In the Supreme Court of the State of California

In re

MOHAMMAD MOHAMMAD,

On Habeas Corpus.

Case No. S259999

Second Appellate District, Division Five, Case No. B295152
Los Angeles County Superior Court, Case No. BH011959
The Honorable William C. Ryan, Judge

MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF HELEN H. HONG

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TO MOHAMMAD MOHAMMAD 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 Opening Brief on the Merits filed in this case:

Exhibit A: The Department's Final Statement of Reasons submitted to the Office of Administrative Law on April 30, 2018 for the regulations implementing Proposition 57.

Exhibit B: Excerpts of the Standard Responses to the Most Frequent Comments Received by the Department relating to the nonviolent parole process, submitted to the Office of Administrative Law on April 30, 2018 in connection with the Department's proposed regulations implementing Proposition 57.

Exhibit C: The Department's summary of, and responses to, comments relating to Standard Response 19, submitted to the Office of Administrative Law on April 30, 2018 in connection with the Department's proposed regulations implementing Proposition 57.

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

Dated: May 4, 2020 Respectfully submitted,

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S/ HELEN H. HONG

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MEMORANDUM OF POINTS AND AUTHORITIES

Under Evidence Code sections 452 and 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, §§ 452, 459, subds. (a), (b).) Here, the documents attached to the motion as Exhibits A, B, and C 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 November 26, 2019. (See Cal. Rules of Court, rule 8.252(a)(2).)

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 A, B, and C are all part of the rulemaking file for the Department's regulations implementing Proposition 57, which is the subject of the matter on appeal. (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 186, fn. 15 ["The agency's responses to comments received in the rulemaking process must be included in its statement of reasons stating its intent in adopting a regulation (Gov.Code, § 11347.3) and thus constitutes part of the

official statement of regulatory intent."].) Exhibit A contains the Department's Final Statement of Reasons submitted to the Office of Administrative Law on April 30, 2018. 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 B is an excerpt of those responses, containing the Department's Standard Responses to comments about the nonviolent parole program. Exhibit C contains excerpts of comments that elicited the Department's Standard Response 19, about the availability of nonviolent parole consideration for inmates convicted of felony offenses that are not listed in Penal Code section 667.5.

Exhibits A, B, and C 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 Opening Brief on the Merits. The Department respectfully requests this Court take judicial notice of the attached documents.

Dated: May 4, 2020 Respectfully submitted,

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DECLARATION OF HELEN H. HONG

I, Helen H. Hong, declare:

1. I am a Deputy Solicitor General in California's Office of Solicitor General, and serve 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 A, B, and C 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. These excerpts were included as part of the package submitted to the Office of Administrative Law, and are now submitted in support of the Department's Opening Brief on the Merits filed in this case.

4. On April 29, 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, that was submitted to the Office of Administrative Law. The document is 1,420 pages long and the Final Statement of Reasons is 1,386 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 A is a true and accurate copy of the cover sheet submitted to the Office of Administrative Law, as well as page numbers 1 through 41 of the April 30, 2018 Final Statement of Reasons. Exhibit B is a true and accurate copy of page numbers 55 through 69 from the April 30, 2018 Final Statement of Reasons, containing the Department's Standard Responses to comments about the nonviolent parole process. Exhibit C is a true and accurate copy of page numbers 284, 393, 395, 432, 440, 442, 443, 691, 760, 992, 1318, 1319, and 1381 from the April 30, 2018 Final Statement of Reasons, which are all of the comments that elicited the Department's Standard Response 19, about the availability of nonviolent parole consideration for inmates convicted of violent felony offenses.

5. On April 29, 2020, I provided electronic copies of the documents attached as Exhibits A, B and C to Mohammad's attorney, Michael Satris. He reported that he opposes this motion for judicial notice.

I declare under penalty of perjury that the foregoing is true and correct and that I executed this declaration in San Diego, California on May 4, 2020.

s/ Helen H. Hong
HELEN H. HONG

INDEX OF EXHIBITS

Exhibit A

California Department of Corrections and Rehabilitation's Final Statement of Reasons (April 30, 2018)

State of California
Office of Administrative Law

In re:
Department of Corrections and Rehabilitation

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections:	**2449.1, 2449.2, 2449.3, 2449.4, 2449.5, 2449.6, 2449.7, 3043.1, 3043.2, 3043.3, 3043.4, 3043.5, 3043.6, 3490, 3491, 3492, 3493**
Amend sections:	**3043, 3043.5 (renumbered to 3043.7), 3043.6 (renumbered to 3043.8), and 3044**
Repeal sections:	**2449.2, 2449.3, 2449.5, 3042, 3043.1, 3043.2, 3043.3, 3043.4, 3043.7**

NOTICE OF APPROVAL OF CERTIFICATE OF COMPLIANCE

Government Code Sections 11349.1 and 11349.6(d)

OAL Matter Number: 2018-0320-01C

OAL Matter Type: Certificate of Compliance (C)

Proposition 57, The Public Safety and Rehabilitation Act of 2016 (the "Act"), was approved by California voters on November 8, 2016. The Act gives the Department of Corrections and Rehabilitation "authority to award credits earned for good behavior and approved rehabilitative or educational achievements." (Cal. Const., art. I, sec. 32, subd. (a), par. (2).) This timely Certificate of Compliance implements the Act by adopting new and revising existing rules for inmate credit earning and parole consideration.

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

Date: May 1, 2018

Steven J. Escobar
Attorney

Original: Scott Kernan, Secretary
Copy: Laura Lomonaco

For: Debra M. Cornez
Director

TEXT OF ADOPTED REGULATIONS

Title 15. Crime Prevention and Corrections

Division 3. Adult Institutions, Programs and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 3.5. Credits

Section 3042. Penal Code 2933 Credits. [Repealed]

Note: Authority cited: Sections 2700 and 5058, Penal Code. Reference: Sections 2931, 2933, 2933.05, 2935, 5054, 6260, 11189 and 11190, Penal Code; *In re Monigold*, 205 Cal. App. 3d 1224; and *People v. Jones*, 44 Cal. Rptr. 2d 164 (Cal. 1995).

Section 3043. Credit Earning.

(a) General. Inmates are expected to work or participate in rehabilitative programs and activities to prepare for their eventual return to society. Inmates who comply with the regulations and rules of the department and perform the duties assigned to them shall be eligible to earn Good Conduct Credit as set forth in section 3043.2 of this article. Unless otherwise precluded by this article, all inmates who participate in approved rehabilitative programs and activities, including inmates housed in administrative segregation housing units, in security housing units, in psychiatric services units, or in other segregated housing placement units, shall be eligible to earn Milestone Completion Credit, Rehabilitative Achievement Credit, and Educational Merit Credit as set forth in sections 3043.3, 3043.4, and 3043.5 of this article. The award of these credits, as well as Extraordinary Conduct Credit as set forth in section 3043.6 of this article, shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole. Inmates who do not comply with the regulations and rules of the department or who do not perform the duties assigned to them shall be subject to credit forfeiture as provided in this article.

(b) Inmate Participation in Credit Earning Programs and Activities. All eligible inmates shall have a reasonable opportunity to earn Good Conduct Credit, Milestone Completion Credit, Rehabilitative Achievement Credit, and Educational Merit Credit in a manner consistent with the availability of staff, space, and resources, as well as the unique safety and security considerations of each prison. No credit shall be awarded for incomplete, partial, or unsatisfactory participation in the credit earning programs or activities described in this article, nor shall credit be awarded for diplomas, degrees, or certificates that cannot be verified after due diligence by department staff.

(c) Release Date Restriction. Under no circumstance shall a determinately sentenced inmate be awarded credit or have credit restored by the department which advances his or her release to a date less than 60 calendar days from the date the award or restoration of such credit is entered into the department's information technology system, except pursuant to a court order.

(d) Participation by Inmates Sentenced as Adults and Housed In the Division of Juvenile Justice or Placed In an Alternative Custody Setting. Inmates sentenced as adults and housed in a facility administered by the department's Division of Juvenile Justice or placed in an alternative custody

setting prior to parole, including a pre-parole or re-entry program, are eligible to participate in Good Conduct Credit, Milestone Completion Credit, Rehabilitative Achievement Credit, Educational Merit Credit, and Extraordinary Conduct Credit. Placement in an alternative custody setting means transfer of an inmate, prior to parole, to serve the remainder of his or her term of incarceration in a community based re-entry facility administered by the department in lieu of confinement in a state prison or Department of Forestry and Fire Protection fire camp.
(e) Participation by Inmates Housed In A Different Jurisdiction. Inmates serving criminal sentences under California law but housed in a different jurisdiction, including those participating in the Western Interstate Corrections Compact, participating in the Interstate Corrections Compact Agreement, housed in a facility administered by a county sheriff, housed in a facility administered by the California Department of State Hospitals, or housed in a facility administered by the Federal Bureau of Prisons, are only eligible to participate in Good Conduct Credit, Educational Merit Credit, or Extraordinary Conduct Credit as described in this article, subject to the criteria set forth in subsection (b) of this section.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Sections 5054 and 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a)(2); and Section 3041, Penal Code.

Section 3043.1. Pre-Sentence Credit.
Credit applied prior to sentencing is awarded by the sentencing court pursuant to sections 2900.1, 2900.5, 2933.1, and 4019 of the Penal Code.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Sections 5054 and 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a)(2); and Sections 2900.1, 2900.5, 2933.1 and 4019, Penal Code.

Section 3043.2. Good Conduct Credit.
(a) The award of Good Conduct Credit requires that an inmate comply with departmental regulations and local rules of the prison and perform the duties assigned on a regular and satisfactory basis.
(b) Notwithstanding any other authority to award or limit credit, effective May 1, 2017, the award of Good Conduct Credit shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole pursuant to the following schedule:
(1) No credit shall be awarded to an inmate sentenced to death or a term of life without the possibility of parole;
(2) One day of credit for every four days of incarceration (20%) shall be awarded to an inmate serving a determinate or indeterminate term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code, unless the inmate qualifies under paragraph (4)(B) of this section or is statutorily eligible for greater credit pursuant to the provisions of Article 2.5 (commencing with section 2930) of Chapter 7 of Title 1 of Part 3 of the Penal Code;
(3) One day of credit for every two days of incarceration (33.3%) shall be awarded to an inmate sentenced under the Three Strikes Law, under subdivision (c) of section 1170.12 of the Penal Code, or under subdivision (c) or (e) of section 667 of the Penal Code, who is not serving a term

for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code, unless the inmate is serving a determinate sentence and qualifies under paragraph (5)(B) of this section;
(4) One day of credit for every day of incarceration (50%) shall be awarded to:
(A) An inmate not otherwise identified in paragraphs (1)-(3) above;
(B) An inmate serving a determinate term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code who has successfully completed the requisite physical fitness training and firefighting training to be assigned as a firefighter to a Department of Forestry and Fire Protection fire camp or as a firefighter at a Department of Corrections and Rehabilitation firehouse; or
(C) An inmate serving a determinate term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code who is housed at a Department of Forestry and Fire Protection fire camp in a role other than firefighter.
(5) Two days of credit for every day of incarceration (66.6%) shall be awarded to:
(A) An inmate eligible to earn day-for-day credit (50%) pursuant to paragraph (4)(A) above who is assigned to Minimum A Custody or Minimum B Custody pursuant to section 3377.1;
(B) An inmate serving a determinate sentence who is not serving a term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code who has successfully completed the requisite physical fitness training and firefighting training to be assigned as a firefighter to a Department of Forestry and Fire Protection fire camp or as a firefighter at a Department of Corrections and Rehabilitation firehouse; or
(C) An inmate serving a determinate sentence who is not serving a term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code who is housed at a Department of Forestry and Fire Protection fire camp in a role other than firefighter.
(c) For purposes of placement in an alternative custody setting the department shall consider the Good Conduct Credit that may be earned during the inmate's incarceration. An inmate who is placed in an alternative custody setting, including a pre-parole or re-entry program, shall be awarded the same Good Conduct Credit that the inmate earned prior to that placement.
(d) Credit Forfeiture and Restoration. Good Conduct Credit shall be forfeited in whole-day increments upon placement in a zero-credit work group pursuant to subsection 3044(b)(4) or 3044(b)(6) or a finding of guilt of a serious rule violation in accordance with section 3323. Forfeited credit under this section shall be restored if the disciplinary action is reversed pursuant to an administrative appeal or court of law. Forfeited credit may also be restored in accordance with Article 5.5 of Subchapter 4 of Chapter 1 of Division 3 of Title 15 of the California Code of Regulations.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Sections 5054 and 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a)(2); and Sections 667, 667.5, 1170.2, 2930 and 3041, Penal Code.

Section 3043.3. Milestone Completion Credit.
(a) The award of Milestone Completion Credit requires the achievement of a distinct objective of approved rehabilitative programs, including academic programs, substance abuse treatment programs, social life skills programs, Career Technical Education programs, Cognitive Behavioral Treatment programs, Enhanced Outpatient Program group module treatment programs, or other approved programs with similar demonstrated rehabilitative qualities. To be awarded such credit, the inmate shall participate in all required classroom activities for the

duration of the program, to include any subcomponents required in the curriculum for that program. Passing an exam alone shall not qualify for the award of such credit.
(b) Milestone Completion Credit for completing academic courses related to a high school diploma shall not be awarded to inmates already possessing a high school diploma, high school equivalency approved by the California Department of Education, or college degree.
(c) Notwithstanding any other authority to award or limit credit, effective August 1, 2017, all inmates eligible for Good Conduct Credit pursuant to section 3043.2 shall be eligible for Milestone Completion Credit pursuant to this section. The award of Milestone Completion Credit shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole. Milestone Completion Credit shall be awarded in increments of not less than one week, but no more than twelve weeks in a twelve-month period. Milestone Completion Credit earned in excess of this limit shall be awarded to the inmate on his or her next credit anniversary, defined as one year after the inmate completes his or her first Milestone Completion Credit program, and each year thereafter. Upon release to parole, release to community supervision, or discharge from parole, any excess credit under this section shall be deemed void. If instead an inmate completes one term and immediately begins serving a consecutive term, any excess credit awarded under this section shall be applied to that consecutive term. One week is equivalent to seven calendar days.
(d) A Milestone Completion Credit Schedule (REV 11/17), approved by the Director of the Division of Adult Institutions under the direction of the Secretary, is hereby incorporated by reference. The schedule identifies all of the approved Milestone Completion Credit programs, the corresponding credit reduction for successful completion of each program, and whether credit for repeating the program is authorized. The director may authorize a program be repeated for credit if there are significant rehabilitative benefits to be gained by those inmates who retake the program.
(e) Standard Performance Criteria. Standard performance criteria for the award of Milestone Completion Credit include the mastery or understanding of course curriculum by the inmate as demonstrated by completion of assignments, instructor evaluations, and testing processes. Within ten business days of completion of an approved credit earning program under this section, the instructor shall verify completion of the program in the department's information technology system. Within ten additional business days, a designated system approver shall verify the inmate's eligibility for such credit.
(f) Modified Performance Criteria.
(1) In lieu of the above standard performance criteria, participants in approved prison housing units with structured, full-time rehabilitative programming or in approved alternative custody settings shall be awarded credit under this section in the following increments: three weeks of credit (the equivalent of 21 calendar days) for completion of every three months of program plan activities up to a maximum of twelve weeks of credit in a twelve-month period. Within ten business days of completing three months of program plan activities under this subsection a designated system approver shall be responsible for verifying and awarding credit to such participants.
(2) In lieu of the above standard performance criteria, enhanced outpatient program participants, developmentally disabled program participants, and participants in an approved mental health inpatient program, excluding those in a mental health crisis bed, shall be awarded credit under this section upon successfully completing scheduled, structured therapeutic activities in

accordance with their mental health treatment plan or, if applicable, their developmentally disabled program, in the following increments: one week of credit (the equivalent of seven calendar days) for every 60 hours completed up to a maximum of six weeks of credit for 360 hours completed in a twelve-month period. Within ten business days of completing 60 hours of scheduled, structured therapeutic activities under this subsection the Chief of Mental Health at each institution shall be responsible for verifying and awarding credit to such participants.
(g) For purposes of placement in an alternative custody setting the department shall consider the Milestone Completion Credit that may be earned during the inmate's incarceration.
(h) Credit Forfeiture and Restoration. 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, only after all Good Conduct Credit is exhausted. Forfeited credit under this section shall be restored if the disciplinary action is reversed pursuant to an administrative appeal or court of law.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Sections 5054 and 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a)(2); and Sections 2933.05 and 3041, Penal Code.

Section 3043.4. Rehabilitative Achievement Credit.
(a) The award of Rehabilitative Achievement Credit requires verified attendance and satisfactory participation in approved group or individual activities which promote the educational, behavioral, or rehabilitative development of an inmate. To qualify for credit under this section, the purpose, expected benefit, program materials, and membership criteria of each proposed activity, as well as any affiliations with organizations or individuals outside of the department, must be pre-approved by the institution. The meeting frequency and location of each activity shall only be approved under safe and secure conditions. Inmate participation in such activities shall be consistent with his or her custodial classification, work group assignment, privilege group, and other safety and security considerations.
(b) Notwithstanding any other authority to award or limit credit, effective August 1, 2017, all inmates eligible for Good Conduct Credit pursuant to section 3043.2 shall be eligible for Rehabilitative Achievement Credit pursuant to this section. The award of Rehabilitative Achievement Credit shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole.
(c) Standard Award Increments. Rehabilitative Achievement Credit shall be awarded in the following increments: one week of credit for every 52 hours of participation in approved rehabilitative activities up to a maximum of four weeks of credit for 208 hours of participation in a twelve-month period.
(d) Modified Award Increments. Rehabilitative Achievement Credit shall be awarded to inmates housed in a facility administered by the department's Division of Juvenile Justice or placed in an alternative custody setting prior to parole, including a pre-parole or re-entry program, in the following increments: one week of credit for every three months of participation up to a maximum of four weeks of credit in a twelve-month period.
(e) Rehabilitative Achievement Credit earned in excess of the four-week limit identified in subsections (c) and (d) of this section during a single year (which shall commence after the inmate earns his or her first week of such credit and each year thereafter) shall be deemed void. Upon release to parole, release to community supervision, or discharge from parole, any excess

credit under this section shall also be deemed void. One week is equivalent to seven calendar days.
(f) Under the direction of the Secretary and in conjunction with the Director of the Division of Adult Institutions, every warden shall periodically (but no less than once per year) issue a separate local rule in compliance with subdivision (c) of section 5058 of the Penal Code for each particular prison or other correctional facility identifying the Rehabilitative Achievement Credit activities which comply with subsection (a) of this section and are approved at that location.
(g) Within ten business days of completing 52 hours of approved activity under this section, staff designated by the warden at each institution shall verify the inmate's completion of the hours necessary for this credit, confirm the inmate's eligibility to receive this credit, and ensure the credit is awarded to the inmate in the department's information technology system.
(h) For purposes of placement in an alternative custody setting the department shall consider the Rehabilitative Achievement Credit that may be earned during the inmate's incarceration.
(i) Credit Forfeiture and Restoration. 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, only after all Good Conduct Credit is exhausted. Forfeited credit under this section shall be restored if the disciplinary action is reversed pursuant to an administrative appeal or court of law.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Sections 5054 and 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a)(2); and Section 3041, Penal Code.

Section 3043.5. Educational Merit Credit.
(a) The award of Educational Merit Credit requires the achievement of a significant academic accomplishment which will provide inmates with life-long rehabilitative benefits. Specifically, the achievement of a high school diploma (or high school equivalency approved by the California Department of Education), a collegiate degree (at the associate, bachelor, or post-graduate level), or a professional certificate as an Alcohol and Drug Counselor shall entitle an inmate to the benefits of this credit.
(b) Notwithstanding any other authority to award or limit credit, effective August 1, 2017, all inmates eligible for Good Conduct Credit pursuant to section 3043.2 shall be eligible for Educational Merit Credit pursuant to this section. The award of Educational Merit Credit shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole. Educational Merit Credit shall be awarded in the increments set forth in the schedule below upon demonstrated completion of the corresponding diploma, certificate, or degree:

Category	Description	Credit
1	High School Diploma or High School Equivalency approved by the California Department of Education	90 days
2	Offender Mentor Certification Program (alcohol and other drug counselor certification recognized	180 days

	and approved by the California Department of Health Care Services)	
3	Associate of Arts or Science Degree	180 days
4	Bachelor of Arts or Science Degree	180 Days
5	Post-Graduate Degree	180 days

(c) Credit for each category listed in subsection (b) of this section shall only be awarded once to an inmate upon proof the diploma, certificate, or degree was conferred during the inmate's current term of incarceration. Educational Merit Credit for achieving a high school diploma or high school equivalency as approved by the California Department of Education shall not be awarded to inmates already possessing a high school diploma, approved equivalent, or college degree prior to the date the inmate was received in prison for his or her current period of incarceration. Educational Merit Credit shall not be awarded for an associate, bachelor, or post-graduate degree, unless the inmate earned at least 50 percent of the units necessary for that degree while serving his or her current term, the degree was conferred by a regionally accredited institution, and the inmate arranged for an official, sealed copy of their transcript to be sent by the educational institution directly to the Principal at the inmate's institution. Credit for such degrees earned before August 1, 2017, but during an inmate's current term of incarceration, shall be effective on the date the credit is entered into the department's information technology system.
(d) Within 30 calendar days of receiving documentation from an inmate indicating completion of an Educational Merit Credit, during the inmate's current term of incarceration, department staff shall verify completion of the diploma, certificate, or degree in the department's information technology system.
(e) Upon release to parole, release to community supervision, or discharge from parole, any excess credit under this section shall be deemed void. If instead an inmate completes one term and immediately begins serving a consecutive term, any excess credit shall be applied to that consecutive term.
(f) Credit Forfeiture. Educational Merit Credit shall not be forfeited due to disciplinary action.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Sections 5054 and 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a)(2); and Section 3041, Penal Code.

Section 3043.6. Extraordinary Conduct Credit.
(a) Notwithstanding any other authority to award or limit credit, effective August 1, 2017, the Director of the Division of Adult Institutions, under the direction of the Secretary, may award up to twelve months of Extraordinary Conduct Credit to any inmate who has performed a heroic act in a life-threatening situation or who has provided exceptional assistance in maintaining the safety and security of a prison, in accordance with subsection 3376(d)(3)(C) or subsection 3376.1(d)(6). No credit shall be awarded to an inmate sentenced to death or a term of life without the possibility of parole.
(b) The award of such credit shall advance the inmate's release date if sentenced to a determinate term or advance the inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole.

(c) Upon release to parole, release to community supervision, or discharge from parole, any excess credit under this section shall be deemed void. If instead an inmate completes one term and immediately begins serving a consecutive term, any excess credit shall be applied to that consecutive term.
(d) Credit Forfeiture. Extraordinary Conduct Credit shall not be forfeited due to disciplinary action.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Sections 5054 and 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a)(2); and Sections 2935 and 3041, Penal Code.

Section 3043.7. Special Assignments.
(a) Special assignments include:
(1) The positions of chairperson and secretary of an institution's inmate advisory council may qualify as a full-time assignment to Work Group A-1.
(2) Assignment to an approved full-time pre-release program shall qualify as a full time assignment to Work Group A-1.
(3) Any Reentry program assignment shall qualify as a full-time assignment to Work Group A-1.
(b) Short Term Medical or Psychiatric Inpatient Hospitalization (29 calendar days or less). Inmates determined by medical or mental health staff to need short-term inpatient care shall retain their existing credit earning category. Inmates requiring longer periods of inpatient care shall be referred by the attending physician or mental health clinician to a classification committee for review. The classification committee shall confirm the inmate's unassigned inpatient category and change the inmate's work or training group status as follows:
(1) A general population inmate shall be assigned to Work Group A-2, effective the thirtieth calendar day of unassignment, unless the inmate is assigned to Work Group C or Work Group M in accordance with sections 3044(b)(4) or 3044(b)(8).
(2) An inmate who is assigned to Work Group A-1, Work Group B, Work Group F, or Work Group M and placed in segregated housing shall be assigned to Work Group D-1, effective the first day of placement into Administrative Segregation, unless the inmate is assigned to Work Group D-2, Work Group F, or Work Group M in accordance with sections 3044(b)(6), 3044(b)(7)(D), 3044(b)(7)(E), 3044(b)(8)(E), or 3044(b)(8)(F).
(3) Segregation inmates assigned to Work Group D-1 or D-2 shall retain their work group status.
(c) Long Term Medical or Psychiatric Unassigned Status. In cases where the health condition necessitates that the inmate becomes medically unassigned for 30 calendar days or more, the physician or mental health clinician shall specify an anticipated date the inmate may return to work. The classification committee shall review the inmate's medical or psychiatric unassigned status and change the inmate's work group status as follows:
(1) An inmate in the general population shall be re-assigned to Work Group A-2, involuntary unassigned, effective the thirtieth calendar day of un-assignment, unless the inmate is assigned to Work Group C or Work Group M in accordance with sections 3044(b)(4) or 3044(b)(8).
(2) An inmate who is assigned to Work Group A-1, Work Group B, Work Group F, or Work Group M and placed in segregated housing shall be re-assigned to Work Group D-1, effective the first day of placement into Administrative Segregation, unless the inmate is assigned to Work Group D-2, Work Group F, or Work Group M in accordance with sections 3044(b)(6), 3044(b)(7)(D), 3044(b)(7)(E), 3044(b)(8)(E), or 3044(b)(8)(F).

