is life-long. Among those required to register in California are individuals convicted of misdemeanor nuisance-type offenses. In terms of the nature of past registerable offenses, treating these individuals as though all of them are violent, predatory rapists and child molesters is irrational. Excluding all inmates convicted of crimes which presently require registration also makes no sense in terms of considerations of public safety. Research studies over the past thirty years have consistently yielded data demonstrating that; overall, sex offenders reoffend at rates considerably lower than any other category of inmate, except those convicted of murder. The myth of the "dangerous sexual predator" which drove the department's policies a decade ago has been effectively debunked by science, as has been acknowledged repeatedly by state and federal courts. Scientific advances have been made over the past half-century in assessing the relative risk of recidivism by any person convicted of a sex offense, and probability estimates of risk vary dramatically based on a person's risk assessment score. Regulations that exclude from parole eligibility tens of thousands of nonviolent non-dangerous inmates, many of whom can be safely released, discounts the expressed wishes of the electorate.

**Response E1488.1:** Please see **Standard Response 15.** In addition, on December 8, 2017, the department modified section 3491(b)(3) to provide that an inmate is not eligible for parole consideration if the inmate "is convicted of a sexual offense that currently requires or will require registration as a sex offender under the Sex Offender Registration Act, codified in sections 290 through 290.024 of the Penal Code." This modification reflects that as a result of recent changes to the Sex Offender Registration Act by Senate Bill 384, Chapter 541 of the Statutes of 2017, some inmates will not be subject to lifetime registration requirements.

**Comment E1488.2:** The parole provision of subdivision (a), subparagraph (1) does not exclude any inmate convicted of a nonviolent felony offense by virtue of the fact that he received an indeterminate, versus a determinate sentence. Yet the department has drafted and circulated proposed regulations which exclude from nonviolent offender parole consideration all such inmates, regardless of the nature of their commitment offenses. As stated in subdivision (a) of section 32, avoiding the release of prisoners by federal court order was not the only purpose of Proposition 57's parole provision. The electorate adopted these provisions to enhance public safety and to improve rehabilitation. CPDA is in agreement with the comments of other organizations, such as Stanford's Justice Advocacy Project and the First District Appellate Project, with regard to the department's decision to exclude, from the parole release provisions of Proposition 57, all nonviolent third strikers. CPDA would like the department to reconsider its decision to limit nonviolent offender parole consideration to those sentenced to a determinate

## DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **In re Gregory Gadlin**
No.: **S254599**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On March 4, 2020, I served the attached

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION'S SUPPLEMENTAL MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF CHARLES CHUNG**

by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

Michael Satris
**E-mail:** satrislaw.eservice@gmail.com
**Attorney for Petitioner Gregory Gadlin**
***Served via email***

Second Appellate District, Division Five
Court of Appeal of the State of California
**E-mail:** 2d1.clerk5@jud.ca.gov
***Served via email***

Sherri R. Carter, Clerk of the Court
Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012
**Attn: The Honorable William C. Ryan, Judge**
***Served via U.S. Mail***

California Appellate Project
**E-mail:** capdocs@lacap.com
***Served via email***

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 4, 2020, at Los Angeles, California.

S. Figueroa
Declarant

Signature

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