(3) An inmate in segregated housing who is assigned to Work Group D-1 or D-2 shall be retained in their respective work group.

(d) Medical or mental health care status determination:

(1) When an inmate has a disability that limits his or her ability to participate in a work, academic, Career Technical Education program or other such program, medical or mental health staff shall document the nature, severity, and expected duration of the inmate's limitations on a CDC Form 128-C (Rev. 1/96), Chrono-Medical, Psychiatric, Dental. The medical or mental health staff shall not make program assignment recommendations or decisions on the form. The CDC Form 128-C shall then be forwarded to the inmate's assigned correctional counselor who shall refer the inmate to a classification committee for review. The classification committee shall have sole responsibility for making program assignment and work group status decisions. Based on the information on the CDC Form 128-C and working in conjunction with staff from the affected work area, academic program, Career Technical Education program, and the Inmate Assignment Lieutenant, the classification committee shall evaluate the inmate's ability to participate in work, academic, Career Technical Education program, or other programs and make a determination of the inmate's program assignment and work group status.

(2) Only when the inmate's documented limitations are such that the inmate, even with reasonable accommodation, is unable to perform the essential functions of any work, academic, Career Technical Education or other such program, will the inmate be placed in one of the two following categories by a classification committee:

(A) Temporary medical or psychiatric unassignment. Except as provided in section 3043.7(e)(2)(A), when a disabled inmate is unable to participate in any work, academic, Career Technical Education program or other program, even with reasonable accommodation, because of a medically determinable physical or mental impairment that is expected to last for less than six months, the classification committee shall place the inmate on temporary medical or psychiatric unassignment. An inmate on temporary medical or psychiatric unassignment status shall be scheduled for classification review any time there is a change in his or her physical or mental impairment, or no less than every six months for reevaluation. The credit earning status of an inmate on temporary medical or psychiatric unassignment for less than six months shall be in accordance with section 3044(b)(2), Work Group A-2, unless the inmate is assigned Work Group M in accordance with section 3044(b)(8). If the inmate's condition lasts six months and the classification committee still cannot assign the inmate due to his or her impairment, the credit earning status shall be changed to be in accordance with section 3044(b)(1), Work Group A-1 and appropriate privilege group retroactive to the first day of the temporary medical or psychiatric unassignment, unless the inmate is assigned Work Group M in accordance with section 3044(b)(8).

(B) Medically disabled. When an inmate is unable to participate in any assigned work, academic, Career Technical Education program, or other such program activity, even with reasonable accommodation, because of a medically determinable physical or mental impairment that is expected to result in death or last six months or more, the classification committee shall place the inmate on medically disabled status. The inmate credit earning status shall be in accordance with section 3044(b)(1), Work Group A-1 and Privilege Group A, unless the inmate is assigned Work Group M in accordance with section 3044(b)(8).

(e) Medical or psychiatric special assignments:

(1) Light duty: Inmates determined to have long-term medical or psychiatric work limitations shall be processed in the following manner:

(A) A medical or mental health evaluation of the inmate shall be made to determine the extent of disability and to delineate capacity to perform work and training programs for either a full or partial workday. If the inmate is deemed capable of only a partial work program, full credit shall be awarded for participation in such a program.
(B) A classification committee shall review the evaluation and determine the inmate's assignment.
1. A committee concurring with an evaluation's light duty recommendation shall refer the matter to the facility's assignment office which shall attempt to provide an assignment within the inmate's capabilities. Inmates assigned to such light duty shall be scheduled for semi-annual review.
2. A committee disagreeing with an evaluation's light duty recommendation shall refer the matter back to the medical or mental health department, describing the difference of opinion or rationale for requesting a second evaluation. If the committee disagrees with the second evaluation it shall refer the matter to the institution classification committee for final determination.
(2) Short-term medical or psychiatric lay-in or unassignment. Inmates who are ill or otherwise require a medical or psychiatric lay-in, or unassignment for 29 calendar days or less, shall be processed in the following manner:
(A) Only designated medical or mental health staff are authorized to approve such lay-ins and unassignments. Reasons for the approval and the expected date of return to their regular assignment shall be documented by the medical or mental health staff making the decision.
(B) Inmates shall notify their work or training supervisor of their lay-in or unassignment status. The work or training supervisor shall record each day of the inmate's approved absence as an "E".
(C) Medical or mental health staff determining an inmate should continue on lay-in or unassigned status for more than 29 calendar days shall refer the case to a classification committee for review.
(D) The inmate shall continue to use ETO time while on short-term medical/psychiatric lay-in or unassigned status.
(f) On-the-job injuries. The chief medical officer shall document inmate injuries occurring on the job. With the exception of inmates assigned to Work Group F, such injured inmates shall retain their existing work group status until medically approved to return to their work assignment. Inmates assigned to Work Group F shall revert to Work Group A-1 in accordance with section 3044(b)(1) or Work Group M in accordance with section 3044(b)(8) effective on the date the chief medical officer determines the on-the-job injury excludes the inmate from conservation camp placement or from placement as a firefighter at a California Department of Corrections and Rehabilitation firehouse, providing the chief medical officer's exclusion determination is within 29 calendar days following the date of the inmate's removal from the conservation camp or firehouse firefighter assignment. If the chief medical officer's exclusion determination is not within 29 calendar days following the date of the inmate's removal from the conservation camp or firehouse firefighter assignment, the inmate shall revert to Work Group A-1 in accordance with section 3044(b)(1) or Work Group M in accordance with section 3044(b)(8) effective the 30th calendar day following the date of the inmate's removal from the conservation camp or firehouse firefighter assignment.
(g) Medical or psychiatric treatment categories "H", "I", and "N". An inmate assigned to category "H", "I", or "N" is not capable of performing a work or training assignment and shall,

except where otherwise prohibited by law, be assigned to Work Group A-1, unless the inmate is assigned Work Group M in accordance with section 3044(b)(8).
(h) Department of State Hospitals Placements. An inmate transferred to the Department of State Hospitals pursuant to sections 1364, 2684, or 2690 of the Penal Code shall be assigned to a work group as provided in section 3043.8(b).

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2933, 2933.05, 2933.3, 2933.6, 5054 and 5068, Penal Code.

Section 3043.8. Impact of Transfer on Credit Earning.
(a) Non-adverse transfers.
(1) A non-adverse transfer is movement of an inmate to a less restrictive institution or program where the security level is the same or lower, movement to a secure perimeter from a non-secure camp or Level 1 (Minimum Support Facility) setting by order of the prison administration for non-adverse reasons or transfers from reception centers.
(2) With the exception of inmates assigned to Work Group F, an inmate transferred for non-adverse reasons shall retain their work and privilege group status. Inmates assigned to Work Group F shall revert to Work Group A-1 effective the date removed from camp or institution fire fighter assignment.
(3) With the exception of inmates assigned pursuant to subsections 3040.2(f)(2) and 3040.2(f)(4), an inmate in a work assignment at the sending institution shall be placed on an existing waiting list at the receiving institution. If eligible, inmates on waiting lists at sending institutions shall be merged into the receiving institution's waiting list based on credit earning status, release date, and the length of time they have spent on the sending institution's waiting list. Inmates who are day-for-day eligible per Penal Code section 2933 shall be given priority for assignment with the exception of Senate Bill (SB) 618 Participants who, as defined in section 3000, pursuant to the provisions of subsection 3077.3(b)(1), and subject to the provisions of 3077.3(f), shall be placed at the top of an institution's waiting list and given priority for assignment. Inmates shall be merged into the receiving institution's waiting list in the following manner:
(A) First, SB 618 Participants. Those SB 618 Participants having the earliest release date shall be given first priority.
(B) Second, those inmates who are day-for-day credit eligible, approved for the program and are not assigned, Work Group A-2. Inmates eligible to earn credits per Penal Code section 2933 shall be given second priority for placement on waiting lists and the inmate with the earliest release date shall be given priority.
(C) Third, inmates who are day-for-day credit eligible and are already designated Work Group A-1. Inmates eligible to earn credits per Penal Code section 2933 shall be given next priority for placement on waiting lists and the inmate with the earliest release date shall be given priority.
(D) Fourth, those inmates who are not Penal Code section 2933 day-for-day credit eligible and are already designated Work Group A-1. Inmates will be placed on waiting lists based upon the work group effective date.
(E) Fifth, those inmates who are not Penal Code section 2933 day-for-day credit eligible and are not assigned, Work Group A-2. Inmates will be placed on waiting lists based upon the work group effective date.

(4) An inmate in an OCE approved academic, Career Technical Education program, or substance abuse treatment, Cognitive Behavioral Treatment program or Transitions program at the sending institution shall be placed on the waiting list for the same or similar program, at the receiving institution if available. If the receiving institution's program is unavailable, the inmate shall be placed on an existing waiting list at the receiving institution. The inmate's projected release date and the California Static Risk Assessment (CSRA) as described in Section 3768.1 shall be the primary determinants for priority placement. Inmates with a CSRA of moderate or high shall take priority over those with a low risk assessment. Inmates shall be merged into the receiving institution's waiting list based on their CSRA and in accordance with subsection (3) of this section.

(b) Transfers to Department of Mental Health (DMH).

(1) Penal Code (PC) sections 2684 and 2690 transfers. An inmate transferred to the DMH pursuant to PC sections 2684 and 2690 is not capable of performing a work or training assignment. Such an inmate shall be classified by the sending facility before the transfer and placed in Work Group A-1.

(2) Penal Code section 1364 transfers. An inmate transferred to DMH to participate in the voluntary experimental treatment program pursuant to Penal Code section 1364 shall participate in a full-time credit qualifying work/training assignment in order to earn full worktime credit.

(c) Adverse transfers.

(1) Adverse transfers are defined as a transfer resulting from any in-custody documented misbehavior or disciplinary that may or may not have resulted in an inmate's removal from current program.

(2) If an inmate is removed from a program for adverse reasons and is subsequently exonerated of the charges, the credit earning status shall be designated as though the inmate had not been removed from the assignment.

(3) Effective on the date of transfer an inmate in Work Group A-1 or F who receives an adverse transfer shall be reclassified to Work Group A-2 by the sending institution. The inmate shall remain in Work Group A-2 until reclassified by the receiving institution.

(4) An inmate in Work Group A-2, C or D at the time of transfer shall be retained in that group status until reclassified at the receiving institution.

(d) Reception center or layover status.

(1) Inmates being processed in reception centers, who are ineligible to earn day-for-day credits per Penal Code section 2933, can be assigned to half-time assignments. Inmates on layover (en route) status in any institution shall only be assigned to half-time assignments. Exception to this policy requires approval from the director, division of adult institutions.

(2) An inmate's participation in a full or half-time assignment while undergoing reception center processing shall be recorded on timekeeping logs. The inmate's timekeeping log shall be completed by the work supervisor on a daily basis. A copy shall be issued to the inmate upon written request.

(e) Special housing unit transfers.

(1) Inmates found guilty of a credit loss offense which could result in a security housing unit (SHU) determinate term shall be evaluated for SHU assignment by a classification committee.

(2) Inmates placed in a SHU, PSU, or in ASU for reasons specified in section 3043.4 shall be placed in workgroup D-2. All other inmates in SHU, PSU, or ASU shall be placed in Work Group D-1. The effective date of both workgroups shall be the first day of placement into SHU, PSU, or ASU.

(f) Community Correctional Center (CCC) transfers. Transfers of inmates approved for a CCC program are considered non-adverse. With the exception of inmates assigned to Work Group F, inmates shall retain their current work group status while en route to a program. Inmates assigned to Work Group F shall revert to Work Group A-1 effective the date removed from the camp or institution fire fighter assignment.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1203.8, 1364, 2684, 2690, 2933, 2933.05, 2933.3, 2933.6, 5054 and 5068, Penal Code.

Section 3044. Inmate Work Groups and Privilege Groups.
(a) Full-time and half-time defined.
(1) Full-time work or training assignments normally mean eight hours per day on a five day per week basis, exclusive of meals.
(2) Half-time work or training assignments normally mean four hours per day on a five day per week basis, exclusive of meals.
(b) Consistent with the provisions of section 3375, all assignments or re-assignments to a work group shall be approved by a classification committee.
(1) Work Group A-1 (Full-Time Assignment). An inmate willing and able to perform an assignment on a full-time basis shall be assigned to Work Group A-1, except when the inmate qualifies for the assignment of Work Group F or Work Group M pursuant to sections 3044(b)(7) or 3044(b)(8). The work day shall not be less than 6.5 hours of work participation and the work week no less than 32 hours of work participation, as designated by assignment. Those programs requiring an inmate to participate during other than the normal schedule of eight-hours-per-day, five-days-per-week (e.g., 10-hours-per-day, four-days-per-week) or programs that are scheduled for seven-days-per-week, requiring inmate attendance in shifts (e.g., three days of 10 hours and one day of five hours) shall be designated as "special assignments" and require departmental approval prior to implementation. "Special assignment" shall be entered on the inmate's timekeeping log by the staff supervisor.
(A) Any inmate assigned to a rehabilitative program, including but not limited to, substance abuse treatment, cognitive behavioral treatment, transitions, education, career technical education, or any combination thereof, shall be assigned to Work Group A-1, except when the inmate qualifies for the assignment of Work Group M pursuant to section 3044(b)(8). An inmate assigned to the Security Threat Group Step Down Program shall be assigned a work group in accordance with sections 3044(b)(5) and 3044(b)(6).
(B) Any inmate assigned to a combination of half-time work assignment and any rehabilitative program as described in section 3044(b)(1)(A), shall be assigned to Work Group A-1, except when the inmate qualifies for the assignment of Work Group M pursuant to section 3044(b)(8).
(C) A full-time college program may be combined with a half-time work or career technical education program equating to a full-time assignment. The college program shall consist of twelve units in credit courses only leading to an associate's degree in two years or a bachelor's degree in four years.
(D) Any inmate diagnosed by a physician or mental health clinician as totally disabled and therefore incapable of performing an assignment, shall remain assigned to Work Group A-1 throughout the duration of their total disability, unless the inmate is assigned to Work Group C, Work Group D-1, Work Group D-2, or Work Group M in accordance with sections 3044(b)(4), 3044(b)(5), 3044(b)(6), or 3044(b)(8).

(E) Any inmate diagnosed by a physician or mental health clinician as partially disabled shall be assigned to an assignment within the physical and mental capability of the inmate as determined by the physician or mental health clinician, unless changed by disciplinary action.
(2) Work Group A-2 (Involuntarily Unassigned). An inmate willing but unable to perform in an assignment shall be assigned to Work Group A-2, if the inmate does not qualify for assignment to Work Group M pursuant to section 3044(b)(8) and either of the following is true:
(A) The inmate is placed on a waiting list pending availability of an assignment.
(B) The unassigned inmate is awaiting adverse transfer to another institution.
(3) Work Group B (Half-Time Assignment). An inmate willing and able to perform an assignment on a half-time basis shall be assigned to Work Group B, except when the inmate qualifies for the assignment of Work Group M pursuant to section 3044(b)(8). Half-time programs shall normally consist of an assignment of four hours per workday, excluding meals, five-days-per-week, or full-time enrollment in college consisting of twelve units in credit courses leading to an associate's degree or bachelor's degree. The work day shall be no less than three hours and the work week no less than fifteen hours.
(4) Work Group C (Disciplinary Unassigned; Zero Credit).
(A) Any inmate who twice refuses to accept assigned housing, who refuses to accept or perform in an assignment, or who is deemed a program failure as defined in section 3000 by a classification committee shall be assigned to Work Group C for a period not to exceed the number of disciplinary credits forfeited due to the serious disciplinary infraction(s) or 180 days, whichever is less, except when the inmate qualifies for assignment to Work Group D-2 in accordance with section 3044(b)(6)(C).
(B) An inmate assigned to this work group shall not be awarded Good Conduct Credit, as described in section 3043.2, for a period not to exceed the number of disciplinary credits forfeited or 180 days, whichever is less, and shall revert to his or her previous work group upon completion of the credit forfeiture, unless the inmate no longer qualifies for assignment to Work Group F or Work Group M due to the totality of their case factors. In such exceptional circumstances, the inmate shall be assigned to another work group in accordance with this section. The inmate shall also be referred to a classification committee for placement on an appropriate waiting list.
(5) Work Group D-1 (Lockup Status). An inmate assigned to a segregated housing program, shall be assigned to Work Group D-1, unless the inmate qualifies for continued assignment to Work Group F or Work Group M or initial assignment to Work Group M in accordance with sections 3044(b)(7)(D), 3044(b)(7)(E), 3044(b)(8)(E), or 3044(b)(8)(F). Inmates assigned to Steps 1 through 4 of the Security Threat Group Step Down Program and who are eligible to earn credit pursuant to section 2933 of the Penal Code, shall be awarded one day of credit for each day assigned to this work group. Inmates who are not eligible to earn credit pursuant to section 2933 of the Penal Code shall receive credits pursuant to their sentence. Segregated housing shall include, but not be limited to, the following:
(A) Administrative Segregation Unit (ASU);
(B) Security Housing Unit (SHU);
(C) Psychiatric Services Unit (PSU);
(D) Non-Disciplinary Segregation (NDS).
(6) Work Group D-2 (Lockup Status: Zero Credit).
(A) Unless the exceptional criteria specified in section 3044(b)(6)(B) are met, an inmate serving an imposed SHU term pursuant to section 3341.9(e) in segregated housing shall be assigned to

Work Group D-2, effective the date of the Rules Violation Report, for a period not to exceed the number of whole-day credits forfeited for the rule violation or 180 days, whichever is less, up to the Minimum Eligible Release Date or the date the Institution Classification Committee suspends the remainder of the SHU term. Following completion of the period of credit forfeiture, the inmate shall be re-evaluated by a classification committee for assignment to another work group.
(B) An inmate serving an imposed SHU term pursuant to section 3341.9(e) in segregated housing due to a guilty finding for a Division A-1 offense, as designated in section 3323(b), and which involved serious bodily injury on a non-prisoner, shall be assigned to Work Group D-2, effective the date of the Rules Violation Report, for a period not to exceed the number of whole-day credits forfeited for the rule violation or 360 days, whichever is less, up to the Minimum Eligible Release Date or the date the Institution Classification Committee suspends the remainder of the SHU term. Following completion of the period of credit forfeiture, the inmate shall be re-evaluated by a classification committee for assignment to another work group.
(C) An inmate in ASU, SHU, PSU, or other segregated housing, who is deemed a program failure as defined in section 3000, may be assigned Work Group D-2 for non-SHU assessable Rules Violation Report(s) by a classification committee for a period not to exceed the number of credits forfeited for the rules violation(s) or 180 days, whichever is less. An inmate assigned to Work Group C at the time of placement in ASU, SHU, PSU, or other segregated housing, or who refuses to accept or perform work assignments, shall be assigned Work Group D-2. An inmate released from ASU, SHU, PSU, or other segregated housing, may be assigned Work Group C by a classification committee, not to exceed the remaining number of disciplinary credits forfeited due to the serious disciplinary infraction(s) or 180 days, whichever is less.
(D) If the administrative finding of misconduct is overturned or if the inmate is criminally prosecuted for the misconduct and is found not guilty, Good Conduct Credit shall be restored.
(7) Work Group F (Minimum B Custody and Firefighting or Non-Firefighting Camp Placement). Assignment to Work Group F awards Good Conduct Credit pursuant to sections 3043.2(b)(4)(B), 3043.2(b)(5)(A), and 3043.2(b)(5)(B).
(A) An inmate assigned to Minimum B Custody who has successfully completed the requisite physical fitness training and firefighting training to be assigned as a firefighter to a Department of Forestry and Fire Protection fire camp or as a firefighter at a Department of Corrections and Rehabilitation firehouse shall be assigned to Work Group F.
(B) An inmate assigned to Minimum B Custody who is placed in a Department of Forestry and Fire Protection fire camp for assignment to a non-firefighter position shall be assigned to Work Group F.
(C) An inmate placed in Work Group F who is 1) found guilty of a serious rule violation as defined in sections 3323(b), 3323(c), or 3323(d), 2) found guilty of a rule violation involving use or possession of any unauthorized communication device or of any narcotic, drug, drug paraphernalia, controlled substance, alcohol, or other intoxicant, as defined in sections 3323(e), 3323(f), 3323(g), or 3323(h), 3) placed in a zero-credit work group pursuant to sections 3044(b)(4) or 3044(b)(6), or 4) otherwise removed from this assignment due to safety or security considerations, shall be assigned to another work group consistent with the remaining provisions of this section and shall be ineligible to receive Good Conduct Credit pursuant to sections 3043.2(b)(4)(B), 3043.2(b)(5)(A), or 3043.2(b)(5)(B). An inmate who has been removed from this assignment under the circumstances described above may be re-assigned to Work Group F, after an appropriate period of time, by a classification committee.

(D) An inmate assigned to Work Group F who 1) is temporarily placed in an ASU or other segregated housing placement unit, 2) designated by the Institution Classification Committee as non-disciplinary segregation pursuant to section 3335(a), and 3) who otherwise remains eligible for continued assignment to Work Group F pursuant to sections 3044(b)(7)(A) or 3044(b)(7)(B), shall continue to be assigned Work Group F for the duration of his or her non-disciplinary segregation.
(E) An inmate initially assigned to Work Group D-1 by the Institution Classification Committee due to placement in ASU, SHU, PSU, or other segregated housing unit pursuant to section 3044(b)(5) and who 1) was not designated for non-disciplinary segregation by the Institution Classification Committee, 2) otherwise eligible for the assignment to Work Group F pursuant to sections 3044(b)(7)(A) or 3044(b)(7)(B) during the period of segregated housing, and 3) was not found guilty of the serious rule violation which was the reason for ASU or other segregated housing placement, shall be made whole by retroactive assignment to Work Group F beginning with the effective date that Work Group D-1 was originally imposed and for the same number of days that he or she was assigned to Work Group D-1.
(F) An inmate assigned to Work Group F pursuant to section 3044(b)(7) for a cumulative period of twelve months or more on his or her current term of incarceration shall continue to earn Good Conduct Credit pursuant to sections 3043.2(b)(4)(B), 3043.2(b)(5)(A), or 3043.2(b)(5)(B), upon transfer to an alternative custody setting as defined in section 3043(d).
(G) An inmate may be assigned Minimum B Custody and Work Group F, if the inmate meets the criteria noted above and all of the following are true:
1. The inmate is wanted for a felony by an out-of-state law enforcement agency (other than a Federal agency).
2. The agency does not have a detainer placed with the department for the felony.
3. The inmate's central file documents that the agency communicated to the department that they will not extradite the inmate for the purpose of prosecution of the felony.
4. The totality of the inmate's remaining case factors does not preclude the assignment of Minimum B Custody.
(8) Work Group M (Minimum Custody or otherwise eligible for Minimum Custody). Assignment to Work Group M awards Good Conduct Credit pursuant to section 3043.2(b)(5)(A).
(A) Effective January 1, 2018, an inmate assigned to Minimum A Custody or Minimum B Custody who does not qualify for assignment to Work Group F pursuant to section 3044(b)(7) shall be assigned to Work Group M. Work Group M may be assigned retroactively to May 1, 2017. However, Good Conduct Credit awarded pursuant to section 3043.2(b)(5)(A) shall be limited in accordance with section 3043(c).
(B) Effective January 1, 2018, an inmate otherwise eligible for assignment to Minimum A Custody or Minimum B Custody whose eligibility for such assignment is limited solely due to their 1) placement in the Mental Health Services Delivery System at the Enhanced Outpatient level of care or higher level and/ or 2) medical or mental health status which requires additional clinical and custodial supervision as determined by the Institutional Classification Committee, shall be assigned to Work Group M. Work Group M may be assigned retroactively to May 1, 2017. However, Good Conduct Credit awarded consistent with section 3043.2(b)(5)(A) shall be limited in accordance with section 3043(c).
(C) Effective January 1, 2018, an inmate may be assigned Minimum A or Minimum B Custody and/ or Work Group M, which may be applied retroactively to May 1, 2017, if the inmate meets the criteria noted above and all of the following, are true:

1. The inmate is wanted for a felony by an out-of-state law enforcement agency (other than a Federal agency).
2. The agency does not have a detainer placed with the department for the felony.
3. The inmate's central file documents that the agency communicated to the department that they will not extradite the inmate for the purpose of prosecution of the felony.
4. The totality of the inmate's remaining case factors does not preclude the assignment of Minimum A and Minimum B Custody or the inmate is otherwise eligible for assignment to Minimum A or Minimum B Custody as described in section 3044(b)(8)(B).

(D) An inmate assigned to Work Group M who is 1) found guilty of a serious rule violation as defined in sections 3323(b), 3323(c), or 3323(d), 2) found guilty of a rule violation involving use or possession of any unauthorized communication device or of any narcotic, drug, drug paraphernalia, controlled substance, alcohol, or other intoxicant, as defined in sections 3323(e), 3323(f), 3323(g), or 3323(h), 3) placed in a zero-credit work group pursuant to sections 3044(b)(4) or 3044(b)(6), or 4) otherwise removed from this assignment due to safety or security considerations, shall be re-assigned to another work group consistent with the remaining provisions of this section and shall be ineligible to receive Good Conduct Credit pursuant to sections 3043.2(b)(4)(B), 3043.2(b)(5)(A), or 3043.2(b)(5)(B). An inmate who has been removed from this assignment under the circumstances described above may be assigned to Work Group M again, after an appropriate period of time, by a classification committee.

(E) An inmate eligible for initial assignment to Work Group M or who is assigned to Work Group M who 1) is temporarily placed in an ASU or other segregated housing placement unit, 2) designated by the Institution Classification Committee as non-disciplinary segregation pursuant to section 3335(a), and 3) who otherwise remains eligible for initial or continued assignment to Work Group M pursuant to sections 3044(b)(8)(A) or 3044(b)(8)(B), shall be assigned Work Group M for the duration of his or her non-disciplinary segregation.

(F) An inmate initially assigned to Work Group D-1 by the Institution Classification Committee due to placement in ASU, SHU, PSU, or other segregated housing unit pursuant to section 3044(b)(5) and who 1) was not designated for non-disciplinary segregation by the Institution Classification Committee, 2) was otherwise eligible for the assignment to Work Group M pursuant to sections 3044(b)(8)(A) or 3044(b)(8)(B) during the period of segregated housing, and 3) was not found guilty of the serious rule violation which was the reason for ASU or other segregated housing placement, shall be made whole by retroactive assignment to Work Group M beginning with the effective date that Work Group D-1 was originally imposed and for the same number of days he or she was assigned to Work Group D-1.

(G) Except when otherwise precluded by this section, an inmate 1) who undergoes reception center processing with a permanent disability that impacts placement or who is receiving dialysis treatment, 2) who, as determined by a classification committee, experienced an extended stay in the reception center beyond 60 days solely due to the disability, and 3) qualifies for the assignment of Work Group M pursuant to this section, shall be assigned Work Group M effective the 61st day of the stay at the reception center. Work Group M may be assigned retroactively to May 1, 2017. However, Good Conduct Credit awarded consistent with section 3043.2(b)(5)(A) shall be limited in accordance with section 3043(c).

(9) Work Group U (Unclassified). An inmate undergoing reception center processing shall be assigned to Work Group U from the date of their reception until classified at their assigned institution, except when the inmate is assigned Work Group M by a classification committee prior to the completion of reception center processing in accordance with section 3044(b)(8)(G).

(c) Privileges. Privileges for each work group shall be those privileges earned by the inmate. Inmate privileges are administratively authorized activities and benefits required of the secretary, by statute, case law, governmental regulations, or executive orders. Inmate privileges shall be governed by an inmate's behavior, custody classification and assignment. A formal request or application for privileges is not required unless specified otherwise in this section. Institutions may provide additional incentives for each privilege group, subject to availability of resources and constraints imposed by security needs.
(1) To qualify for privileges generally granted by this section, an inmate shall comply with rules and procedures and participate in assigned activities.
(2) Privileges available to a work group may be denied, modified, or temporarily suspended by a hearing official at a disciplinary hearing upon a finding of an inmate's guilt for a disciplinary offense as described in sections 3314 and 3315 of these regulations or by a classification committee action changing the inmate's custody classification, work group, privilege group, or institution placement.
(3) Disciplinary action denying, modifying, or suspending a privilege for which an inmate would otherwise be eligible shall be for a specified period not to exceed 30 days for an administrative rule violation or 90 days for a serious rule violation.
(4) A permanent change of an inmate's privilege group shall be made only by classification committee action under provisions of section 3375. Disciplinary or classification committee action changing an inmate's privileges or privilege group shall not automatically affect the inmate's work group classification.
(5) No inmate or group of inmates shall be granted privileges not equally available to other inmates of the same custody classification and assignment who would otherwise be eligible for the same privileges.
(6) Changes in privilege group status due to the inmate's placement in lockup:
(A) An inmate housed in an ASU, SHU, or PSU shall be designated Privilege Group D with the exception of:
1. Inmates designated as NDS who shall retain their privilege group prior to ASU placement;
2. Inmates placed in the Security Threat Group (STG) Step Down Program (SDP) in accordance with section 3044(i);
3. Inmates who are assigned to the Debrief Processing Unit (DPU) in accordance with Section 3378.7;
4. Inmates who are on Administrative SHU status in accordance with section 3044(j).
(7) An inmate in a reentry program assignment shall be eligible for available privileges subject to participating in assignment programs and shall not require a privilege group designation.
(8) An inmate's privileges shall be conditioned upon each of the following:
(A) The inmate's compliance with procedures governing those privileges.
(B) The inmate's continued eligibility.
(C) The inmate's good conduct and satisfactory participation in an assignment.
(9) Inmates returned to custody from parole may be eligible to receive privileges based upon their satisfactory participation in an assignment.
(10) When assigned to a RCGP facility, the inmate's privileges shall be in accordance with section 3378.9.
(d) Privilege Group A:
(1) Criteria:
(A) Full-time assignment as defined in section 3044(a).

(B) An inmate diagnosed by a physician or mental health clinician as totally disabled shall remain in Privilege Group A, unless changed by disciplinary action.
(C) An inmate designated by a physician or mental health clinician as partially disabled pursuant to section 3044(b)(1)(E) shall remain in Privilege Group A, unless changed by disciplinary action.
(2) Privileges for Privilege Group A are as follows:
(A) Family visits limited only by the institution/facility resources, security policy, section 3177(b), or other law.
(B) Visits during non-work/training hours, limited only by availability of space within facility visiting hours, or during work hours when extraordinary circumstances exist as defined in section 3045.2(d)(2). NDS inmates in Privilege Group A are restricted to non-contact visits consistent with those afforded to other inmates in ASU.
(C) Maximum monthly canteen draw as authorized by the secretary.
(D) Telephone access during the inmate's non-work/training hours limited only by institution/facility telephone capabilities. Inmates identified as NDS are permitted one personal telephone access per week under normal operating conditions.
(E) Access to yard, recreation and entertainment activities during the inmate's non-working/training hours and limited only by security needs.
(F) Excused time off as described in section 3045.2.
(G) The receipt of four inmate packages, 30 pounds maximum weight each, per year. Inmates may also receive special purchases, as provided in subsections 3190(j) and (k).
(e) Privilege Group B:
(1) Criteria, any of the following:
(A) Half-time assignment as defined in section 3044(a) or involuntarily unassigned as defined in section 3044(b).
(B) A hearing official may temporarily place an inmate into the group as a disposition pursuant to section 3314 or 3315.
(2) Privileges for Privilege Group B are as follows:
(A) One family visit each six months, unless limited by section 3177(b) or other law.
(B) Visits during non-work/training hours, limited only by availability of space within facility visiting hours, or during work hours when extraordinary circumstances exist, as defined in section 3045.2(d)(2). NDS inmates in Privilege Group B are restricted to non-contact visits consistent with those afforded to other inmates in ASU.
(C) Seventy-five percent (75%) of the maximum monthly canteen draw as authorized by the secretary.
(D) One personal telephone access period per month under normal operating conditions.
(E) Access to yard, recreation, and entertainment activities during the inmate's non-working/training hours and limited only by institution/facility security needs.
(F) Excused time off as described in section 3045.2.
(G) The receipt of four inmate packages, 30 pounds maximum weight each, per year. Inmates may also receive special purchases, as provided in subsections 3190(j) and (k).
(f) Privilege Group C:
(1) Criteria, any of the following:
(A) The inmate who twice refuses to accept assigned housing, or who refuses to accept or perform in an assignment, or who is deemed a program failure as defined in section 3000.

(B) A hearing official may temporarily place an inmate into the group as a disposition pursuant to section 3314 or 3315.
(C) A classification committee action pursuant to section 3375 places the inmate into the group. An inmate placed into Privilege Group C by a classification committee action may apply to be removed from that privilege group no earlier than 30 days from the date of placement. Subsequent to the mandatory 30 days placement on Privilege Group C, if the inmate submits a written request for removal, a hearing shall be scheduled within 30 days of receipt of the written request to consider removal from Privilege Group C.
(2) Privileges and non-privileges for Privilege Group C are as follows:
(A) No family visits.
(B) One-fourth the maximum monthly canteen draw as authorized by the secretary.
(C) Telephone calls on an emergency basis only as determined by institution/facility staff.
(D) Yard access limited by local institution/facility security needs. No access to any other recreational or entertainment activities.
(E) No inmate packages. Inmates may receive special purchases, as provided in subsections 3190(j) and (k).
(g) Privilege Group D:
(1) Criteria: Any inmate, with the exception of validated STG affiliates participating in the SDP or designated NDS inmates, housed in a special segregation unit, voluntarily or under the provisions of sections 3335-3345 of these regulations who is not assigned to either a full-time or half-time assignment.
Inmates assigned to Steps 1 through 4 of the SDP while completing the Pre-Debrief Intake Panel (DIP) portion of Phase One of the debrief process, as described in section 3378.5, are entitled to privileges and non-privileges commensurate with the SDP step to which the offender is currently assigned, in accordance with sections 3044(i) and 3378.7.
(2) Any inmate removed from the general population due to disciplinary or administrative reasons, shall forfeit their privileges within their general population privilege group pending review by a classification committee.
(3) Privileges and non-privileges for Privilege Group D, other than those listed above, are as follows:
(A) No family visits.
(B) Twenty-five percent (25%) of the maximum monthly canteen draw as authorized by the secretary.
(C) Telephone calls on an emergency basis only as determined by institution/facility staff.
(D) Yard access limited by local institution/facility security needs. No access to any other recreational or entertainment activities.
(E) The receipt of one inmate package, 30 pounds maximum weight each, per year. Inmates shall be eligible to acquire an inmate package after completion of one year of Privilege Group D assignment. Inmates may also receive special purchases, as provided in subsections 3190(j) and (k).
(h) Privilege Group U:
(1) Criteria: Reception center inmates under processing.
(2) Privileges and non-privileges for Privilege Group U are:
(A) No family visits.
(B) Canteen Purchases. One-half of the maximum monthly canteen draw as authorized by the secretary.

(C) Telephone calls on an emergency basis only as determined by institution/facility staff.
(D) Yard access, recreation, and entertainment limited by local institution/facility security needs.
(E) Excused time off as described in section 3045.2.
(F) No inmate packages. Inmates may receive special purchases, as provided in subsections 3190(j) and (k).
(i) Privilege Group S1 through S4:
(1) Criteria: Participation in the STG SDP.
(2) Upon a guilty finding in a disciplinary hearing, the disposition may or when mandated include assessment of one or more penalties in accordance with sections 3314 or 3315.
(3) Privileges and non-privileges for Privilege Groups S1 through S4 are:
(A) S1 for Step 1.
1. No Family Visits.
2. Non-contact visiting during non-work/training hours, limited by available space within facility non-contact visiting room.
3. Twenty-five percent (25%) of the maximum monthly canteen draw as authorized by the secretary.
4. Telephone calls on an emergency basis as determined by institution/facility staff.
5. One telephone call every 90 days if the inmate has met program expectations and has not been found guilty of serious disciplinary behavior in that time period.
6. Yard access in accordance with Section 3343(h) which shall be a minimum of 10 hours per week.
7. The receipt of one inmate package, 30 pounds maximum weight, exclusive of special purchases as provided in Section 3190.
8. One photograph.
9. Electrical appliances are allowed in accordance with the Authorized Personal Property Schedule for SHU/PSU inmates, as described in Section 3190(b)(4).
(B) S2 for Step 2.
1. No Family Visits.
2. Non-contact visiting during non-work/training hours, limited by available space within facility non-contact visiting room.
3. Thirty-five percent (35%) of the maximum monthly canteen draw as authorized by the secretary.
4. Telephone calls on an emergency basis as determined by institution/facility staff.
5. One telephone call every 60 days if the inmate has met program expectations and has not been found guilty of serious disciplinary behavior in that time period.
6. Yard access in accordance with Section 3343(h) which shall be a minimum of 10 hours per week.
7. The receipt of one inmate package, 30 pounds maximum weight, exclusive of special purchases as provided in Section 3190.
8. Two photographs - if the inmate has met program expectations and has not been found guilty of serious disciplinary behavior in that time period, upon completion of Step 2.
9. Electrical appliances are allowed in accordance with the Authorized Personal Property Schedule for SHU/PSU inmates, as described in Section 3190(b)(4).
(C) S3 for Step 3.
1. No Family Visits.

2. Non-contact visiting during non-work/training hours, limited by available space within facility non-contact visiting room.
3. Forty-five percent (45%) of the maximum monthly canteen draw as authorized by the secretary.
4. Telephone calls on an emergency basis as determined by institution/facility staff.
5. One telephone call every 45 days if the inmate has met program expectations and has not been found guilty of serious disciplinary behavior in that time period.
6. Yard access in accordance with Section 3343(h) which shall be a minimum of 10 hours per week.
7. The receipt of one inmate packages, 30 pounds maximum weight, exclusive of special purchases as provided in Section 3190.
8. Three photographs if the inmate has met program expectations and has not been found guilty of serious disciplinary behavior in that time period, upon completion of Step 3.
9. Electrical appliances are allowed in accordance with the Authorized Personal Property Schedule for SHU/PSU inmates, as described in Section 3190(b)(4).
10. Small Group Programs at least two hours per week.
11. Access to appropriate educational programs.
(D) S4 for Step 4.
1. No Family Visits.
2. Non-contact visiting during non-work/training hours, limited by available space within facility non-contact visiting room.
3. Fifty percent (50%) of the maximum monthly canteen draw as authorized by the secretary.
4. Telephone calls on an emergency basis as determined by institution/facility staff.
5. One telephone call every 30 days if the inmate has met program expectations and has not been found guilty of serious disciplinary behavior in that time period.
6. Yard access in accordance with Section 3343(h) which shall be a minimum of 10 hours per week. Participation on small group yards as determined by the Institution Classification Committee (ICC).
7. The receipt of one inmate package, 30 pounds maximum weight each, exclusive of special purchases as provided in Section 3190. In addition, receipt of one inmate package, food only, 15 pounds maximum weight.
8. Four photographs every 90 days if the inmate has met program expectations and has not been found guilty of serious disciplinary behavior in that time period.
9. Electrical appliances are allowed in accordance with the Authorized Personal Property Schedule for SHU/PSU inmates, as described in Section 3190(b)(4).
10. Small group programs at least four hours per week.
11. Access to appropriate educational programs.
(j) Privilege Group AS:
(1) Criteria: Any offender in SHU serving an Administrative SHU term as described in section 3000.
(2) Upon a guilty finding in a disciplinary hearing, the disposition may or when mandated include assessment of one or more penalties in accordance with sections 3314 or 3315.
(3) Privileges and non-privileges for Privilege Group AS are:
(A) No Family Visits.
(B) Non-contact visiting during non-work/training hours, limited by available space within facility non-contact visiting room.

(C) Canteen draw may range from twenty-five percent (25%) to seventy five percent (75%) of the maximum monthly canteen draw as authorized by the secretary and designated by ICC.
(D) Telephone calls on an emergency basis as determined by institution/facility staff.
(E) One phone call at least every 90 days, and ICC may modify the call frequency up to one phone call every month.
(F) Enhanced out of cell yard and programming for a combined total of 20 hours per week.
(G) Receipt of inmate packages, 30 pounds maximum weight each. Offenders may also receive special purchases, as provided in subsections 3190(j) and (k). ICC shall designate between one and four packages per year.
(H) Photographs every 90 days, if the inmate has met program expectations and has not been found guilty of serious disciplinary behavior in that time period. ICC shall designate between one and four photographs every 90 days.
(I) Electrical appliances are allowed in accordance with the Authorized Personal Property Schedule for SHU/PSU inmates, as described in Section 3190(b)(4).
(4) The local Inter-Disciplinary Treatment Team may further restrict or allow additional authorized personal property, in accordance with the Institution's Psychiatric Services Unit operational procedure, on a case-by-case basis above that allowed by the inmate's assigned Privilege Group.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Sections 2700, 2701 and 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a)(2); Sections 2932, 2933, 2933.05, 2933.3, 2933.6, 2935, 5005, 5054 and 5068, Penal Code; and *In re Monigold*, 205 Cal.App.3d 1224 (1988).

Title 15. Crime Prevention and Corrections

Division 3. Adult Institutions, Programs and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 5.5. Parole Consideration

Article 1. Parole Consideration for Determinately-Sentenced Nonviolent Offenders

Section 3490. Definitions.
For the purposes of this article, the following definitions shall apply:
(a) An inmate is a "nonviolent offender" if none of the following are true:
(1) The inmate is condemned to death;
(2) The inmate is currently incarcerated for a term of life without the possibility of parole;
(3) The inmate is currently incarcerated for a term of life with the possibility of parole for a "violent felony;"
(4) The inmate is currently serving a determinate term prior to beginning a term of life with the possibility of parole for a "violent felony" or prior to beginning a term for an in-prison offense that is a "violent felony;"
(5) The inmate is currently serving a term of incarceration for a "violent felony;" or
(6) The inmate is currently serving a term of incarceration for a nonviolent felony offense after completing a concurrent determinate term for a "violent felony."
(b) Notwithstanding subsection (a), a "nonviolent offender" includes an inmate who has completed a determinate or indeterminate term of incarceration and is currently serving a determinate term for an in-prison offense that is not a "violent felony."
(c) "Violent felony" is a crime or enhancement as defined in subdivision (c) of section 667.5 of the Penal Code.
(d) "Primary offense" means the single crime for which any sentencing court imposed the longest term of imprisonment, excluding all enhancements, alternative sentences, and consecutive sentences.
(e) "Full term" means the actual number of days, months, and years imposed by the sentencing court for the inmate's primary offense, not including any sentencing credits.
(f) A "nonviolent parole eligible date" is the date on which a nonviolent offender who is eligible for parole consideration under section 3491 has served the full term of his or her primary offense, less any actual days served prior to sentencing as ordered by the court under section 2900.5 of the Penal Code and any actual days served in custody between sentencing and the date the inmate is received by the department.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Section 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a); Section 1170.1(c), Penal Code; *In re Tate* (2006) 135 Cal.App.4th 756; and *In re Thompson* (1985) 172 Cal.App.3d 256.

Section 3491. Eligibility Review.

(a) A nonviolent offender, as defined in subsections 3490(a) and 3490(b), shall be eligible for parole consideration by the Board of Parole Hearings under article 15 of chapter 3 of division 2 of this title.

(b) Notwithstanding subsection (a), an inmate is not eligible for parole consideration by the Board of Parole Hearings under article 15 of chapter 3 of division 2 of this title if any of the following apply:

(1) The inmate is currently incarcerated for a term of life with the possibility of parole for an offense that is not a violent felony or the inmate is currently serving a determinate term prior to beginning a term of life with the possibility of parole for an offense that is not a violent felony;

(2) Within one year of the date of the eligibility review, the inmate will be eligible for a parole consideration hearing under section 3051 or 3055 of the Penal Code or the inmate has already been scheduled for an initial parole consideration hearing under section 3051 or 3055 of the Penal Code; or

(3) 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.

(c) The department shall complete an eligibility review within 60 calendar days of an inmate's admission to the department.

(d) The department shall conduct a new eligibility review whenever an official record, such as an amended abstract of judgment or minute order, is received that affects the inmate's eligibility under this article, when an inmate begins serving a term for an in-prison offense that is not a violent felony, or when an inmate is within one year of being eligible for a parole consideration hearing under section 3051 or 3055 of the Penal Code.

(e) The department shall conduct an eligibility review by completing the following steps.

(1) The department shall determine if the inmate is eligible for parole consideration by the Board of Parole Hearings under subsections (a) and (b) of this section.

(2) If the inmate is eligible for parole consideration by the Board of Parole Hearings under subsections (a) and (b), the department shall identify the inmate's primary offense, as defined in subsection 3490(d) of this article.

(A) If at the time of the eligibility review the inmate is serving a term or terms for crimes committed prior to his or her arrival to prison, the terms for any in-prison crimes shall not be considered when identifying the inmate's primary offense.

(B) If at the time of the eligibility review the inmate is serving a term or terms for crimes committed after his or her arrival to prison, only the terms for all in-prison crimes currently being served or yet to be served shall be considered when identifying the inmate's primary offense.

(3) If the inmate is eligible for parole consideration by the Board of Parole Hearings under subsections (a) and (b), the department shall establish his or her nonviolent parole eligible date, as defined in subsection 3490(f) of this article.

(f) Eligibility reviews under this section shall be served on the inmate and placed in the inmate's central file within 15 business days of being completed.

(g) Eligibility reviews under this section are subject to the department's inmate appeal process in accordance with article 8 of chapter 1 of this division.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Section 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a).

Section 3492. Public Safety Screening and Referral.
(a) Effective July 1, 2017, if an inmate is determined to be eligible for parole consideration under section 3491, he or she shall be screened under this section for possible referral to the Board of Parole Hearings.
(b) Inmates shall be screened under this section at least 35 calendar days prior to their nonviolent parole eligible date.
(c) An inmate is eligible for referral to the Board of Parole Hearings if, on the date of the screening, all of the following are true:
(1) The inmate is not currently serving a Security Housing Unit term;
(2) The Institutional Classification Committee has not assessed the inmate a Security Housing Unit term within the past five years, unless the department assessed the Security Housing Unit term solely for the inmate's safety;
(3) The inmate has not served a Security Housing Unit term in the past five years, unless the department assessed the Security Housing Unit term solely for the inmate's safety;
(4) The inmate has not been found guilty of a serious rule violation for a Division A-1 or Division A-2 offense as specified in subsection 3323(b) or 3323(c) within the past five years;
(5) The inmate has not been assigned to Work Group C as specified in subsection 3044(b)(4) in the past year;
(6) The inmate has not been found guilty of two or more serious Rules Violation Reports in the past year;
(7) The inmate has not been found guilty of a drug-related offense as specified in section 3016 or refused to provide a urine sample as specified in subsection 3290(d) in the past year;
(8) The inmate has not been found guilty of any Rules Violation Reports in which a Security Threat Group nexus was found in the past year; and
(9) The inmate's nonviolent parole eligible date falls at least 180 calendar days prior to his or her earliest possible release date and the inmate will not reach his or her earliest possible release date for at least 210 calendar days.
(d) Within five business days of being screened, inmates who are eligible for referral under this section shall be referred to the Board of Parole Hearings for parole consideration under article 15 of chapter 3 of division 2 of this title.
(e) Inmates shall be screened again under this section one year from the date of their previous public safety screening until they are released from custody or are no longer eligible for parole consideration under section 3491, if any of the following apply:
(1) The inmate was determined to be ineligible for referral under this section;
(2) The inmate was referred to the Board of Parole Hearings and a hearing officer determined the Board of Parole Hearings did not have jurisdiction to review the inmate for release under section 2449.2 of division 2 of this title;
(3) The inmate was referred to the Board of Parole Hearings and was denied release after a review on the merits under section 2449.4 of division 2 of this title;
(4) The inmate was referred to the Board of Parole Hearings and was denied release after a previous decision approving the inmate's release was vacated by the Board of Parole Hearings under section 2449.6 of division 2 of this title; or

(5) The inmate was referred to the Board of Parole Hearings and was denied release after a previous decision was reviewed by the Board of Parole Hearings under section 2449.7 of division 2 of this title.
(f) Public safety screening and referral results shall be served on the inmate and placed in the inmate's central file within 15 business days of being completed and, if the inmate is deemed eligible for referral to the Board of Parole Hearings, he or she shall be provided information about the nonviolent offender parole process, including the opportunity to submit a written statement to the Board of Parole Hearings.
(g) Public safety screenings and referrals under this section are subject to the department's inmate appeal process in accordance with article 8 of chapter 1 of this division.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Section 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a).

Section 3493. Processing for Release.
If an inmate is approved for release by the Board of Parole Hearings under section 2449.4 of division 2 of this title and the decision is not vacated or overturned by the Board of Parole Hearings, the Division of Adult Institutions shall release the inmate 60 calendar days from the date of the Board of Parole Hearings' decision unless the inmate has an additional term to serve for an in-prison offense. Inmates released pursuant to this section shall be released in accordance with section 4755 of the Penal Code, section 3075.2 of this title, and any other procedures required by law, including required notifications to victims and law enforcement agencies.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Section 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a).

Title 15. Crime Prevention and Corrections

Division 2. Board of Parole Hearings

Chapter 3. Parole Release

Article 15. Parole Consideration for Determinately-Sentenced Nonviolent Offenders

Section 2449.1. Definitions.
For the purposes of this article, the following definitions shall apply:
(a) An inmate is a "nonviolent offender" if none of the following are true:
(1) The inmate is condemned to death;
(2) The inmate is currently incarcerated for a term of life without the possibility of parole;
(3) The inmate is currently incarcerated for a term of life with the possibility of parole for a "violent felony;"
(4) The inmate is currently serving a determinate term prior to beginning a term of life with the possibility of parole for a "violent felony" or prior to beginning a term for an in-prison offense that is a "violent felony;"
(5) The inmate is currently serving a term of incarceration for a "violent felony;" or
(6) The inmate is currently serving a term of incarceration for a nonviolent felony offense after completing a concurrent determinate term for a "violent felony."
(b) Notwithstanding subsection (a), a "nonviolent offender" includes an inmate who has completed a determinate or indeterminate term of incarceration and is currently serving a determinate term for an in-prison offense that is not a "violent felony."
(c) "Violent felony" is a crime or enhancement as defined in subdivision (c) of section 667.5 of the Penal Code.
(d) "Primary offense" means the single crime for which any sentencing court imposed the longest term of imprisonment, excluding all enhancements, alternative sentences, and consecutive sentences.
(e) "Full term" means the actual number of days, months, and years imposed by the sentencing court for the inmate's primary offense, not including any sentencing credits.
(f) A "nonviolent parole eligible date" is the date on which a nonviolent offender who is eligible for parole consideration under section 3491 has served the full term of his or her primary offense, less any actual days served prior to sentencing as ordered by the court under section 2900.5 of the Penal Code and any actual days served in custody between sentencing and the date the inmate is received by the department.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b). Reference: Cal. Const., art. 1, sec. 32(a); *In re Tate* (2006) 135 Cal.App.4th 756; and *In re Thompson* (1985) 172 Cal.App.3d 256.

Section 2449.2. Jurisdictional Review.
(a) Within 15 calendar days of a referral from the department under section 3492 of division 3 of this title, a hearing officer shall review the inmate's case and determine whether the board has jurisdiction to review the inmate for release.
(b) The board has jurisdiction to review an inmate for release if all of the following are true:

(1) The inmate's earliest possible release date is at least 210 calendar days after the date of the department's referral and the inmate's earliest possible release date is at least 180 calendar days after his or her nonviolent parole eligible date;
(2) The inmate is eligible for parole consideration under section 3491 of division 3 of this title; and
(3) The inmate, as of the date of the jurisdictional review, meets the criteria for referral to the board under subsection 3492(c) of division 3 of this title.
(c) If the hearing officer determines the board does not have jurisdiction to review the inmate for release, he or she shall issue a written decision that includes a statement of reasons supporting the decision. A copy of the decision shall be served on the inmate and placed in the inmate's central file within 15 business days of being issued. Inmates determined to be ineligible for referral to the board under this section shall be screened for possible referral to the board again as provided in subsection 3492(e) of division 3 of this title.
(d) If the hearing officer determines the board has jurisdiction to review the inmate for release, the board shall proceed with the notification process outlined in section 2449.3 of this article.
(e) Inmates may seek review of decisions issued under this section by writing the board in accordance with section 2449.7 within 30 calendar days of being served the decision. Decisions issued under this section are not subject to the department's inmate appeal process under article 8 of chapter 1 of division 3 of this title.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b). Reference: Cal. Const., art. 1, sec. 32(a).

Section 2449.3. Notification Process.
(a) Within five business days of a hearing officer determining the board has jurisdiction to review an inmate for release under section 2449.2, the board shall notify registered victims and the prosecuting agency or agencies of the inmate's pending parole review and provide an opportunity to submit a written statement.
(b) Responses to the board under this section must be in writing and postmarked or electronically stamped no later than 30 calendar days after the board issued the notification.
(c) A registered victim is any person who is registered as a victim with the department's Office of Victim and Survivor Rights and Services at the time of the inmate's referral to the board under section 3492 of division 3 of this title.
(d) The prosecuting agency or agencies include any California district attorney office responsible for prosecuting the inmate, or the State of California Office of the Attorney General if that office was responsible for prosecuting the inmate, for any crimes for which the inmate is currently incarcerated.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b). Reference: Cal. Const., art. 1, sec. 32(a).

Section 2449.4. Review on the Merits.
(a) Within 30 calendar days of the conclusion of the notification process described under subsection 2449.3(b), a hearing officer shall review the inmate's case on the merits and determine whether to approve his or her release.
(b) The hearing officer shall review and consider all relevant and reliable information about the inmate including, but not limited to:

(1) Information contained in the inmate's central file and the inmate's documented criminal history, including the inmate's Record of Arrests and Prosecutions (RAP sheets) and any return to prison with a new conviction after being released as a result of this section; and
(2) Written statements submitted by the inmate, any victims registered at the time of the referral, and the prosecuting agency or agencies that received notice under section 2449.3.
(c) After reviewing and considering the relevant and reliable information, the hearing officer shall determine whether the inmate poses a current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity as determined by considering and applying the factors in section 2449.5.
(d) The hearing officer shall issue a written decision that includes a statement of reasons supporting the decision. A copy of the decision shall be served on the inmate and placed in the inmate's central file within 15 business days of being issued. The board shall, within five business days of issuing a decision, send notice of the decision to any victim who was registered at the time of the referral and any prosecuting agency or agencies that received notice under section 2449.3.
(1) If the hearing officer finds the inmate poses a current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity, the hearing officer shall deny parolerelease and issue his or her decision.
(2) If the hearing officer finds the inmate does not pose a current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity, the hearing officer shall approve release and issue his or her decision unless the decision will result in the inmate being released two or more years prior to his or her earliest possible release date. If the decision will result in the inmate being released two or more years prior to his or her earliest possible release date, the decision shall be reviewed by an associate chief deputy commissioner or the Chief Hearing Officer before it is finalized and issued. If the associate chief deputy commissioner or the Chief Hearing Officer does not concur with the hearing officer's decision, he or she shall issue a new decision approving or denying release.
(e) Inmates approved for release under this section shall be processed for release by the department as described in section 3493 of division 3 of this title.
(f) Inmates denied release under this section shall be screened for possible referral to the board again as provided in subsection 3492(e) of division 3 of this title.
(g) Inmates may seek review of decisions issued under this section by writing the board in accordance with section 2449.7 within 30 calendar days of being served the decision. Decisions issued under this section are not subject to the department's inmate appeal process under article 8 of chapter 1 of division 3 of this title.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b). Reference: Cal. Const., art. 1, sec. 32(a).

Section 2449.5. Factors to Consider During a Review on the Merits.
(a) When conducting a review on the merits under section 2449.4, the hearing officer shall weigh the factors in subsections (b) through (h) and, based on the totality of the circumstances, determine if the inmate poses a current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity. The inmate shall be approved for release if factors aggravating the inmate's risk do not exist or if they are outweighed by factors mitigating the inmate's risk. When weighing the factors aggravating and mitigating the inmate's risk, the hearing officer shall take into account the relevance of the information based on the passage of

time, the inmate's age, and the inmate's physical and cognitive limitations. The factors are set forth as general guidelines; the importance attached to any factor or combination of factors in a particular case is left to the judgment of the hearing officer.

(b) The following factors concerning the inmate's current conviction(s), if present, shall be considered as aggravating the inmate's risk.

(1) The inmate personally used a deadly weapon.

(2) There were one or more victims who suffered physical injury or threat of physical injury.

(3) There were multiple convictions involving large-scale criminal activity.

(4) The inmate played a significant role in the crime(s) as compared to other offenders, if any.

(c) The following factors concerning the inmate's current conviction(s), if present, shall be considered as mitigating the inmate's risk.

(1) The inmate did not personally use a deadly weapon.

(2) No victims suffered physical injury or threat of physical injury.

(3) There was only one conviction.

(4) The inmate played an insignificant role in the crime(s) as compared to other offenders, if any.

(d) The following factors concerning the inmate's prior criminal conviction(s), if any, shall be considered as aggravating the inmate's risk.

(1) The inmate has a violent felony conviction as defined in subdivision (c) of section 667.5 of the Penal Code in the past 15 years.

(2) The inmate's prior criminal conviction(s) coupled with his or her current conviction(s) show a pattern of assaultive behavior or a pattern of similar criminal conduct that is increasing in severity.

(3) The inmate was incarcerated for a misdemeanor conviction involving physical injury to a victim or a felony conviction within five years prior to his or her current conviction(s).

(4) The inmate was previously approved for release by the board under this article and returned to state prison with a new conviction.

(e) The following factors concerning the inmate's prior criminal behavior, if present, shall be considered as mitigating the inmate's risk.

(1) The inmate has no prior criminal convictions.

(2) The inmate has not been convicted of a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code in the past 15 years.

(3) The inmate's prior criminal conviction(s) coupled with his or her current conviction(s) shows a pattern of assaultive behavior or a pattern of similar criminal conduct that is decreasing in severity.

(4) The inmate was free from incarceration for a misdemeanor conviction involving physical injury to a victim or a felony conviction for five years or more prior to his or her current conviction(s).

(f) The following factors concerning the inmate's institutional behavior, work history, and rehabilitative programming as documented in the inmate's central file shall be considered as aggravating the inmate's risk.

(1) The inmate has been found guilty of institutional Rules Violation Reports resulting in physical injury or threat of physical injury since his or her last admission to prison.

(2) There is reliable information in the confidential section of the inmate's central file indicating the inmate has engaged in criminal activity since his or her last admission to prison.

(3) The inmate has limited or no participation in available vocational, educational, or work assignments.

(4) The inmate has limited or no participation in available rehabilitative or self-help programming to address the circumstances that contributed to his or her criminal behavior, such as substance abuse, domestic violence, or gang involvement.
(g) The following factors concerning the inmate's institutional behavior, work history, and rehabilitative programming as documented in the inmate's central file shall be considered as mitigating the inmate's risk.
(1) The inmate has not been found guilty of institutional Rules Violation Reports resulting in physical injury or threat of physical injury since his or her last admission to prison.
(2) There is no reliable information in the confidential section of the inmate's central file indicating the inmate has engaged in criminal activity since his or her last admission to prison.
(3) The inmate has successfully participated in vocational, educational, or work assignments for a sustained period of time.
(4) The inmate has successfully participated in rehabilitative or self-help programming to address the circumstances that contributed to his or her criminal behavior, such as substance abuse, domestic violence, or gang involvement, if any, for a sustained period of time.
(h) Written statements submitted by the inmate, written statements concerning the inmate's commitment offense and criminal history from the prosecuting agency or agencies that received notice under section 2449.3, and written statements from any victims who received notice under section 2449.3 shall be considered.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b). Reference: Cal. Const., art. 1, sec. 32(a).

Section 2449.6. Vacating a Decision.
(a) If at any time prior to release an inmate previously approved for release under section 2449.4 is subsequently determined to no longer be eligible for parole consideration under section 3491 of division 3 of this title or to no longer meet the criteria for referral to the board under subsection 3492(c) of division 3 of this title, the Chief Hearing Officer or an associate chief deputy commissioner shall issue a written decision vacating the previous decision that includes a statement of reasons supporting the new decision.
(b) Within 15 business days of issuing a decision under subsection (a), a copy of the decision shall be served on the inmate and placed in the inmate's central file. The board shall, within five business days of issuing a decision under subsection (a), send notice of the decision to any victim who was registered at the time of the referral and any prosecuting agency or agencies that received notice under section 2449.3.
(c) If a decision is vacated under this section, the inmate shall be screened again for possible referral to the board as provided in subsection 3492(e) of division 3 of this title.
(d) Inmates may request review of a decision issued under this section by writing the board as provided in section 2449.7 within 30 calendar days of being served the decision. Decisions under this section are not subject to the department's inmate appeal process under article 8 of chapter 1 of division 3 of this title.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b). Reference: Cal. Const., art. 1, sec. 32(a).

Section 2449.7. Decision Review.

(a) An inmate may request review of a jurisdictional decision issued under section 2449.2, a decision on the merits issued under section 2449.4, or a decision vacating a previous approval for release issued under section 2449.6 by submitting a written request to the board within 30 calendar days of the inmate being served the decision. The inmate's written request shall include a description of why the inmate believes the previous decision was not correct and may include additional information not available to the hearing officer at the time the previous decision was issued.

(b) The Chief Hearing Officer or an associate chief deputy commissioner may also initiate a review under this section at any time prior to the inmate's release if the previous decision contained an error of law, an error of fact, or if the board receives new information that would have materially impacted the previous decision had it been known at the time the decision was issued.

(c) A hearing officer, associate chief deputy commissioner, or the Chief Hearing Officer, who was not involved in the original decision, shall complete a review of the decision within 30 calendar days of the board receiving the request.

(d) The hearing officer, associate chief deputy commissioner, or the Chief Hearing Officer reviewing the previous decision shall consider all relevant and reliable information and issue a decision either concurring with the previous decision or overturning the previous decision with a statement of reasons supporting the new decision.

(e) A copy of the decision shall be served on the inmate and placed in the inmate's central file within 15 business days of being issued.

(f) Within five business days of issuing a decision under this section that overturns a previous decision issued under section 2449.4 or 2449.6, the board shall send notice of the decision to any victim who was registered at the time of the referral and any prosecuting agency or agencies that received notice under section 2449.3. Inmates who are denied release under this section shall be screened for possible referral to the board again as provided in section 3492(e) of division 3 of this title.

(g) If a decision under this section overturns a previous decision that determined the board did not have jurisdiction to review the inmate because he or she was not eligible for referral under section 2449.2, the board shall proceed with the notification process outlined in section 2449.3. The board shall also, within 60 calendar days, conduct a review on the merits under section 2449.4.

(h) Decisions under this section are not subject to the department's inmate appeal process under article 8 of chapter 1 of division 3 of this title.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b). Reference: Cal. Const., art. 1, sec. 32(a).

FINAL STATEMENT OF REASONS

The Initial Statement of Reasons is incorporated by reference.

UPDATES TO THE INITIAL STATEMENT OF REASONS

The Notice of Emergency Proposed Regulations for "Inmate Credit Earning and Parole Consideration" was published in the California Regulatory Notice Register on July 14, 2017 which began the 45-day public comment period. The Notice of Change to Regulations (NCR) #17-05 including the text of the regulations, and the Initial Statement of Reasons, was mailed the same day to persons who requested to be placed on the California Department of Corrections and Rehabilitation (CDCR) mailing list to receive notifications of rulemaking actions. The documents were also posted on the Department's Internet and Intranet websites, and posted in CDCR institutions. In addition they were posted on the CDCR internet and intranet websites, and copies posted in CDCR institutions.

The Department received comments from approximately 12,000 organizations and members of the public during the initial public comment period. The total number of individual comments responded to was approximately 41,000. A substantial amount of the comments received were not unique and were deemed repetitive per GC 11346.9(a)(3). The Department developed "Standard Responses" to the most frequently submitted comments that raised the same issue. These Standard Responses are numbered 1-30. When a comment could be addressed with a Standard Response, the department referred the reader to that response, for example "see Standard Response 1". In addition, many commenters utilized templated sets of comments. In this case, the templated comments were organized into tables, one table for each template. As a result, the attached tables identify the specific comments made and list out the comment numbers assigned to each commenter who utilized that template. Table A through Table W group the repetitive comments by *topic/theme/subject matter.* If a commenter utilized a template but also added additional comments, these are identified below the table and responded to individually. Responses to the comments received during the initial public comment period may be found under Exhibit "A".

A public hearing was held on September 1, 2017 with 108 speakers providing verbal and written comments. Responses to the comments received at the public hearing may be found under Exhibit "D".

On August 31, 2017, the department submitted a request to the Office of Administrative Law for an Emergency Readoption of these regulations, pursuant to Penal Code 5058.3. This request was approved on September 19, 2017.

On December 8, 2017, the department submitted a request to the Office of Administrative Law (OAL) for an Emergency Readoption of these regulations, pursuant to Government Code 11364.1(h). This request was approved on December 18, 2017.

On December 8, 2017 a Renotice, which included revisions to the revised text of the regulations, was distributed, to all persons whose comments were received during the public comment period and all persons who requested notification of the availability of such changes. These documents were also posted on the Department's Internet and Intranet websites. The changes and reasons for them are found in the rule making file under the tab #3, *Update to Informative Digest* that contains a description of the *Changes to Text as Originally Noticed to the Public.* During the renotice comment period, 269 commenters responded. Responses to the comments received during the public comment period may be found under Exhibit "E". The "Milestone Completion Credit Schedule" (REV. 11/17) was mailed along with the 15-day Notice and Modified text.

On January 26, 2018 a second Renotice, which included revisions to the revised text of the regulations, and an Addendum to the Initial Statement of Reasons was distributed to all persons whose comments were received during the public comment period and all persons who requested notification of the availability of such changes. These documents were also posted on the Department's Internet and Intranet websites. The changes and reasons for them are found in the rulemaking file with the title *Notice of Changes to the Text as Originally Proposed and Addendum to the Initial Statement of Reasons.* During the renotice comment period, 31 commenters responded. Responses to the comments received during the public comment period may be found under Exhibit "F".

The comments are coded according to when they were received. Comments received by standard mail during the initial comment period were given an "S" designation; e-mailed comments received during that period were designated "E;" verbal comments made at the public hearing were designated "H;" the comments received following the first re-notice period were designated "R", and the comments submitted following the second re-notice period coded "A."

PART I: INTRODUCTION

The Notice of Proposed Regulations for "Credit Earning and Parole Consideration" was published in the California Regulatory Notice Register on July 14, 2017 which began the initial public comment period. The proposed text was made available for public comment from July 14, 2017 through September 1, 2017.

On December 8, 2017, the department submitted a request to the Office of Administrative Law for an Emergency Re-adoption of these regulations, pursuant to Government Code section 11346.1, subdivision (h). This request was approved on December 18, 2017.

On December 8, 2017 modified text which documented substantial changes to the original text as proposed was published and made available to the public for comment. The modified text was made available for public comment from December 8, 2017 through December 26, 2017. The changes to the text are described below.

PART II: CHANGES TO TEXT AS ORIGINALLY PROPOSED

A. CREDIT EARNING

Subsection 3043(a) was amended to include the phrase, "Unless otherwise precluded by this article," in order to clarify that condemned inmates and inmates sentenced to life without the possibility of parole are not eligible to earn credits because they are excluded elsewhere in this article.

The inclusion of "administrative segregation housing units, security housing units, psychiatric services units, and other segregated housing placement units" was made necessary by the passage of Senate Bill 759, which was signed into law on August 25, 2016. That bill amended Penal Code section 2933.6 and required the department to adopt regulations expressly allowing inmates placed in segregated housing the opportunity to earn credit. This amendment, therefore, fulfills the mandate of Senate Bill 759 and Penal Code section 2933.6.

In addition, the phrase "him or her" was changed to "them" and the word "below" was changed to "of this article" in several instances for clarity.

Subsection 3043(b) was amended to delete the phrase "participate in credit earning programs and activities" and add the phrase "earn Good Conduct Credit, Milestone Completion Credit, Rehabilitative Achievement Credit, and Educational Merit Credit" to provide more specificity. Also, the phrase "nor shall credit be awarded" was added to the last sentence for clarity.

Subsection 3043(c) was amended to clarify that the release date restriction described in this section only applies to inmates serving a determinate sentence. Credit earned by an indeterminately sentenced inmate is applied to advance their Minimum Eligible Parole Date, meaning the date they are scheduled for parole hearings. The Minimum Eligible Parole Date is not a release date so the release date restriction is inapplicable to indeterminately sentenced inmates.

In addition, the phrase "entered into the department's information technology system" was added to the last sentence to clarify when the release restriction commences. This clarification was necessary to ensure department staff know the exact date to calculate the beginning of the release

restriction and because using the date of entry into the department's information technology system helps ensure that all of the necessary notifications and parole planning can occur prior to the inmate's release. Also, the phrase "except pursuant to a court order" was added to the last sentence to clarify that the release restriction is not applicable if it contravenes a court order.

Subsection 3043(d) was moved to subsection 3043(e) and new subsection 3043(d) was added to clarify that the rules described in this section for Good Conduct Credit, Milestone Completion Credit, Rehabilitative Achievement Credit, Educational Merit Credit, and Extraordinary Conduct Credit apply to juveniles sentenced as adults and housed in the Division of Juvenile Justice, but not to wards housed in the Division of Juvenile Justice. The lack of any reference to juveniles sentenced as adults might otherwise lead to the erroneous conclusion that Milestone Completion Credit is only applicable to inmates housed in the Division of Adult Institutions. Additionally, the text was amended to define the phrase "alternative custody setting" to make clear that inmates serving the remainder of their term in an alternative custody setting are eligible to receive credit in the same manner as inmates that remain confined in an institution.

Subsection 3043(e) (formerly subsection 3043(d)) was amended to add facilities administered by a county sheriff to the list of housing facilities outside the department's jurisdiction. This amendment was necessary because the department does not have control over the operations of local jails (that is the prerogative of county sheriffs) so the availability of rehabilitative programs such as Milestone Completion Credit programs and Rehabilitative Achievement Credit programs remain outside the control of the department, as do the daily activities of inmates housed in county jails. Additionally, it was clarified that inmates are "housed" in a facility administered by the California Department of State Hospitals. The word "only" was added to clarify that inmates housed outside the department's jurisdiction are only eligible to participate in Good Conduct Credit, Educational Merit Credit, and Extraordinary Conduct Credit because facilities in other jurisdictions cannot reasonably be expected to provide the staffing, program space, and resources necessary to implement Milestone Completion Credit and Rehabilitative Achievement Credit.

Subsection 3043.2(a) was amended to state that the department has "regulations" and prisons have "local rules." This change was made as a non-substantive change since the department has rulemaking authority to adopt regulations, while prisons may adopt local rules.

Subsection 3043.2(b) was amended so that the format used to reference a subdivision in the Penal Code is the same format used in the Penal Code itself. In addition, the word "below" was changed to "of this section" in several instances for clarity.

Subsection 3043.2(b)(2) was amended to state that the reference to "Article 2.5" is in Title "1," not Title "I," of the Penal Code. This was made as a non-substantive change because there is no Title "I" in the Penal Code, only a Title "1".

Subsections 3043.2(b)(4) and 3043.2(b)(5) were amended to clarify that the training necessary to be assigned as a firefighter to a Department of Forestry and Fire Protection fire camp or as a firefighter at a Department of Corrections and Rehabilitation firehouse includes physical fitness training as well as firefighting training. Physical fitness training is necessary to ensure that an inmate is physically capable of performing the strenuous activities that are an essential function of fighting fires and firefighting training is necessary to ensure that an inmate can safely and professionally perform all of the duties of a firefighter. Only those inmates who successfully complete both types of training shall be awarded the enhanced Good Conduct Credit available in these subsections.

These subsections were also amended to add a new subsection (C) in each. The new subsection (b)(4)(C) clarifies that inmates serving a determinate sentence who are serving a term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code section and who are "housed at a Department of Forestry and Fire Protection Fire Camp in a role other than firefighter" shall be awarded the enhanced Good Conduct Credit available in this subsection. The new subsection (b)(5)(C) clarifies that inmates serving a determinate sentence who are not serving a term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code and who are "housed at a Department of Forestry and Fire Protection fire camp in a role other than firefighter" shall also be awarded the enhanced Good Conduct Credit available in this subsection. Awarding enhanced Good Conduct Credit to these inmates is warranted because they perform critical support functions to sustain the fire camps and the firefighters housed there. These critical support functions include special training and skills in such areas as wastewater treatment and small engine repair, to name a few. Additionally, inmates earning credit pursuant to subsection (b)(5)(C) earn more credit than those earning credit pursuant to subsection (b)(4)(C) because, as stated in the Initial Statement of Reasons, the department elected to follow the Legislative model of providing differing rates of credit based on the gravity of each inmate's offense and simplify the number of credit categories to five, but also expand the number of inmates eligible for Good Conduct Credit and the amount of credit that may be awarded overall.

Also, in the Initial Statement of Reasons describing the purpose for these subsections the citation to subsections 3377.1(a)(8) and (a)(9) should instead be to subsections 3377.1(a)(6) and (a)(7).

Subsection 3043.2(c) was moved to subsection 3043.2(d) and new subsection 3043.2(c) was added to clarify that inmates placed in an alternative custody setting, including a pre-parole or re-entry program, shall be awarded the same Good Conduct Credit they were earning prior to that placement. This change ensures inmates are not adversely affected by placement in an alternative custody setting and incentivizes inmates to participate in these transitional programs.

Subsection 3043.2(d) (formerly subsection 3043.2(c)) was amended to correct various references to other sections of the regulations.

Subsection 3043.3(a) was amended to expressly state the following: "To be awarded such credit, the inmate shall participate in all required classroom activities for the duration of the program, to include any subcomponents required in the curriculum for that program. Passing an exam alone shall not qualify for the award of such credit." The inclusion of this language was necessary to clarify that the award of Milestone Completion Credit involves more than merely passing an exam; it requires an inmate's participation in all required classroom activities for the duration of the program to ensure inmates fully internalize the rehabilitative benefits available through classroom participation.

Subsection 3043.3(b) was amended to clarify that Milestone Completion Credit shall not be awarded to any inmate who completes an academic course related to a high school diploma if that inmate already possesses a high school diploma, high school equivalency, or college degree. The purpose of said amendment is to ensure that credit is only awarded to inmates for academic gains made while incarcerated, not for academic gains made prior to arrival in state prison. Additionally, for clarity the text defines "high school equivalency" as any equivalency approved by the California Department of Education. This is necessary to ensure the high school equivalency is recognized by the California Department of Education, which in turn ensures the school issuing the high school equivalency is accredited.

Also, the "Inmate Declaration of General Educational Development (GED) Eligibility" (CDCR Form 2233 (REV. 06/11)) and the "Time Credit Waiver (PC § 2934)" (CDCR Form 916 (REV. 09/09)) (which are incorporated by reference) were repealed in this rulemaking action and were made available to the public upon request.

Subsection 3043.3(c) was amended to clarify the meaning of the phrase "release from prison" as used in this section. To that end, the phrase was changed to "release to parole, release to community supervision, or discharge from parole." The new phrase "release to parole" was added to identify those inmates released from prison and commencing parole supervision under the department pursuant to Penal Code section 3000.08(a); the new phrase "release to community supervision" was added to identify those inmates released from prison and commencing community supervision under a local probation department pursuant to Penal Code section 3000.08(b); and the new phrase "discharge from parole" was added to identify those inmates released from prison and immediately discharged from parole, meaning they will not be under supervision by state or local officials. These new phrases clarify that inmates who leave state prison under one of these three situations are included in this section.

Subsection 3043.3(d) was amended to remove the regulatory requirement that the Director of the Division of Adult Institutions consult with the Director of the Division of Rehabilitative Programs and the Undersecretary of Health Care Services before promulgating revisions to the Milestone Completion Credit Schedule. This requirement was found unnecessary because the Director of the Division of Adult Institutions consults with the Director of the Division of Rehabilitative Programs and the Undersecretary of Health Care Services regularly. Furthermore, the regulatory requirement that the Director of the Division of Adult Institutions promulgate any revisions under the direction of the Secretary remains.

In addition, this subsection was amended to incorporate the Milestone Completion Credit Schedule revised in November, 2017 ("REV 11/17") instead of the schedule revised in March, 2017 ("REV 3/17") and the phrase "whether the program may be repeated for credit" was changed to "whether credit for repeating the program is authorized" for clarity.

Finally, the following sentence was added to the section to clarify when the director may authorize credit for repeating a program: "The director may authorize a program be repeated for credit if there are significant rehabilitative benefits to be gained by those inmates who retake the program." In this way, inmates will be discouraged from simply repeating the same programs and instead be encouraged to participate in a wide variety of rehabilitative programs, thus expanding the knowledge and skills they need to successfully reintegrate into society. Nevertheless, inmates will be permitted to repeat some programs for credit if the program has significant rehabilitative benefits regardless if the program has been taken previously.

Subsection 3043.3(e) was amended to distinguish the "standard performance criteria" found in this section with the "modified performance criteria" found in new subsection 3043.3(f). In addition, the phrase "standardized testing" was changed to "testing processes" because not every Milestone Completion Credit program ends with a standardized test, some end with a practicum, a project portfolio, or a test specially tailored by the instructor. Finally, this section was amended to clarify that within ten business days of completing each program an instructor shall verify the inmate's completion in the department's information technology system and within ten additional business days a designated system approver shall verify the inmate's eligibility for such credit. This two-step process helps ensure the accuracy, timeliness, and integrity of the program.

Subsection 3043.3(f) was deleted and the text was incorporated into subsection 3043.3(f)(1) and 3043.3(f)(2) instead. New subsection 3043.3(f)(1) was added to establish "modified performance criteria" for inmates in pre-approved prison housing units with structured, full-time rehabilitative programming or in pre-approved alternative custody settings. Unlike inmates eligible for credit based on standard performance criteria, these inmates are eligible for three weeks of credit (the equivalent of 21 calendar days) for successfully completing three months of

program plan activities, up to a maximum of twelve weeks of credit in a twelve-month period. In this way, inmates earning credit under the "modified performance criteria" are eligible to earn the same amount of credit per year (twelve weeks) as inmates earning credit under the standard performance criteria, but instead of earning those credits through certificates issued upon successfully completing each course they will earn them through certificates issued upon successfully completing three months of structured, full-time rehabilitative programming in their housing unit.

Inmates eligible for modified performance criteria have been accepted into specialized programs that provide round-the-clock services designed to promote self-improvement, family reunification, parenting skills, and essential life skills to successfully reintegrate into society. These programs are distinguished from standard housing units because they are delivered as part of a community-based model where all the participants spend 24 hours a day and 7 days a week in the same unit, living and learning together. One such pre-approved prison housing unit is the Delancey Street Program. Other pre-approved alternative custody settings include the Male Community Reentry Program, the Custody to Community Transitional Reentry Program, and the Community Prisoner Mother Program.

Finally, this section was amended to clarify that within ten business days of completing each three-month period of program plan activities a designated system approver shall verify and award the inmate such credit. However, as described in the Initial Statement of Reasons, in the case of an inmate participating in the Enhanced Outpatient Program, the Developmentally Disabled Program, or participating in an approved mental health inpatient program, excluding those in a mental health crisis bed, the Chief of Mental Health at the institution where the inmate is housed shall verify and award of credit instead. Ten business days was selected as the deadline for completing this task in order to provide staff with a reasonable period of time to process the numerous requests received for credit upon completion of a Milestone Completion Credit program, in both a timely and accurate fashion.

Subsection 3043.3(f)(2) was added to establish "modified performance criteria" for inmates in Enhanced Outpatient Program participants, Developmentally Disabled Program participants, and participants in an approved mental health inpatient program, excluding those in a mental health crisis bed. Unlike inmates eligible for credit based on standard performance criteria, these inmates are eligible for one week of credit (the equivalent of seven calendar days) for successfully completing 60 hours of scheduled, structured therapeutic activities in accordance with their mental health treatment plan or, if applicable, their Developmentally Disabled Program, up to a maximum of six weeks of credit for 360 hours completed in a twelve-month period.

Finally, this section was amended to clarify that within ten business days of completing each 60 hour period of activities the Chief of Mental Health at each institution shall verify and award the inmate such credit. Ten business days was selected as the deadline for completing this task in order to provide staff with a reasonable period of time to process the numerous requests received for credit upon completion of a Milestone Completion Credit program, in both a timely and accurate fashion.

Subsection 3043.3(g) was moved to subsection 3043.3(h) and new subsection 3043.3(g) was added to allow inmates eligible for alternative custody settings to be placed in those programs earlier than they might otherwise be placed there based on the Milestone Completion Credit they may earn during their incarceration. In this way, inmates will receive the full benefit of the reentry programming available to them through alternative custody settings.

A portion of subsection 3043.4(b) was moved to subsection 3043.4(c) to distinguish the "standard award increments" found in this section with the "modified award increments" found in new subsection 3043.4(d). The standard award increments in this section apply to all inmates who are not housed in a facility administered by the department's Division of Juvenile Justice or placed in an alternative custody setting prior to parole, including a pre-parole or re-entry program.

The last portion of subsection 3043.4(b) was moved to subsection 3043.4(e). Additionally, the reference to "this limit" was amended as a non-substantive change to refer to the four-week limits identified in subsections 3043.4(c) and (e) since this provision was relocated to a different subsection and there is now a second, different limit pertaining to modified awards.

Subsection 3043.4(d) was moved to subsection 3043.4(g) and new subdivision 3043.4(d) was added to establish "modified award increments" for all juveniles sentenced as adults and housed in a facility administered by the department's Division of Juvenile Justice and for all inmates placed in an alternative custody setting prior to parole, including a pre-parole or re-entry program. Unlike inmates eligible for credit based on standard award increments, these inmates are eligible for one week of credit for every three months of program participation up to a maximum of four weeks of credit in a twelve-month period. In this way, inmates earning credit under the "modified award increments" are eligible to earn the same amount of credit per year (four weeks) as inmates earning credit under the standard award increments, but instead of earning those credits through certificates issued upon successfully completing each course they will earn them through certificates issued upon successfully completing three months of program participation in their housing unit.

These amendments were made to clarify that the Rehabilitative Achievement Credit rules described in this section apply to inmates housed in the Division of Juvenile Justice, but not to

wards housed in the Division of Juvenile Justice. The lack of any reference to juveniles sentenced as adults might otherwise lead to the erroneous conclusion that Rehabilitative Achievement Credit is only applicable to inmates housed in the Division of Adult Institutions. Additionally, the text was amended to clarify that these credit earning rules apply to inmates placed in alternative custody settings in the same manner as inmates that are housed in a facility administered by the department's Division of Juvenile Justice. This ensures that these two groups of inmates are not adversely impacted due to their placement in the Division of Juvenile Justice or in an alternative custody setting.

Subsection 3043.4(e) was moved to subsection 3043.4(i) and new subsection 3043.4(e) was added to clarify the meaning of the phrase "release from prison" as used in this section. To that end, the phrase was changed to "release to parole, release to community supervision, or discharge from parole." The new phrase "release to parole" was added to identify those inmates released from prison and commencing parole supervision under the department pursuant to Penal Code section 3000.08(a); the new phrase "release to community supervision" was added to identify those inmates released from prison and commencing community supervision under a local probation department pursuant to Penal Code section 3000.08(b); and the new phrase "discharge from parole" was added to identify those inmates released from prison and immediately discharged from parole, meaning they will not be under supervision by state or local officials. These new phrases clarify that inmates who leave state prison under one of these three situations are included in this section.

Subsection 3043.4(f) (formerly subsection 3043.4(c)) was amended to delete the phrase "once per calendar year" and add the phrase "once per year" for clarity. This change is necessary to make clear that the regulatory requirement in this section may occur anytime in a 12 month period and need not coincide with the calendar year. This subsection was also amended to add the phrase "of this section" to make clear that the reference to "subsection (a)" was a reference to "subsection (a) of this section."

Subsection 3043.4(g) (formerly subsection 3043.4(d)) was added here.

Subsection 3043.4(h) was added to allow inmates eligible for alternative custody settings to be placed in those programs earlier than they might otherwise be placed there based on the Rehabilitative Achievement Credit they may earn during their incarceration. In this way, inmates will receive the full benefit of the reentry programming available to them through alternative custody settings.

Subsection 3043.4(i) (formerly subsection 3043.4(e)) was added here.

Subsection 3043.5(a) was amended to add "high school equivalency recognized by the California Department of Education." This amendment to the text was deemed necessary to ensure that only those high school equivalencies which establish a student has the level of knowledge equivalent to a high school graduate. GED stands for General Education Development or General Education Diploma. The GED is just one of many recognized high school equivalency exams. This amendment ensures the high school equivalency is recognized by the California Department of Education, which in turn ensures the school issuing the high school equivalency is accredited.

Subsection 3043.5(b) is amended to delete a reference to the "GED" and replaced with "High School Equivalency approved by the California Department of Education." This change was necessary because a High School Equivalency Certificate demonstrates a student has a level of knowledge equivalent to a high school graduate. GED stands for General Education Development or General Education Diploma. The GED is just one of many recognized high school equivalency exams approved for use in California.

Subsection 3043.5(c) was amended to expressly state the following: "Educational Merit Credit for achieving a high school diploma or high school equivalency as recognized by the California Department of Education shall not be awarded to inmates already possessing a high school diploma, approved equivalent, or college degree prior to the date the inmate was received in prison for his or her current period of incarceration." The inclusion of this language was necessary to clarify that Educational Merit Credit shall not be awarded to any inmate for a high school diploma or high school equivalency if that inmate already possesses a high school diploma, high school equivalency, or college degree. The purpose of said amendment is to ensure that credit is only awarded to inmates for academic gains made while incarcerated, not for academic gains made prior to arrival in state prison. Additionally, for clarity the text defines "high school equivalency" as any equivalency recognized by the California Department of Education. This is necessary to ensure the high school equivalency is recognized by the California Department of Education, which in turn ensures the school issuing the high school equivalency is accredited.

In addition, the word "above" was changed to "of this section" for clarity and the phrase "effective on the date the credit is entered into the department's information technology system" was added to the last sentence to clarify when the Educational Merit Credit will be effective. This is necessary because this is the date that the Educational Merit Credit was verified, and document in the departments information system.

Subsection 3043.5(e) was amended to clarify the meaning of the phrase "release from prison" as used in this section. To that end, the phrase was changed to "release to parole, release to community supervision, or discharge from parole." The new phrase "release to parole" was

added to identify those inmates released from prison and commencing parole supervision under the department pursuant to Penal Code section 3000.08(a); the new phrase "release to community supervision" was added to identify those inmates released from prison and commencing community supervision under a local probation department pursuant to Penal Code section 3000.08(b); and the new phrase "discharge from parole" was added to identify those inmates released from prison and immediately discharged from parole, meaning they will not be under supervision by state or local officials. These new phrases clarify that inmates who leave state prison under one of these three situations are included in this section.

Subsection 3043.6(a) was amended to correct various references to other sections of the regulations.

Subsection 3043.6(c) was amended to clarify the meaning of the phrase "release from prison" as used in this section. To that end, the phrase was changed to "release to parole, release to community supervision, or discharge from parole." The new phrase "release to parole" was added to identify those inmates released from prison and commencing parole supervision under the department pursuant to Penal Code section 3000.08(a); the new phrase "release to community supervision" was added to identify those inmates released from prison and commencing community supervision under a local probation department pursuant to Penal Code section 3000.08(b); and the new phrase "discharge from parole" was added to identify those inmates released from prison and immediately discharged from parole, meaning they will not be under supervision by state or local officials. These new phrases clarify that inmates who leave state prison under one of these three situations are included in this section.

Subsections 3043.7(e)(2)(B) and 3043.7(g) were amended to change apostrophes to quotation marks because the latter is the appropriate punctuation. This is a non-substantive change.

Subsections 3044(b)(2) and (b)(4) were described in the Initial Statement of Reasons as renumbered and otherwise unchanged, however, in addition to renumbering these subsections other non-substantive changes were made.

B. MILESTONE COMPLETION CREDIT SCHEDULE

The Milestone Completion Credit Schedule identifies all of the available Milestone Completion Credit programs and the amount of credit that can be earned for successfully completing each. The department has revised the Milestone Completion Credit Schedule, which is incorporated by reference in subsection 3043.3(d), as follows:

Under "General Milestone Description and Codes"

Marley's Mutts Dog Program and New Life K-9 Program were added to provide inmates with additional rehabilitative programming opportunities as well as the companionship of a pet canine. Inmates who graduate from the program can obtain certification which can be used to secure employment upon release to the community.

The curriculum for the Last Mile program was changed resulting in an increase in the number of classroom hours and assignments necessary to successfully complete the program. Accordingly, the department revised the number of weeks of credit earned for the program from four weeks to seven weeks per year.

High School Equivalency testing was deleted because it was determined that it is redundant to award credit for General Education Development (GED) subtests as well as Adult Basic Education tests (using the CASAS Benchmarks) given that these tests measure the same or very similar educational learning gains.

Under "Academic Milestone Descriptions and Codes"

The curriculum for the Cognitive Behavioral Treatment Substance Use Disorder program (five months) was changed resulting in a decrease in the number of classroom hours and assignments necessary to successfully complete the program. Accordingly, the department revised the number of weeks of credit earned for the program from five weeks to four weeks per year.

The Long Term Offender Program was added to provide inmates sentenced to a term of life with the possibility of parole with additional rehabilitative programming opportunities.

Under "COCF Career Technical Education Milestone Descriptions and Codes"

Painting, drywall, and horticulture-landscaping programs were added to provide inmates housed in other states with additional rehabilitative programming opportunities.

C. THE NONVIOLENT PAROLE PROCESS

Section 3490 was amended to clarify the definitions of key terms that apply to the parole consideration process for determinately-sentenced nonviolent offenders.

Subsection 3490(a) was amended to clarify the definition of "nonviolent offender" for purposes of the parole consideration process for determinately-sentenced nonviolent offenders. The

introductory phrase was reworded to clarify that an inmate is a "nonviolent offender" if none of the listed statements is true. This subsection was also amended to separately list each circumstance that excludes an inmate from the definition of "nonviolent offender" so that it is clear each circumstance is an independent criterion for exclusion. Furthermore, this subsection was amended to modify the definition of "nonviolent offender" for two categories of offenders: (1) all inmates who are convicted of a sexual offense that requires registration as a sex offender under Penal Code section 290; and (2) all inmates who are serving an indeterminate term of life with the possibility of parole. These inmates remain ineligible for nonviolent offender parole consideration for public safety and other reasons under amended subsection 3491(b). However, they are no longer excluded from the definition of "nonviolent offender." This subsection was also amended to exclude from the definition of "nonviolent offender" inmates who are currently serving a term of incarceration for a nonviolent felony offense after having completed a concurrent determinate term for a violent felony. Other amendments were made for clarity.

Subsection 3490(a)(1) was amended to add the words "to death" after "condemned" to more accurately describe sentences imposed for condemned inmates.

Subsection 3490(a)(2) was amended to clarify that an inmate who is currently incarcerated for a term of life without the possibility of parole is excluded from the definition of nonviolent offender. The term "currently" was added in recognition that some terms of imprisonment may change, such as when an inmate is resentenced. As amended, this subsection clarifies that the department will look to the inmate's current sentence when determining whether he or she is incarcerated for a term of life without the possibility of parole.

Subsection 3490(a)(3) was amended to clarify that an inmate who is currently incarcerated for a term of life with the possibility of parole for a "violent felony" is excluded from the definition of nonviolent offender. A "violent felony" is defined in subsection 3490(c), as "a crime or enhancement as defined in subdivision (c) of section 667.5 of the Penal Code." Previously, this subsection excluded all inmates who are incarcerated for a term of life with the possibility of parole, including inmates whose life term was imposed as a result of an offense that is not a violent felony. Under the proposed amendment, a life term inmate whose life term was imposed as a result of an offense that is not a violent felony is no longer excluded from the definition of "nonviolent offender," but is instead ineligible for nonviolent parole consideration under subsection 3491(b). This amendment is necessary because some inmates receive a life-term for a crime that is not a violent felony under Penal Code section 667.5, subdivision (c) and therefore, are considered to be "nonviolent offenders" for other purposes, such as credit earning. However, as explained below in the changes for subsection 3491(b), life term inmates remain ineligible for parole consideration because the plain text of Proposition 57 makes clear that parole eligibility only applies to determinately sentenced inmates, and furthermore, public safety requires their exclusion. The term "currently" was added in recognition that some terms of imprisonment may

change, such as when an inmate is resentenced. In addition, inmates may be granted parole by the Board of Parole Hearings and thereby finish serving an indeterminate term of life with the possibility of parole. If they then begin serving a determinate term for an in-prison offense for a felony that is not violent, they will be deemed a "nonviolent offender" under subsection 3490(b).

Subsection 3490(a)(4) was adopted to clarify that inmates who are currently serving a determinate term prior to beginning a term of life with the possibility of parole for a violent felony, or prior to beginning a term for an in-prison offense that is a violent felony, are excluded from the definition of a nonviolent offender. This amendment is necessary to clarify that inmates who are required to serve a future prison term for a violent felony offense are excluded from the definition of "nonviolent offender." This amendment also helps to avoid confusion by expressly stating that inmates who have been sentenced to an indeterminate term for a violent felony or to a determinate term for an in-prison offense that is a violent felony, but who have yet to begin serving those terms, are ineligible for the nonviolent parole review process even though they may not yet be serving those terms.

Subsection 3490(a)(5) was renumbered and amended from subsection 3490(a)(2). This subsection excludes from the definition of "nonviolent offender" inmates who are "currently" serving a term of incarceration for a violent felony. The word "currently" was added in recognition that some inmates' terms of imprisonment change, such as when an inmate is resentenced. In addition, inmates may complete a term for a violent felony and begin serving a term for an in-prison offense that is not a violent felony, at which time they would be considered a "nonviolent offender" under subsection 3490(b).

Subsection 3490(a)(6) was amended to exclude inmates from the definition of "nonviolent offender" if they are currently serving a term of incarceration for a nonviolent felony offense after completing a concurrent determinate term for a violent felony. These inmates were sentenced to state prison for a term of imprisonment that included a conviction for a violent felony. As such, they are excluded from the definition of "nonviolent offender" and the citation to *In re Reeves* (2005) 35 Cal.4th 765 found in the "notes" of the section is no longer relevant so it was deleted.

Additionally, this subsection is amended to remove from the definition of "nonviolent offender" the exclusion of inmates who are "[c]onvicted of a sexual offense that requires registration as a sex offender under Penal Code section 290." These inmates are no longer excluded from the definition of "nonviolent offender." This amendment is necessary because some inmates who are required to register as a sex offender are serving a term for a crime that is not a violent felony under Penal Code section 667.5, subdivision (c) and are considered to be "nonviolent offenders" for other purposes, such as credit earning. However, as explained below in the changes for

subsection 3491(b), they remain ineligible for the parole consideration process to effectuate the intent of Proposition 57.

Subsection 3490(b) was amended to remove from the definition of "nonviolent offender" inmates who have completed a determinate term of incarceration for a violent felony and who are currently serving a concurrent term for a nonviolent felony offense. As explained above, these inmates are now specifically excluded from the definition of "nonviolent offender" under subsection 3490(a)(6). This subsection is also amended to remove the term "nonviolent in-prison offense" and replace it with "in-prison offense that is not a violent felony" for clarity.

The term "Notwithstanding (a)" was added to the beginning of this subsection to clarify that certain inmates who are ineligible for the nonviolent parole review process under subsection (a) may become eligible at a later point in time if they complete their term for a violent felony and must then serve a determinate term for an in-prison offense that is not a "violent felony." In other words, despite their initial ineligibility from the nonviolent offender parole review process under subsection (a) they can later become eligible for the nonviolent offender parole review process under subsection (b) if they must serve a determinate term for a nonviolent in-prison offense even though they originally came to prison with a violent felony conviction.

Subsection 3490(e) was amended to specify that "full term" means the actual number of days, months, and years imposed by the sentencing court for the inmate's primary offense. The terms "days" and "months" were added to clarify that partial years are intended to be included in the more general term of "years."

Subsection 3490(f) was amended to clarify the definition of "Nonviolent Parole Eligible Date." The definition is amended to remove reference to "an inmate who qualifies as a nonviolent offender" and replace it with "a nonviolent offender who is eligible for parole consideration under section 3491." The amendment is necessary to reflect amendments to section 3491, which clarify who is eligible for parole consideration. This subsection is also amended to remove the term "pre-sentence credits" so as to avoid confusion with the term "sentencing credits" referenced in the definition of "primary offense" and to clarify that only actual days served prior to sentencing (as ordered by the court under Penal Code section 2900.5) and actual days between the date of sentencing and the date the inmate is received by the department count toward an inmate serving the full term of his or her primary offense.

Section 3491 was amended to clarify the department's process for determining if a nonviolent offender is eligible for parole consideration. The title of the section is amended to reflect that it applies to all eligibility reviews, not just initial eligibility reviews. In addition, the phrase "eligibility determination" is replaced with "eligibility review" to more accurately reflect that inmates will be reviewed for eligibility under this section.

Subsection 3491(a) was amended to expressly state that nonviolent offenders as defined in subsections 3490(a) and 3490(b) are eligible for parole consideration by the Board of Parole Hearings. This subsection is also amended to remove language requiring the department to begin eligibility determinations under this subsection by June 1, 2017, as the department began eligibility determinations before June 1, 2017, as required, and the timing of eligibility determinations is now described in subsections (c) and (d).

Subsection 3491(b) was amended to specify that notwithstanding subsection 3491(a), inmates who are incarcerated for a term of life with the possibility of parole for an offense that is not a violent felony, or who are currently serving a determinate term prior to beginning a term of life with the possibility of parole for an offense that is not a violent felony, are not eligible for the nonviolent parole consideration process.

Inmates who are incarcerated for a term of life with the possibility of parole are excluded from parole consideration under this subsection to comport with the plain language of the Public Safety and Rehabilitation Act of 2016 ("the Act") and the voters' intent. Under its plain language, the Act applies only to inmates serving determinate sentences. The Act establishes "parole consideration" for all inmates convicted of "a nonviolent felony offense" after they have completed the "full term" of their "primary offense . . . imposed by the court." (Cal. Const., art. I, § 32, subd. (a).) Parole review under the Act is thus triggered once an inmate serves the "full term" of his or her primary offense, defined as the "longest term of imprisonment imposed by the court." (Cal. Const., art. I, § 32, subd. (a).) While a determinate sentence has a fixed term, an indeterminate sentence does not. The Act's language—which determines when an inmate is eligible for parole review—demonstrates the voters' intent not to apply this new parole process to inmates sentenced to an indeterminate term and who are already eligible for parole consideration under a different statutory scheme. Because, as a matter of law, an indeterminately sentenced inmate is deemed to have served his full indeterminate term only when found suitable for parole, an indeterminately sentenced inmate cannot trigger parole review under the Act.

Additional language within the Act's text also shows that the Act only applies to inmates serving determinate sentences. The Act authorizes parole review "after completing . . . the longest term of imprisonment imposed by the court." (Cal. Const., art. I, § 32, subd. (a)(1)(A).) Although the court may sentence an inmate to an indeterminate life term, it does not fix the term or duration of imprisonment. Rather, the board is vested with the authority to fix the precise length of an indeterminate term through its parole suitability function. That the Act's text requires the inmate complete "the longest term of imprisonment imposed by the court" before the inmate is eligible for the nonviolent parole process shows the Act was not intended to provide parole consideration for inmates serving life sentences, whose terms are determined by the board. Nothing in the Act or the ballot materials gives the department the power to resentence indeterminately sentenced

inmates—it merely provides for parole review after a certain period of incarceration as determined by the inmate's sentence that was "imposed by the court." To that end, section 3491(b)(1), which precludes indeterminately sentenced inmates from parole review under the Act, codifies the Act's plain language.

Moreover, excluding indeterminately sentenced inmates is consistent with the voters' intent to grant broad discretion to the Secretary of the department to establish a regulatory framework that protects and enhances public safety. The department appropriately exercised its discretion to exclude indeterminately sentenced inmates so as not to disturb the voters' established public safety concerns regarding the current third-strike prison population. In 2012, the electorate passed Proposition 36, also known as the Three Strikes Reform Act. (*People v. Brown* (2014) 230 Cal.App.4th 1502, 1507.) The Three Strikes Reform Act enacted Penal Code section 1170.126, which permitted inmates sentenced under the existing Three Strikes Law to petition the superior court to be resentenced to a determinate term as a second striker. (*Id.*, citing Pen. Code, § 1170.126, subd. (f).) The court could deny the petition if it determined that resentencing the inmate would pose an unreasonable risk of danger to public safety. (*People v. Valencia* (2017) 3 Cal.5th 347, 350.) Inmates serving an indeterminate life term for a third serious or violent felony offense were ineligible to petition for resentencing. (Pen. Code, § 1170.126, subd. (e).)

The Three Strikes Reform Act's stated purpose was to prevent the early release of dangerous criminals and relieve prison overcrowding by allowing low-risk, nonviolent inmates serving life sentences for petty crimes, such as shoplifting and simple drug possession, to be resentenced. Following these reforms, the third-strike prison population now consists of inmates who fall into one of three categories: (1) eligible for resentencing under Proposition 36 but deemed to pose an unreasonable risk of danger to public safety; (2) ineligible for resentencing under Proposition 36 due to a violent third-strike conviction; or (3) ineligible for resentencing under Proposition 36 due to a serious third-strike conviction. The voters have found that this population poses an unreasonable risk to public safety and requires a lengthier period of incarceration under the Three Strikes Law. Thus, the department's exclusion of this third-strike population from the Act's parole review is consistent with the voters' consistent intent to protect the public and enhance public safety.

Subsection 3491(b) was also amended to specify that notwithstanding subsection 3491(a), inmates who are within one year of eligibility for a youth offender parole consideration hearing under Penal Code section 3051 or an elderly offender parole consideration hearing under recently enacted Penal Code section 3055 are not eligible for the nonviolent parole consideration process.

Penal Code section 3051 provides for youth offender parole hearings to consider release of offenders who committed specified crimes prior to 26 years of age. When reviewing an offender's suitability for parole under Penal Code section 3051, the Board of Parole Hearings shall give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law. Inmates sentenced pursuant to the Three Strikes Law, sentenced to life in prison without the possibility of parole, condemned to death, or convicted of the first-degree murder of a peace officer or a person who had been a peace officer, are exempt from youth offender parole hearings.

Penal Code section 3055 was recently enacted pursuant to Assembly Bill 1448 in the 2017-2018 regular session of the legislature for the purpose of reviewing the parole suitability of inmates who are 60 years of age or older and who have served a minimum of 25 years of continuous incarceration on their sentence. When considering the release of an inmate who meets these criteria, the Board of Parole Hearings is required to consider whether age, time served, and diminished physical condition, if any, have reduced the elderly inmate's risk for future violence. Inmates sentenced pursuant to the Three Strikes Law, sentenced to life in prison without the possibility of parole, condemned to death, or convicted of the first-degree murder of a peace officer or a person who had been a peace officer, are exempt from the elderly offender parole program.

Inmates who are within one year of eligibility for a youth offender parole hearing or an elderly offender parole hearing are excluded from parole consideration under this subsection because they will soon have an opportunity to appear before the Board of Parole Hearings in person for a parole suitability hearing. In order to be eligible for both the nonviolent parole consideration process and a parole suitability hearing as a youth offender or under elderly parole, inmates must be sentenced to a lengthy determinate term for which they have been incarcerated for a minimum of 15 or 25 years, respectively. This means they have been convicted of more serious offenses and have served lengthier sentences. In addition, it is likely they will have already been denied release under the nonviolent parole consideration process after having served the full term of their primary offense. These inmates represent a very small fraction of offenders who are eligible for the nonviolent parole consideration process.

Inmates scheduled for a parole suitability hearing are given a copy of a written notice of their rights associated with the parole suitability hearing process six months in advance of their hearing and are appointed counsel four months in advance of their hearing. In addition, victims and prosecutors are notified 90 days in advance of the hearing. For these reasons, ensuring there is a one year "break" between an inmate's eligibility for parole review under the nonviolent parole consideration process and his or her eligibility for the parole suitability hearing process is reasonable and necessary to avoid confusion for inmates, their families, victims, and the public

that would result from inmates being eligible for two parole processes within a relatively short period of time.

This amendment also precludes inmates who have already had a parole suitability hearing from being eligible for the nonviolent parole consideration process, which is necessary to avoid duplication of effort and confusion for inmates, their families, victims, and the public that would result from inmates being eligible for two parole processes at the same time.

Lastly, subsection 3491(b) was amended to specify that notwithstanding subsection 3491(a), inmates convicted of a sexual offense that currently requires, or will require, registration as a sex offender under the Sex Offender Registration Act are not eligible for the nonviolent parole consideration process. 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*: "When 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.) In addition, when Proposition 35 was approved in 2012, the people 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 currently convicted of a violent offense listed under Penal Code section 667.5, subdivision (c). An additional 1,076 inmates are currently 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 currently 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 proposed regulations 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.

Subsection 3491(c) was amended to specify that the department shall determine an inmate's eligibility for nonviolent parole consideration within 60 calendar days of the inmate's admission to the department. This is the same time period allotted for the department to complete a variety of other administrative tasks associated with processing an inmate into the department and it provides a reasonable maximum time period for determining inmate eligibility. The amendment is necessary to provide clear timeframes for determining an inmate's eligibility for nonviolent parole consideration.

Subsection 3491(d) was amended to specify that the department shall conduct a new eligibility determination whenever (1) it receives an official document, such as an amended abstract of judgment, that affects the inmate's eligibility; (2) an inmate begins serving a term for an in-prison offense that is not a violent felony; or (3) an inmate is within a year of being eligible for a youth offender parole consideration hearing or an elderly parole consideration hearing. These amendments are necessary to clarify the circumstances that will trigger a new eligibility review.

These circumstances each represent a change in an inmate's status that may affect his or her eligibility for parole consideration. For example, the department may receive an amended abstract of judgment indicating an inmate has been resentenced such that he or she is no longer convicted of a violent felony, thus making him or her eligible for nonviolent parole consideration. In addition, under subsection 3490(b), an inmate who completes a term of imprisonment for a violent felony and begins serving a determinate term for an in-prison offense that is not a violent felony is not excluded from the definition of nonviolent offender, thus he or she may be eligible for nonviolent parole consideration. In contrast, under subsection 3491(b)(2), an inmate who was previously eligible for parole consideration may become ineligible because he or she is within a year of being eligible for a youth offender hearing or elderly parole hearing. The amendments to this subsection are necessary to ensure that a new eligibility review will be conducted when any of these triggering events occurs, thus allowing inmates to know whether they are eligible for parole consideration and if so, when they can expect to be screened for possible referral to the board.

Subsection 3491(e) was amended to specify the steps the department will take when conducting an eligibility review. First, the department will determine if the inmate is eligible for parole consideration as described in subsections (a) and (b). For inmates who are eligible, the department will identify the inmate's primary offense and establish the inmate's Nonviolent Parole Eligible Date. Under Penal Code section 1170.1, subdivision (c), a term consecutively imposed by the sentencing court for an in-prison offense is treated as separate from the prison term that gave rise to the prison commitment, meaning, sentences for in-prison offenses are not

merged with the sentence that first brought the inmate into prison. As a result, an inmate's primary offense will vary depending on the timing of his or her eligibility review. For inmates who are currently incarcerated for offenses committed before coming to prison, their primary offense will be based on the sentence imposed by the court for crimes committed prior to the inmate's admission to prison. For inmates who are currently incarcerated for crimes committed while in prison, their primary offense will be based on the sentence imposed by the court for the in-prison offenses. This subsection is necessary to clarify how the department will identify an inmate's primary offense depending on the type of term the inmate is serving. It is also necessary to more accurately detail the overall eligibility review process.

Subsection 3491(f) was adopted to require that a copy of all eligibility reviews be served on the inmate and placed in his or her central file within 15 business days of being completed. This amendment is necessary to ensure inmates timely receive notice of eligibility determinations and that they are appropriately documented in the inmate's central file. Fifteen business days provides a reasonable maximum time period for serving inmates with eligibility reviews and takes into account the time necessary to reach some inmates who may be in remote locations, such as fire camps.

Subsection 3491(g) was amended to reflect the amended title of this subsection.

Section 3492 was amended to clarify the process for screening eligible nonviolent offenders to determine if they will be referred to the Board of Parole Hearings for parole consideration. Specifically, this section is amended to provide greater clarity concerning the public safety screening criteria inmates must meet in order to be referred to the Board of Parole Hearings for parole consideration, as well as the applicable timeframes for conducting the screenings.

Subsection 3492(a) was amended for consistency and to reflect that eligibility reviews are now conducted under section 3491.

Subsection 3492(b) was amended to clarify that inmates will be screened under this subsection at least 35 calendar days prior to their Nonviolent Parole Eligible Date. This is necessary to clarify that the term "35 days" means calendar days rather than business days.

Subsection 3492(c) was amended to clarify the list of circumstances that must be true in order for a nonviolent offender to be eligible for referral to the Board of Parole Hearings. It is also amended to specify that the circumstances must be true as of the date of the screening. Because some of the criteria include circumstances that must have occurred within a specified period of time, such as "within the past year" or "in the past five years," it is necessary to clarify the date upon which the statements must be true.

This subsection is also amended to clarify that inmates are ineligible for referral to the Board of Parole Hearings if they have been assessed or served a Security Housing Unit term within the past five years, unless it was assessed solely for the inmate's safety. Previously, this subsection required that the Security Housing Unit term be for a Security Threat Group or disciplinary reason. The amended language more accurately reflects that some Security Housing Unit terms may be assessed solely for the inmate's safety and not due to a disciplinary infraction and, therefore, should not result in the inmate being ineligible for referral to the Board of Parole Hearings.

In addition, this subsection is amended to clarify that inmates are "assigned to Work Group C" rather than "placed in Work Group C" and that the correct reference to the regulation describing Work Group C is subsection 3044(b)(5). These amendments are necessary to ensure consistency with the regulations governing Work Group C.

Lastly, this subsection is amended to clarify that inmates must have at least 210 calendar days remaining to serve on their sentence or they will not be referred to the Board of Parole Hearings. This amendment is necessary because the entire parole consideration process from the date an inmate is screened under this subsection to the date an inmate is released can take up to 210 days, which includes specified time periods for notices to be sent, for written statements to be submitted by inmates, victims, and prosecutors, for the board to issue written decisions, as well as 30 days for inmates to request review of a decision, 5 days for the board to receive the inmate's request, and 60 days for parole planning and release. The 210-day timeframe ensures the department's and the board's resources are focused on reviewing inmates who, if approved for release, are certain to be processed for release on or before they would otherwise be released as a result of their Earliest Possible Release Date.

Subsection 3492(c)(4) was amended to replace "and" with "or" for clarity, since Division A-1 and Division A-2 offenses are listed individually in either 3323, subdivisions (b) or section 3323, subdivision (c). In addition, this subsection was amended by moving the provisions of 3292(b)(8) to subsection 3492(e).

Subsection 3492(d) was amended to clarify that inmates who are eligible for referral to the Board of Parole Hearings under this subsection shall be referred within five business days of being screened. This amendment is necessary to provide a clear timeframe by which the department will refer eligible inmates to the board under this subsection. Five business days is a reasonable maximum time period that takes into account weekends, holidays, and any temporary delays resulting from periodic unavailability of information technology systems for routine maintenance and upgrades.

Subsection 3492(e) was amended to clarify the circumstances under which an inmate will be screened again for possible referral to the Board of Parole Hearings for nonviolent parole consideration based on public safety criteria established under section 3492(c). This subsection now lists all the possible triggering events for an inmate to be re-screened and the timing of that re-screening. Unless an inmate is released or is no longer eligible for parole consideration under section 3491, he or she will be screened again one year from the date of their previous public safety screening if the inmate is (1) determined to be ineligible for referral under this section; (2) referred to the Board of Parole Hearings and a hearing officer determines the board did not have jurisdiction under section 2449.2 of division 2 to review the inmate; (3) referred to the Board of Parole Hearings and denied release under section 2449.4 of division 2; (4) referred to the Board of Hearings and denied release after a prior approval was vacated under section 2449.6 of division 2; or (5) referred to the Board of Parole Hearings and denied release after a previous decision was reviewed by the board under section 2449.7 of division 2. These amendments are necessary to expressly specify that inmates will be re-screened annually, absent specified circumstances, regardless of the outcome of their last screening. For clarity, subsection 3492(e) was amended to list the various possible outcomes of a prior screening, any one of which will trigger a re-screening so long as the inmate is still in custody and remains eligible for the nonviolent offender parole consideration process under sections 3490 and 3491

Subsection 3492(f) was amended to require that a copy of the results of screenings under this subsection shall be served on the inmate and placed within his or her central file within 15 business days of being completed and, if the inmate is deemed eligible for referral to the Board of Parole Hearings, he or she shall be provided information about the nonviolent offender parole process, including the opportunity to submit a written statement to the Board Parole Hearings. Fifteen business days provides a reasonable maximum time period for serving inmates with screening results and takes into account the time necessary to reach some inmates who may be in remote locations, such as fire camps. This amendment is necessary to ensure inmates timely receive notice of referral decisions, that inmates are provided with important information, and that they are appropriately documented in the inmate's central file.

Subsection 3492(g) was amended to clarify that this subsection governs public safety screenings and referral decisions, which are subject to review under the department's Inmate Appeals Process. The phrase "eligibility decision" was removed to avoid confusion with eligibility decisions rendered under section 3491.

Section 3493 was amended to clarify that inmates who are approved for release by the Board of Parole Hearings shall be released within 60 calendar days from the date of the decision, so long as the decision is not subsequently vacated or overturned by the Board of Parole Hearings. The word "overturned" was added to the text for consistency with the amended text of section 2449.7, which provides that decisions may be "overturned" during the board's decision-review

process, as distinguished from decisions that may be "vacated" under section 2449.6. This section is also amended to remove language specifying that inmates who are approved for release by the Board of Parole Hearings and who have an additional term to serve under Penal Code section 1170.1(c) for an in-prison offense will not begin serving that term until 60 days from the date of the Board of Parole Hearings' decision. The removal of this language ensures that inmates are eligible to earn credits toward their release date during the 60-day period following the board's decision. Additionally, this section is amended to remove the reference to the Division of Adult Parole Operations because only the Division of Adult Institutions is responsible for releasing inmates.

Section 2449.1 was amended to clarify the definitions of key terms that apply to the parole consideration process for determinately-sentenced nonviolent offenders. This subsection is amended to mirror the provisions of section 3490 of division 3. As such, please see section 3490 for an explanation of amendments to this section.

Section 2449.2 was renumbered from section 2449.3 to reflect that the Board of Parole Hearings will review its jurisdiction to consider an inmate for nonviolent parole *before* sending notices to registered victims and prosecuting agencies under what is now enumerated as section 2449.3. The public safety screening and referral process under section 3492 of division 3 is an automated process using electronic data stored in the department's main computer system. The purpose of the jurisdictional review under this section is to have a hearing officer review the inmate's electronic central file to confirm the inmate is eligible for parole consideration. The amendments to this section are necessary to avoid notifying victims and prosecutors of an inmate's referral for parole consideration without first confirming that the Board of Parole Hearings has jurisdiction to consider the inmate for release, thus eliminating significant and unnecessary workload for the board and prosecutors, and unnecessary stress and anxiety for victims.

Subsection 2449.2(a) was amended to clarify that the Board of Parole Hearings must conduct a jurisdictional review within 15 calendar days from the date the inmate is referred to the board by the department under section 3492 of division 3. Fifteen calendar days establishes a reasonable maximum time period for the board to review all cases for jurisdiction. The 15 business day time period is necessary to accommodate natural fluctuations in the number of inmates referred from one week to another and is sufficient for the board to assign a case, conduct the necessary review, and issue a written decision. This subsection is also amended to delete reference to the 30-day notification response period since notifications will now occur after jurisdiction has been determined. In addition, this subsection is amended to replace the term "nonviolent offender parole consideration" with the term "release" for clarity.

Subsection 2449.2(b) was amended to clarify that the Board of Parole Hearings has jurisdiction to review an inmate for release if all of the following apply: (1) the inmate's Earliest Possible Release Date is at least 210 calendar days after the date of the department's referral and the inmate's Earliest Possible Release Date is at least 180 calendar days after his or her Nonviolent Parole Eligible Date; (2) the inmate is eligible for parole consideration under section 3491 of division 3; and (3) the inmate, as of the date of the jurisdictional review, meets the criteria for referral to the board under subsection 3492(c) of division 3. This subsection is amended to mirror the provisions of section 3492 of division 3. As such, please see section 3492 for an explanation of amendments to this section.

In addition, this subsection is amended to replace the term "nonviolent offender parole consideration" with the term "release" for clarity.

Subsection 2449.2(c) was amended to clarify that the board's written decision that it lacks jurisdiction to consider an inmate for parole consideration under this subsection will include a statement of reasons supporting the decision and that it will be served on the inmate and placed in his or her central file within 15 business days of being issued. Fifteen business days provides a reasonable maximum time period for serving inmates with screening results and takes into account the time necessary to reach some inmates who may be in remote locations, such as fire camps. This amendment is necessary to ensure inmates timely receive notice of decisions issued under this subsection and that they are appropriately documented in the inmate's central file. Additionally, this subsection is amended to clarify that when the board determines it does not have jurisdiction to consider the inmate for release under this subsection, the inmate will be screened again for possible referral to the board under the procedures and timelines described in subsection 3492(e) of division 3. In addition, the requirement that victims and prosecutors be notified of decisions under this subsection was amended and moved to subsection 2449.2(d).

Subsection 2449.2(d) was amended to clarify that the board will send notices to victims and prosecutors as described in section 2449.3 only for those cases in which the board has determined it has jurisdiction to review the inmate for release.

Subsection 2449.2(e) was amended to clarify that inmates may seek review of a decision under this subsection by submitting a request in writing to the board under section 2449.7 within 30 calendar days of being served the decision. The requirement that requests be submitted in writing within 30 days is an existing requirement from section 2449.7 (previously section 2449.5), repeated here for clarity.

Section 2449.3 was renumbered from section 2449.2 and amended to reflect that the Board of Parole Hearings will confirm it has jurisdiction to consider an inmate for release under what is

now enumerated as section 2449.2 before sending notices to registered victims and prosecuting agencies under this section.

Subsection 2449.3(a) was renumbered from subsection 2449.2(a) with non-substantive conforming amendments for consistency.

Subsection 2449.3(b) was renumbered from subsection 2449.2(a)(1) and modified to clarify that 30 days means 30 calendar days.

Subsection 2449.3(c) was renumbered from subsection 2449.2(b) and modified to clarify that inmates are referred to the board under section 3492 of division 3.

Subsection 2449.3(d) was renumbered from subsection 2449.2(c) without change.

Section 2449.4 was amended to clarify timeframes for conducting a review on the merits, the legal standard for determining whether an inmate should be released, the factors the board will consider when determining whether an inmate should be released, and the board's procedures for issuing a written decision. In addition, this section is amended for consistency with other sections.

Subsection 2449.4(a) was amended to clarify that a review on the merits will occur within 30 calendar days after the time period expires for registered victims and prosecutors to submit written statements under section 2449.3. Thirty calendar days provides a reasonable maximum time period for the matter to be assigned to staff, for the necessary information to be collected and analyzed, and for a decision to be rendered.

Subsection 2449.4(b) was amended to clarify that the board is required to consider the inmate's documented criminal history and RAP sheet. The word "current" is removed from "current RAP sheet" because it is unnecessary and vague.

Subsection 2449.4(c) was amended to change the legal standard for determining whether an inmate should be released. As amended, the board must determine if the inmate poses a current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity. The amended standard more accurately reflects the manner in which the board weighs immutable factors such as the circumstances of an inmate's criminal history with factors that are subject to change, such as an inmate's rehabilitative programming when determining the inmate's current risk. In addition, the amended standard is necessary to clarify that an inmate's risk of significant criminal activity may be such that he or she poses an unreasonable risk to public safety despite not personally having inflicted physical violence on others. This subsection is also amended to require the board to consider and apply the factors in section 2449.5 when determining if an

inmate poses a current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity.

Subsection 2449.4(d) was amended to clarify that decisions under this subsection are to be issued in writing and supported by a statement of reasons. In addition, this subsection is amended to expressly require copies of decisions to be served on the inmate and placed in the inmate's central file within 15 business days of being issued. Fifteen business days provides a standard maximum time for serving inmates with the board's decisions and takes into account the time necessary to reach some inmates who may be in remote locations, such as fire camps. This subsection was also amended to require that notice of the board's decisions are to be sent to victims and prosecutors who received notice under section 2449.3 within five business days of the decision being issued. Five business days provides a reasonable maximum time period for processing notices, given a variety of variables such as state holidays, staff availability, and fluctuations in workload. Paragraphs (1) and (2) are amended to reflect the change in the legal standard and to clarify that decisions resulting in an inmate being approved for release two or more years prior to his or her Earliest Possible Release Date shall not be issued until reviewed by an associate chief deputy commissioner or the Chief Hearing Officer, who will concur with the decision or issue a final decision. These amendments are necessary to provide transparency and clarity to the parole consideration process and to ensure inmates timely receive notice of board decisions and that they are appropriately documented in the inmate's central file.

Subsection 2449.4(d)(2) was amended to provide clarity concerning the additional review required to finalize a decision approving release, if the decision will result in the inmate being released more than two years prior to his or her Earliest Possible Release Date. Specifically, subsection 2449.4(d)(2) was amended to clarify that these decisions will be reviewed by an associate chief deputy commissioner or the Chief Hearing Officer before they are finalized and issued. Furthermore, subsection 2449.4(d)(2) was amended to expressly state the outcome of such a review. If the reviewing officer does not concur with the decision, he or she shall issue a new decision approving or denying release. In addition, provisions from former subsection 2449.4(d)(4) were moved to subsection 2449.4(d)(2) and combined with this new language to create one subsection to address the board's procedures for issuing decisions in which an inmate is approved for release.

Subsections 2449.4(e) and 2449.4(f) were amended to clarify that inmates approved for release will be processed for release by the department as provided in section 3493 of division 3 and that inmates denied release will be screened again for possible referral to the board as provided in subsection 3492(e) of division 3.

Subsection 2449.4(g) was amended to clarify that inmates may seek review of a decision under this subsection by submitting a request in writing to the board under section 2449.7 within 30

calendar days of being served the decision. Thirty calendar days is a reasonable time period for an inmate to submit a request for the board to review its decision. Providing a clear time period also serves to ensure the timeliness of submissions, thereby preserving the integrity of the board's decisions.

Section 2449.5 was adopted to clarify the board's decision-making process by listing the factors the board considers as aggravating and mitigating an inmate's current risk when determining whether an inmate poses a current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity. This section also provides guidance about how the board weighs the factors.

Subsection 2449.5(a) clarifies that the board's decisions are based on the totality of the circumstances and that an inmate shall be released if the factors aggravating an inmate's risk do not exist or if they are outweighed by factors mitigating the inmate's risk. The subsection requires the board to take into account the passage of time, the inmate's age, as well as the inmate's physical and cognitive limitations when weighing the factors. This important information is needed by the board to make a fully-informed decision on the inmate's case. This subsection also clarifies that the factors represent general guidelines and that the importance of any factor or combination of factors is left to the judgment of the hearing officer. This subsection provides broad discretion to the hearing officer, which is consistent with the law governing the board's parole consideration process for indeterminately sentenced inmates, youthful offenders, and inmates eligible for elderly parole. Broad discretion is necessary to protect public safety and to ensure the board is able to provide meaningful individualized parole consideration in a manner that addresses the unique facts of each case. In addition, these amendments are necessary to promote consistency in decision-making and to clarify the board's parole consideration process for inmates, victims, and the public.

Subsections 2449.5(b) through 2449.5(g) specify the factors the board is to consider as aggravating and mitigating an inmate's risk. These amendments are necessary to promote the Act's primary goals of encouraging and motivating nonviolent offenders to take responsibility for their own rehabilitation, promoting public safety by encouraging inmates to pursue educational, vocational, rehabilitative, and self-improvement programs, and reducing recidivism by increasing the likelihood that inmates will better prepare themselves for their eventual return to society.

Subsection 2449.5(b) lists four factors concerning the inmate's current conviction or convictions that, if present, shall be considered as aggravating the inmate's risk. The factors are: (1) The inmate personally used a deadly weapon; (2) There were one or more victims who suffered physical injury or threat of physical injury; (3) There were multiple convictions involving large-scale criminal activity; and (4) The inmate played a significant role in the crime(s) as compared

to other offenders, if any. Using a deadly weapon or causing physical injury or threatening physical injury to a victim demonstrates the inmate's propensity to engage in violent behavior, thus aggravating his or her risk for future violence. Having multiple convictions involving large-scale criminal activity demonstrates the inmate's propensity to engage in significant criminal activity, thus aggravating his or her risk for engaging in significant criminal activity in the future. Lastly, an inmate who played a significant role in the crime or crimes as compared to other offenders, if any, demonstrates the inmate's more significant role in the criminal activity, thus aggravating his or her future risk.

Subsection 2339.5(c) lists four factors concerning the inmate's current conviction or convictions that, if present, shall be considered as mitigating the inmate's risk. The factors are: (1) The inmate did not personally use a deadly weapon; (2) No victims suffered physical injury or threat of physical injury; (3) There was only one conviction; (4) The inmate played an insignificant role in the crime(s) as compared to other offenders, if any. Committing a crime without personally using a deadly weapon and without causing a victim to suffer physical injury or threat of physical injury demonstrates the inmate's lack of propensity to engage in violent behavior, thus mitigating his or her risk of future violence. Having only one conviction demonstrates the inmate's lack of propensity to engage in widespread criminal activity, thus mitigating his or her risk of engaging in significant criminal activity in the future. And inmates who played an insignificant role in the crime or crimes as compared to other offenders, if any, demonstrates the inmate's less significant role in the criminal activity, thus mitigating his or her future risk.

Subsection 2449.5(d) lists four factors concerning the inmate's prior criminal conviction(s) that, if present, shall be considered as aggravating the inmate's risk. The four factors are: (1) The inmate has a violent felony conviction as defined in subdivision (c) of section 667.5 of the Penal Code in the past 15 years; (2) The inmate's prior criminal conviction(s) coupled with his or her current conviction(s) show a pattern of assaultive behavior or a pattern of similar criminal conduct that is increasing in severity; (3) The inmate was incarcerated for a misdemeanor conviction involving physical injury to a victim or a felony conviction within five years prior to his or her current conviction(s); (4) The inmate was previously approved for release by the board under this article and returned to state prison with a new conviction. Having a violent felony conviction in the past 15 years demonstrates the inmate's propensity to engage in violence and repeated criminal activity despite prior incarceration and supervised release. Most violent felonies result in several years of incarceration, followed by several years of supervised release. Furthermore, these inmates must have subsequently committed the crime or crimes resulting in their current term of incarceration, for which they must have also served the full term of their primary offense before they are eligible for parole consideration. As such, the 15 year time limit is appropriate because it means there was a relatively short break between the inmate's past incarceration and his or her most recent criminal activity, thus aggravating his or her future risk. Having a criminal history that is increasing in severity demonstrates the inmate's risk of future

criminality is increasing, thus aggravating his or her future risk. Inmates whose prior criminal includes incarceration for a misdemeanor conviction involving physical injury to a victim or a felony conviction within five years of his or her current conviction(s) demonstrates that the inmate's criminality is increasing despite prior criminal justice interventions. In addition, convictions so close in time may indicate the inmate was on supervised release at the time he or she committed the crimes associated with his or her current conviction, which aggravates his or her future risk. Lastly, if the inmate was previously approved for release by the board as a nonviolent offender and returned to state prison with a new conviction, it demonstrates he or she continued to engage in criminal activity despite his or her prior rehabilitative efforts and incarceration, thus increasing his or her future risk.

Subsection 2449.5(e) lists four factors concerning the inmate's prior criminal behavior that, if present, shall be considered as mitigating the inmate's risk. The four factors are: (1) The inmate has no prior criminal convictions; (2) The inmate has not been convicted of a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code in the past 15 years; (3) The inmate's prior criminal conviction(s) coupled with his or her current conviction(s) shows a pattern of assaultive behavior or a pattern of similar criminal conduct that is decreasing in severity, and; (4) The inmate was free from incarceration for a misdemeanor conviction involving physical injury to a victim or a felony conviction for five years or more prior to his or her current conviction(s). Not having a prior criminal conviction demonstrates a lack of criminal history and, therefore, mitigates the inmate's future risk. Inmates who do not have a violent felony conviction in the past 15 years demonstrate a lack of recent propensity to commit violence and are less likely to have committed their most recent crimes while on supervised release for a violent offense, thus mitigating their future risk of violence. Similarly, inmates whose overall criminal behavior is decreasing in severity demonstrate a decreasing propensity to engage in significant criminality, thus mitigating their future risk. Inmates who were free from incarceration for a misdemeanor conviction involving physical injury to a victim or a felony for five years or more prior to their current convictions have demonstrated an ability to refrain from criminal activity and are more likely to have successfully completed a term of supervised release, thus mitigating their future risk.

Subsection 2449.5(f) lists four factors concerning the inmate's institutional behavior, work history, and rehabilitative programming (as documented in the inmate's central file) that, if present, shall be considered as aggravating the inmate's risk. The four factors are: (1) The inmate has been found guilty of institutional Rules Violations Reports resulting in physical injury or threat of physical injury since his or her last admission to prison; (2) There is reliable information in the confidential section of the inmate's central file indicating the inmate has engaged in criminal activity since his or her last admission to prison; (3) The inmate has limited or no participation in available vocational, educational, or work assignments, and; (4) The inmate has limited or no participation in available rehabilitative or self-help programming to address the

circumstances that contributed to his or her criminal behavior, such as substance abuse, domestic violence, or gang involvement. Inmates who engage in violent behavior or other criminality while in prison demonstrate a propensity for violence and criminal behavior, thus aggravating their future risk. Inmates who have participated in little or no available vocational, educational, or work assignments have not advanced themselves academically, vocationally, or through work assignments, thus aggravating their future risk. Inmates who have participated in little or no available rehabilitative or self-help programming to address the circumstances that contributed to their criminal behavior, such as substance abuse, etc., are at greater risk for engaging in future criminal behavior. The board, therefore, will consider these inmates' future risk to be aggravated.

Subsection 2449.5(g) lists four factors concerning the inmate's institutional behavior, work history, and rehabilitative programming (as documented in the inmate's central file) that, if present, shall be considered as mitigating the inmate's risk. The four factors are: (1) The inmate has not been found guilty of institutional Rules Violations Reports resulting in physical injury or threat of physical injury since his or her last admission to prison; (2) There is no reliable information in the confidential section of the inmate's central file indicating the inmate has engaged in criminal activity since his or her last admission to prison; (3) The inmate has successfully participated in vocational, educational, or work assignments for a sustained period of time, and; (4) The inmate has successfully participated in rehabilitative or self-help programming to address the circumstances that contributed to his or her criminal behavior, such as substance abuse, domestic violence, or gang involvement, if any, for a sustained period of time. Inmates who avoid engaging in violent or other criminal behavior while incarcerated demonstrate a lack of propensity for violence and criminal behavior, thus mitigating their future risk. Inmates who successfully participate in vocational, educational, or work assignments for a sustained period of time have advanced themselves academically, vocationally, or through work assignments, thus mitigating their future risk. Similarly, inmates who successfully participate in rehabilitative or self-help programming to address the circumstances that contributed to their criminal behavior, such as substance abuse are less likely to engage in future criminal behavior, thus mitigating their future risk.

Subsection 2449.5(h) requires the board to consider written statements from the inmate, written statements from the prosecutor concerning the inmate's commitment offense and criminal history, and written statements from victims who received notice under section 2449.3. These amendments are necessary to ensure the board takes into consideration input from inmates, victims, and prosecutors when determining whether to release a nonviolent offender. Narrowing the focus of statements to be considered from prosecutors is intended to allow prosecutors to focus on information readily available at the local level, such as the inmate's criminal history and the circumstances surrounding his or her commitment offense.

Section 2449.6 requires the board to vacate a decision previously approving an inmate for release if at any time prior to release the inmate subsequently becomes ineligible for parole consideration or ineligible for referral to the board. This section was originally part of the regulatory text governing decision review. However, it was moved to a stand-alone section to avoid confusion, since decisions issued under this section are also subject to review upon request of the inmate or by the board on its own motion under section 2449.7.

Subsections 2449.6(a) and 2449.6(b) require decisions under this subsection to be in writing and supported by a statement of reasons. In addition, copies of the decision are required to be served on the inmate and filed in the inmate's central file within 15 business days of being issued. Fifteen business days provides a standard maximum time for serving inmates with the board's decisions and takes into account the time necessary to reach some inmates who may be in remote locations, such as fire camps. These subsections also require the board, within five business days, to send notice of the decision to victims and prosecutors who received notice under section 2449.3. Five business days provides a reasonable maximum time period for processing notices, given a variety of variable such as state holidays, staff availability, and fluctuations in workload.

These amendments are also necessary to provide transparency and clarity to the parole consideration process and to ensure inmates, victims, and prosecutors timely receive notice of board decisions and that notice to the inmate is appropriately documented in the inmate's central file.

Subsections 2449.6(c) and 2449.6(d) were adopted to clarify that inmates denied release under this subsection will be screened again for possible referral to the board as provided in subsection 3492(e) of division 3 and that inmates may seek review of a decision under this section by submitting a request in writing to the board under section 2449.7 within 30 calendar days of being served the decision. Thirty calendar days is a reasonable maximum time period for an inmate to submit a request for the board to review its decision. Providing a clear time period also serves to ensure the timeliness of submissions, thereby preserving the integrity of the board's decisions.

Section 2449.7 was amended to clarify in detail each decision that is subject to review under this section and to clarify the procedures the board will use when reviewing a decision.

Subsection 2449.7(a) was amended to list the decisions subject to review under this subsection. In addition, it is amended to clarify that an inmate may request review of a decision in writing 30 calendar days from the date he or she is served with the decision. Also, the decision must include a description of why the inmate believes the previous decision is not correct and the inmate may include additional information not available at the time of the previous decision. This important

information is needed by the board to make a fully-informed decision on the inmate's request. Thirty calendar days is a reasonable maximum time period for an inmate to submit a request for the board to review its decision. Providing a clear time period also serves to ensure the timeliness of submissions, thereby preserving the integrity of the board's decisions.

Subsection 2449.7(b) was amended to clarify that the board may initiate review of a previous decision at any time prior to the inmate's release if there was an error of law, an error of fact, or if the board receives new information that would have materially impacted the decision had it been known at the time the decision was made. This amendment is necessary to clarify that the board has authority on its own motion to review its decisions and to ensure its decisions are error-free and are based on all relevant information.

Subsection 2449.7(c) was amended for consistency in formatting and grammar.

Subsection 2449.7(d) was amended to clarify that the decision may be rendered by a deputy commissioner, associate chief deputy commissioner, or the Chief Hearing Officer and that he or she shall issue a decision in writing, either concurring with the previous decision or overturning it, with a supporting statement of reasons. This amendment is necessary to provide transparency and clarity to the parole consideration process.

Subsections 2449.7(e) through 2449.7(g) were adopted to clarify that copies of decisions issued under this section are to be served on the inmate and placed in his or her central file within 15 business days of being issued. Fifteen business days provides a reasonable maximum time period for serving inmates with the board's decisions and takes into account the time necessary to reach some inmates who may be in remote locations, such as fire camps. These subsections also provide clarity concerning the board's process following the issuance of a decision under this subsection, depending on the type of decision reviewed and the outcome of the review. For example, inmates denied release under this subsection will be screened again for possible referral to the board as provided under subsection 3492(e) of division 3, the board shall within 5 business days, send notices to victims and prosecutors who received notice under section 2449.3 concerning a release decision issued under this subsection, and inmates approved for a review on the merits as a result of this subsection shall receive a review on the merits within 60 calendar days.

Five business days for sending notices to victims and prosecutors is a reasonable maximum time period for processing notices, given a variety of variables such as state holidays, staff availability, and fluctuations in workload. Sixty calendar days is a reasonable maximum time period for the board to conduct a review on the merits because the process requires the board to notify victims and prosecutors, allow them 30 calendar days to submit written input, assign the case to a hearing officer, and issue a written decision.

These amendments are also necessary to provide transparency and clarity to the parole consideration process and to ensure inmates timely receive notice of board decisions and that they are appropriately documented in the inmate's central file.

Subsection 2449.7(h) was adopted to clarify that decisions made by the Board of Parole Hearings under this subsection are not subject to the department's Inmate Appeal Process but are instead subject to the decision review processed established by the Board of Parole Hearings in section 2449.7.

PART III: CHANGES TO TEXT AS TEXT AS ORIGINALLY PROPOSED AND ADDENDUM TO THE INITIAL STATEMENT OF REASONS

On January 26, 2018 a second notice that included revisions to the text as originally proposed, a description of the text revisions, and an Addendum to the Initial Statement of Reasons was published and made available for public comment. Despite these changes, no businesses are expected to be eliminated as a result of this rulemaking action. The modified text and Addendum to the Initial Statement of Reasons was made available for public comment from January 26, 2018 through February 12, 2018. The text changes and reasons for the changes are found below. The reasons for the changes to the Addendum to the Initial Statement of Reasons are found in the rule making file with the title "Notice of Changes to the Text as Originally Proposed and Addendum to the Initial Statement of Reasons."

Subsection 3043.3(f)(1):

The department amends subsection 3043.3(f)(1) in order to clarify that an inmate participating in approved prison housing units with structured, full-time rehabilitative programming or in approved alternative custody settings shall (not may) be awarded Milestone Completion Credit for completion of every three months of program plan activities. This amendment is made to clarify that if an inmate successfully completes the program plan activities required under this subsection for a period of three months then the department is required to award the credit to the inmate. Accordingly, subsection 3043.3(f)(1) of the regulations is amended to state:

> (1) In lieu of the above standard performance criteria, participants in approved prison housing units with structured, full-time rehabilitative programming or in approved alternative custody settings **mayshall** be awarded credit under this section in the following increments: three weeks of credit (the equivalent of 21 calendar days) for completion of every three months of program plan activities up to a maximum of twelve weeks of credit in a twelve-month period. Within ten

business days of completing three months of program plan activities under this subsection a designated system approver shall be responsible for verifying and awarding credit to such participants.

Subsection 3043.3(f)(2):

The department amends subsection 3043.3(f)(2) in order to clarify that an inmate participating in the Enhanced Outpatient Program, Developmentally Disabled Program, or approved mental health inpatient program, excluding those in a mental health crises bed, shall (not may) be awarded Milestone Completion Credit upon successfully completing scheduled, structured therapeutic activities. This amendment is made to clarify that if an inmate successfully completes the program plan activities required under this subsection for a period of three months then the department is required to award the credit to the inmate.

The department also amends subsection 3043.3(f)(2) in order to substitute the word "by" with "upon" for clarity purposes and to delete the words "group assignment" after "Developmentally Disabled Program" because not every inmate participating in a developmentally disabled program will be given a group assignment. Accordingly, subsection 3043.3(f)(2) of the regulations is amended to state:

(2) In lieu of the above standard performance criteria, Enhanced Outpatient Program participants, Developmentally Disabled Program participants, and participants in an approved mental health inpatient program, excluding those in a mental health crisis bed, **mayshall** be awarded credit under this section **byupon** successfully completing scheduled, structured therapeutic activities in accordance with their mental health treatment plan or, if applicable, their Developmentally Disabled Program ~~group assignment~~, in the following increments: one week of credit (the equivalent of seven calendar days) for every 60 hours completed up to a maximum of six weeks of credit for 360 hours completed in a twelve-month period. Within ten business days of completing 60 hours of scheduled, structured therapeutic activities under this subsection the Chief of Mental Health at each institution shall be responsible for verifying and awarding credit to such participants.

Relevant Legislative Changes:

Penal Code Section 3041 was amended in Assembly Bill 1448 (2017-2018 regulation session) to add the phrase "Or elderly parole eligible date" following "youth offender parole eligibility date".

ADDITIONAL INFORMATION:

Subsequently, sections 3043.7 and 3044 were amended through a different rule making action (OAL matter number 2017-12-12-02-EON). The text shown in this rulemaking file for those sections incorporates the emergency text approved that went into effect on January 1, 2018.

The "Milestone Completion Schedule" (REV 11/17) was mailed along with the first 15-day notice and modified text to those persons specified 1 CCR Section 44(a)(1) through (4).

Section 3403.3(f): In the Initial Statement of Reasons the Department stated that the Chief of Mental Health at an institution is required to verify the inmate's eligibility for awarded credit for participation in the Enhanced Outpatient Program. This verification also applies to Developmentally Disabled Program participants and participants in an approved mental health in-patient program.

Section 3043.6: This Section restates the authority of Penal Code 2935 and requires an explanation per 1 CCR Section 12(b)(1) . The duplication of the statue is necessary so that all credit earnings are codified in a central location for both inmates and staff who do not have ready access to the Penal Code.

DETERMINATIONS, ASSESSMENTS, MANDATES, AND FISCAL IMPACT:

The Department has determined that no alternative considered or that has otherwise been identified and brought to the Department's attention would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law, than the action proposed. The proposed regulations have been determined to be the most efficient and effective means for inmate credit earning and parole consideration.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the department's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 of the Government Code.

The Department has determined this action imposes no mandates on local agencies or school districts; no fiscal impact on local government or Federal funding to the State, or private persons. The Department has determined the following fiscal impact on the State agency:
Savings: Fiscal Year 2017-18 = $3,006,124
Savings: Fiscal Year 2018-19 = $43,274,133
Savings: Fiscal Year 2019-20 = $45, 093,133

The Department has determined that this action will have an effect on businesses, small businesses, jobs and individuals. The Department estimates this economic impact to range between $35-$50 million dollars annually.

These regulations do not create mandates, reporting requirements, or incentives for California businesses to comply with their provisions.

The regulations promote inmate education, rehabilitation, and good conduct through incentives in the form of credits toward advancing an inmate's the earliest possible parole date. The proposition's primary purposes are to "stop the revolving door of crime by emphasizing rehabilitation", and to "prevent federal courts from indiscriminately releasing prisoners" which enhances public safety.

The implementation of the regulations for Proposition 57 will stabilize and then reduce the state inmate population to a level that can be sustained under a population cap ordered by the federal court. The reduction will be the product of incentives to earn credits that advance an inmate's parole and opportunities for nonviolent offenders to be considered for parole by the Board of Parole Hearings. Inmates who are incentivized by enhanced credit earning opportunities now available under Proposition 57 can pursue an education or gain vocational skills through completing courses and training that are now more readily available. The department offers vocational training that includes auto mechanics, machine shop, building trades, office services and computer literacy. Academic education is offered by the department up through the high school diploma and high school equivalency. Through community partners inmates have the opportunity and new incentives to pursue college degrees at the associate and bachelor level as well as postgraduate education opportunities. Upon parole, these offenders will re-enter the labor force better equipped to secure employment or further their education. Businesses in need of such skills will benefit from a better prepared offender population. A primary goal of these regulations is to produce a more rehabilitated, skilled, educated and employable inmate population that can gain employment and become contributing members of the community.

The inmate population is expected to decrease to a level that can be sustained long term under the federal court ordered cap. This will allow the Department to decrease its reliance on contracted services with private sector prison facilities outside of California. As the inmate population permits, the Department will repatriate its inmates saving contract costs. Correctional positions in the institutions are established based on a fixed ratio of officers to inmates. As the inmate population changes, positions are adjusted based on the ratio. The department anticipates a reduction in the inmate population once the impacts of the Proposition 57 regulations are fully realized resulting in a reduction of institution corrections staff. However, the department also anticipates an increased need for parole agents to supervise a larger parolee population and staff for the Board of Parole Hearings to consider more cases that qualify for consideration under the new nonviolent parole process.

This action has no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561. The Department has made an initial determination the proposed action will have no significant effect on housing costs. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

The Department, in proposing the adoption of these regulations, identified and relied upon the following documents:

1. Official Voter Information Guide, Proposition 57, November 8, 2016 Election http://voterguide.sos.ca.gov/en/propositions/57/arguments-rebuttals.htm
2. Three-Judge Court Order Granting in Part and Denying in Part the State's Request for an Extension of the Population Reduction Deadline. http://www.cdcr.ca.gov/News/docs/3jp-Feb-2014/Three-Judge-Court-order-2-20-2014.pdf
3. Report Filed with Three-Judge Panel Regarding Nonviolent Second Striker Process. http://www.cdcr.ca.gov/News/docs/3JP-Dec-2014/State%27s-report-on-new-parole-process-for-nonviolent-second-strike-inmates.pdf
4. Cutting Corrections Costs: Earned Time Policies for State Prisoners; National Conference of State Legislatures; July 2009. http://www.ncsl.org/documents/cj/earned_time_report.pdf
5. James Bonta and Donald A. Andrews, Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation (Ottawa: Public Safety Canada, 2007), http://www.pbpp.pa.gov/Information/Documents/Research/EBP7.pdf.
6. The Council of State Governments Justice Center. In Brief: Using a Cognitive-Behavioral Approach in Programs to Reduce Recidivism. https://csgjusticecenter.org/jr/in-brief-using-a-cognitive-behavioral-approach-in-programs-to-reduce-recidivism/
7. 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.

8. Steve Aos, Marna Miller and Elizabeth Drake. "Evidence-Based Adult Corrections Programs: What Works and What Does Not." Olympia: Washington State Institute for Public Policy, 2006.
9. CDCR, 2015 Outcome Evaluation Report: http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/2015_Outcome_Evaluation_Report_8-25-2016.pdf.
10. An Update to the Future of California Corrections, January 2016: http://www.cdcr.ca.gov/Blueprint-Update-2016/An-Update-to-the-Future-of-California-Corrections-January-2016.pdf, at p. 25.
11. CDCR, 2013 Outcome Evaluation Report: http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/ARB_FY_0809_Recidivism_Report_02.10.14.pdf.
12. CDCR; Credit Earning '101' (attached below).
13. Governor's Budget Summary for Fiscal Year 2017-2018, Public Safety: http://www.ebudget.ca.gov/2017-18/pdf/BudgetSummary/PublicSafety.pdf.

Additionally, the addendum to the Initial Statement of Reasons was made available to the public for comment in compliance with Government Code Section 11347.1.

The Department has relied upon the results of the Economic Impact Assessment, which can be found in the Notice of Proposed Regulations and is available for review as part of the rulemaking file.

INCORPORATED BY REFERENCE (1 CCR 20)

The Milestone Completion Credit Schedules (REV 03/17 and REV 11/17) were made available to the public throughout the rulemaking process and will continue to be made available upon request. Additionally, "Inmate Declaration of General Education Development (GED) eligibility" (CDCR 2233)(06/11)) and "Time Credit Waiver" (PC § 2934)" (CDCR 916 (REV. 09/09)), which are both being repealed in this rulemaking, were made available to the public upon throughout the rulemaking process and will continue to be made available upon request.

COMMENT SUMMARIES AND RESPONSES

The portion of the Final Statement of Reasons containing comment summaries and responses is over 1000 pages. Due to the length, the document was broken into separate "Exhibits" as described below:

EXHIBIT "A" starting on page 42
Standard Responses to the Most Frequent Comments Received by the Department.

EXHIBIT "B" starting on page 72
Responses to the Public Comments Received During the Initial Comment Period, Grouped According to Subject Matter.

EXHIBIT "C" starting on page 124
Responses to the Public Comments Received During the Initial Comment Period, Individualized.

EXHIBIT "D" starting on page 1,124
Responses to the Verbal Comments Made at the Public Hearing.

EXHIBIT "E" starting on page 1,169
Responses to the Public Comments Received Following the First Notification of Text Changes (1st Re-Notice).

EXHIBIT "F" starting on page 1,372

Responses to the Public Comments Received Following the Second Notification of Text Changes (2nd Re-Notice) and Addendum to the Initial Statement of Reasons.

Exhibit B

Excerpts of the Standard Responses to the Most Frequent Comments Received by the California Department of Corrections and Rehabilitation (April 30, 2018)

PART II: THE NONVIOLENT PAROLE PROCESS

Standard Response #14

Comment: Inmates sentenced under the Three Strikes Law for a third strike should be eligible for the Proposition 57 parole consideration process if the third strike was not a violent felony.

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).)

The overriding purpose 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 excluded inmates who are "incarcerated for a term of life with the possibility of parole." (Cal. Code Regs., tit. 15, §§ 3940, subd. (a)(1) and 2449.1, subd. (a)(1).)

During the public comment period on the emergency regulations, the department received many comments asserting that an inmate currently serving a third strike for a felony offense not listed in Penal Code section 667.5, subdivision (c), 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) to exclude from the

definition of "nonviolent offender" those inmates "currently incarcerated for a term of life with the possibility of parole for a 'violent felony.'"

However, in making these amendments, the department did not alter its decision to exclude all life term inmates from the nonviolent parole consideration process. The department modified section 3491, subdivision (b)(1) to provide that an inmate is ineligible for parole consideration if the inmate "is currently incarcerated for a term of life with the possibility of parole for an offense that is not a violent felony or the inmate is currently serving a determinate term prior to beginning a term of life with the possibility of parole for an offense that is not a 'violent felony.'" Taking the modified regulations at section 3490, subdivision (a)(3) and section 3491, subdivision (b)(1) together, all life term inmates are excluded from the nonviolent parole consideration process. However, such inmates remain eligible for parole consideration under Penal Code section 3041, which sets forth the well-established parole consideration process for indeterminately-sentenced inmates.

Inmates sentenced for a third strike offense are ineligible for the nonviolent parole consideration process for several reasons. First, as the plain language of the Act demonstrates, the voters did not intend for indeterminately sentenced inmates to be eligible for nonviolent parole consideration. Parole consideration under the Act is triggered once an inmate serves the "full term" of the inmate's primary offense, defined as the "longest term of imprisonment imposed by the court." (Cal. Const., art. I, § 32, subd. (a).) A determinate sentence has a fixed term which, under the Act, signals when the inmate qualifies for nonviolent parole consideration. But a life inmate cannot serve the "full term" of his or her indeterminate sentence until they are found suitable for parole. This is because an indeterminate term "has no definite termination date" and "remains indeterminate" until the inmate is found suitable for parole. (*In re Hogan* (1986) 187 Cal.App.3d 819, 824.) Because parole consideration under the Act is only triggered after completing the full term of imprisonment, the plain text of the Act demonstrates that it does not apply to inmates serving indeterminate terms.

Second, public safety requires that third-strike inmates be excluded from nonviolent parole consideration. In 2012, voters passed Proposition 36, which permitted courts to resentence inmates whose third-strike conviction was not a serious or violent felony offense and where the court determines that resentencing would not pose an unreasonable risk to public safety. Approximately 2,300 third-strike inmates have been resentenced and released under Proposition 36. As of February 2018, the third-strike population that remains in prison is comprised of 4,103 inmates convicted of a violent third-strike felony, 2,604 convicted of a serious third-strike felony, and 223 inmates whose Proposition 36 petition was denied by a court (with some petitions still pending). And by definition, a third strike offender has already served at least one prison term for a serious or violent offense and was not dissuaded from committing another serious or violent offense. For these reasons, the Secretary has determined that public safety will

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.

Standard Response #17

Comment: Do not exclude inmates from the parole consideration process just because they served a term in a security housing unit within the last five years.

Response: As stated in the Initial Statement of Reasons, "[T]hose 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." (See the Initial Statement of Reasons, p. 17.)

Proposition 57 requires the department adopt regulations in furtherance of its provisions and certify that the adopted regulations protect and enhance public safety. (Cal. Const., art. I, § 32, subd. (b).) The department determined that inmates who are currently serving a term in a security housing unit or who have served a term in a security housing unit in the recent past or who were assessed a term in a security housing unit in the recent past have demonstrated that they pose a risk of violence to the safety of others, even within the institutional setting. Offenses for which inmates receive security housing unit terms include attempted murder, battery with a weapon capable of causing serious or mortal injury, escape, and leading a riot. Because of the gravity of these in-prison offenses, the department also reasonably determined five years without such misconduct is the minimum period of time necessary for an inmate to demonstrate a reduced risk of violence. As a result, once five years have passed, the inmate will be eligible for the parole consideration process again provided they meet the other public safety screening criteria.

Standard Response #18

Comment: Inmates who are serving terms for offenses committed in prison should be excluded from the parole consideration process.

Response: Proposition 57 amended the California Constitution to state that "[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." (Cal. Const., art. I, § 32, subd. (a)(1).) The term "nonviolent felony offense" is not expressly defined by the Proposition. Instead, Proposition 57 requires the department adopt regulations implementing its provisions and certify that the regulations protect and enhance public safety. (Cal. Const., art. I, § 32, subd. (b).)

Sections 3490 and 2449.1 of the department's emergency regulations define 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 requires registration pursuant to Penal Code section 290. Sections 3490 and 2449.1 do not preclude inmates who have completed serving their sentence for crimes committed prior to prison from inclusion in the parole consideration process if all that remains to serve is a determinate term (or terms) for nonviolent felony offenses committed in prison.

The department's decision to include inmates serving determinate terms for a nonviolent felony offense committed in prison is consistent with judicial decisions governing the imposition of terms for offenses in prison. (See *In re Tate* (2006) 135 Cal.App.4th 756; *In re Thompson* (1985) 172 Cal.App.3d 256.) Those decisions provide that terms for crimes committed in prison are to be treated as separate from terms for crimes committed prior to prison. Consequently, even if an inmate was originally excluded from the parole consideration process because he or she committed a violent felony offense prior to prison, once that term (or terms) is completed, and the remaining commitment is a determinate term for a nonviolent in-prison offense, then the inmate is eligible for the nonviolent parole consideration process after he or she has served the full term for their primary offense.

Standard Response #19

Comment: Exclude inmates from the parole consideration process if they are concurrently sentenced to a violent felony and a nonviolent felony.

Response: Proposition 57 amended the California Constitution to state that "[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." (Cal. Const., art. I, § 32, subd. (a)(1).) The term "nonviolent felony offense" is not expressly defined by the Proposition. Instead, Proposition 57 requires the department adopt regulations implementing its provisions and certify that the regulations protect and enhance public safety. (Cal. Const., art. I, § 32, subd. (b).)

Sections 3490 and 2449.1 of the department's emergency regulations define 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 requires registration pursuant to Penal Code section 290. However, section 3490, subdivision (b)(1) and section 2449.1, subdivision (b)(1) of the department's emergency regulations expressly include in the parole consideration process any inmate who has completed a determinate term of incarceration for a violent felony and is currently serving a concurrent term for a nonviolent felony offense.

The commenter suggests that the department should exclude inmates from the parole consideration process if they are concurrently sentenced to a violent felony and a nonviolent felony. The commenter's suggestion is consistent with judicial decisions governing the award of conduct credit to inmates deemed violent versus those deemed nonviolent. (See *In re Reeves* (2005) 35 Cal.4th 765; *People v. Ramos* (1996) 50 Cal.App.4th 810.) Those decisions provide that it is the offender, and not the offense, that limits conduct credit and so an inmate who has completed a determinate term of incarceration for a violent felony and is currently serving a concurrent term for a nonviolent felony offense is nonetheless a violent offender for the purposes of awarding conduct credit.

Accordingly, on December 8, 2017, the department proposed amendments to sections 3490 and 2449.1 of the regulations to exclude inmates from the parole consideration process if they are concurrently sentenced to a violent felony and a nonviolent felony, regardless of which term may be completed first. As a result, inmates who have completed a determinate term of incarceration for a violent felony and who are currently serving a concurrent term for a nonviolent felony will no longer be eligible for parole consideration under the proposed amendments.

Standard Response #20

Comment: Change the list of crimes and enhancements considered violent felonies that disqualify offenders from the parole consideration process.

Response: The Public Safety and Rehabilitation Act of 2016 ("the Act") amended the California Constitution to state that "[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." (Cal. Const., art. I, § 32, subd. (a)(1).) The term "nonviolent felony offense" is not expressly defined by the Act; instead, it requires the department adopt regulations implementing its provisions and certify that the regulations protect and enhance public safety. (Cal. Const., art. I, § 32, subd. (b).)

Sections 3490 and 2449.1 of the department's emergency regulations define 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 requires registration pursuant to Penal Code section 290.

In implementing a nonviolent parole consideration process in furtherance of the Act, the department incorporated the definition of a violent felony found in Penal Code section 667.5, subdivision (c), but did not make that the exclusive criteria for establishing parole eligibility. The

overriding purpose 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.*) For these reasons, categories of inmates such as inmates serving a term of life with the possibility of parole and inmates who are required to register as a sex offender are excluded from the nonviolent parole process, in addition to those serving a term for a "violent felony."

The commenter suggests that the department change the list of crimes or enhancements considered to be a "violent felony" for purposes of the parole consideration process. However, the appropriate venue for stakeholders to debate the addition or removal of specific offenses or enhancements considered to be "violent" is through the Legislature. Any amendments to Penal Code section 667.5, subdivision (c), whether by adding or removing offenses and enhancements from the list, will affect the eligibility of inmates for nonviolent parole consideration under the proposed regulations.

For purposes of clarity, on December 8, 2017, the department proposed amendments to sections 3490 and 2449.1 of the regulations. As a result, inmates who are serving a term for a "violent felony" are now excluded from the nonviolent parole consideration process under section 3490, subdivision (a)(5) and section 2449.1, subdivision (a)(5).

Standard Response #21

Comment: The Victims' Bill of Rights (commonly referred to as Marsy's Law) requires in-person parole consideration hearings so victims may be present and be heard by the Board of Parole Hearings.

Response: The Public Safety and Rehabilitation Act of 2016 (the "Act") was overwhelmingly approved by California voters on November 8, 2016. The Act authorizes the department to develop regulations that establish a process for nonviolent offenders who have served the full term of their primary offense in state prison to be considered for parole. Pursuant to the Act, the California Constitution was amended to include Section 32 of Article 1, which provided that its 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."

Under the constitutional authority granted by the Act, the department adopted emergency regulations to implement provisions of the Act requiring that "[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." (Cal. Const., art. I, § 32, subd. (a)(1).) In carrying out this requirement in conjunction with the Board of Parole Hearings, the department established a review process through which the board considers determinately sentenced nonviolent offenders for possible release in accordance with the constitutional requirement.

In establishing this process, the department took into consideration the court-ordered nonviolent second-striker process already in effect. Specifically, in 2014 a federal Three-Judge Court ordered the department to implement a parole consideration process for nonviolent second-strike offenders who have served 50 percent of their sentence. This court-ordered process for nonviolent second-strike offenders was implemented in 2015 and required inmates to pass significant public-safety screening criteria. Only those inmates who satisfied these rigorous public-safety screens were then referred to the board. The board would notify the prosecuting agency and any registered victims of an inmate's referral and afforded them 30 days to provide written comment and input concerning the inmate's potential release. When considering release for a nonviolent second-strike offender under the court-ordered process, a hearing officer with extensive experience in criminal law, corrections, or administrative hearings reviewed the inmate's criminal history, behavior in prison, rehabilitative efforts, and written statements from prosecutors and victims, before deciding whether to approve or deny release. The board's decision to approve or deny release was based on whether the inmate poses an unreasonable risk. The same procedures have been applied to the nonviolent parole consideration process under the Act.

Marsy's Law amended the Victims' Bill of Rights by adding Article I, section 28, subdivision (b) to the California Constitution. Paragraph (7) of subdivision (b) states that a victim is entitled "[t]o reasonable notice of . . . all parole or other post-conviction release proceedings, and to be present at all such proceedings." This provision of the Victims' Bill of Rights provides victims with the right to be present and heard at proceedings involving post-conviction release decisions. Thus, victims have a right to attend a variety of post-conviction hearings, including parole hearings for life-term inmates conducted by the Board of Parole Hearings under Penal Code section 3041. Unlike a court hearing or a parole suitability hearing, however, the nonviolent review process established by the regulations is not a "proceeding" that can be attended. Instead, the nonviolent parole review process involves a deputy commissioner conducting an independent review of the record to determine whether the inmate should be released. There is no hearing for any victim to attend.

Marsy's Law also amended the Victim's Bill of Rights to include a provision giving victims the right to be informed of all parole procedures, to participate in the parole process, and to provide information to the parole authority to be considered before release of the offender. (Cal. Const., art. I, § 28, subd. (b)(15).) The emergency regulations implementing the nonviolent parole consideration process fully protect this right by establishing a notification process and an opportunity for victims to submit a written statement for the board's consideration. (Cal. Code Regs., tit. 15, § 2449.2.) Furthermore, the board's hearing officers are mandated to consider statements received from victims when determining whether to approve or deny an inmate's release. (Cal. Code Regs., tit. 15, § 2449.4, subd. (b)(2) and (c)(4).)

For these reasons, the regulations fully comply with the Victim's Bill of Rights and Marsy's Law.

For purposes of clarity, on December 8, 2017, the department proposed amendments to the regulations. As a result, the provisions governing notice to victims are in section 2449.3 of the amended regulations. Provision requiring the board to consider written statements from victims are in section 2449.4, subdivision (b)(2) and section 2449.5, subdivision (h).

Standard Response #22

Comment: Include sentencing credits earned while in jail when calculating the "full term" to be served prior to parole consideration.

Response: Section 32(a) of Article I of the California Constitution, enacted by Proposition 57, states that "[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 department has reasonably interpreted this provision to mean that in order for an inmate to complete the full term for his or her primary offense, he or she must actually serve the years imposed by the sentencing court for the inmate's primary offense, not including any sentencing credits.

Sections 3490(f) and 2449.1(f) of the emergency regulations state that a nonviolent offender will be eligible for referral to the Board of Parole Hearings for parole consideration once he or she has served the full term of his or her primary offense, less pre-sentence credits applied by the sentencing court for time served under Penal Code section 2900.5 and any time spent in custody between sentencing and the date the inmate is received by the department. Thus, the intent of sections 3490(f) and 2449.1(f) is to ensure that pre-sentence credits for actual time served are applied when determining the date upon which an inmate will have served the full term of his or her primary offense.

The department on December 8, 2017, modified the regulatory text at sections 3490(e) and 2449.1(e) to clarify that the full term of an inmate's primary offense is defined as the "actual number of days, months, and years imposed by the sentencing court for the inmate's primary offense, not including any sentencing credits." In addition, the regulatory text at sections 3490(f) and 2449.1(f) was also modified to clarify the definition of "nonviolent parole eligible date" to mean "the date on which a nonviolent offender who is eligible for parole consideration under section 3491 has served the full term of his or her primary offense, less any actual days served prior to sentencing as ordered by the court under section 2900.5 of the Penal Code and any actual days served in custody between sentencing and the date the inmate is received by the department."

Standard Response #23

Comment: Allow inmates to review their central-file for accuracy and completeness prior to parole consideration to ensure the reviewing officer considers all pertinent information when deciding whether to approve the inmate's release.

Response: Inmates are already permitted to review all non-confidential information in their central-file under section 3370 of division 3 of the department's regulations. Following a timely written request, an inmate is permitted to review non-confidential information in their central-file.

Standard Response #24

Comment: Prosecutors should have access to inmate central files for the nonviolent offender parole consideration process.

Response: Inmate central files are confidential and not accessible to prosecutors for purposes of the nonviolent parole consideration process. On December 8, 2017, the department modified the regulatory text at 2449.5(h) to clarify that "written statements concerning the inmate's commitment offense and criminal history from the prosecuting agency or agencies . . . shall be considered" by the board when determining whether to approve an inmate for release. Access to central files is not necessary for prosecutors to provide a written statement concerning the inmate's commitment offense and criminal history; that information is available as a result of having prosecuted the inmate. The central file is fully accessible to the board's hearing officers, however, and section 2449.4(b) requires them to consider all relevant and reliable information about the inmate, including information contained in the inmate's central file. For these reasons, an inmate's central file is not accessible to prosecutors for purposes of the nonviolent parole consideration process.

Standard Response #25

Comment: Allow victims to confidentially submit their written statements to the Board of Parole Hearings prior to parole consideration.

Response: There is currently no legal or procedural mechanism for the Board of Parole Hearings to accept, store, and consider confidential written statements from victims prior to parole consideration. Similarly, there was no such legal or procedural mechanism in the nonviolent second-striker parole process in effect since 2015 under federal court order. Since then, the Board of Parole Hearings has processed over 12,000 nonviolent second-striker parole reviews and requests for a victim's written statement to remain confidential was expressed only a few times; in most instances to protect the victim's address. In those cases, the Board of Parole Hearings arranged for the victim to submit a written statement without disclosing an address. For these reasons, the regulations do not provide a mechanism for victims to submit "confidential" statements to the Board of Parole Hearings.

Standard Response #26

Comment: Allow victims and prosecutors more than 30 days to file written statements for review by the Board of Parole Hearings prior to parole consideration.

Response: After receiving notification from the Board of Parole Hearings of an inmate's pending parole consideration, victims and prosecutors have 30 days to postmark or electronically stamp a written statement for consideration by the Board of Parole Hearings. (See section 2449.3.) Lengthening the time between the board's notification and submission of written statements by victims or prosecutors would unreasonably delay the parole consideration process. Many inmates under parole consideration have less than one year remaining on their sentence.

Instead of delaying the parole consideration process to give victims and prosecutors more time to submit written statements, the department has developed alternative mechanisms to give victims, prosecutors, and the public at large more notice of an inmate's pending parole consideration. Specifically, the department has made the Nonviolent Parole Eligible Date for each eligible inmate available on its website, thus revealing when each inmate will be considered for release. In addition, the department has made the date an inmate will be reconsidered, if denied release, available on its website. These alternative measures give victims, prosecutors, and the public months and sometimes years of advance notice of when a nonviolent offender will be eligible for parole consideration. The Board of Parole Hearings also implemented an electronic notification process for victims and prosecutors to further expedite the notification process once an inmate is referred to the board. For these reasons, the department did not amend section 2449.3 of the

regulations regarding timelines for victims and prosecutors to submit written statements for the board's consideration.

Exhibit C

California Department of Corrections and Rehabilitation's Summary of, and Responses to, Comments Relating to Standard Response 19 (April 30, 2018)

should be tried in juvenile or adult court. The Act's primary purposes are to 'stop the revolving door of crime by emphasizing rehabilitation' and to 'prevent federal courts from indiscriminately releasing prisoners.'" In order to achieve these goals, the department established a parole consideration process for nonviolent offenders and increased credit earning opportunities for inmates who successfully complete approved educational and rehabilitative programs. The department seeks to make our prisons and our communities safer by encouraging and motivating willing inmates to participate in educational and rehabilitative programs and service opportunities that create skills, employ-ability and hope. In this way, the department intends to incentivize inmates to take responsibility for their own rehabilitation, promote public safety by encouraging inmates to pursue educational, vocational training, rehabilitative and self-improvement programs, and reduce recidivism by increasing the likelihood that inmates will better prepare themselves for their eventual return to society.

Comment S770.1: The proposed regulations have the effect of classifying those convicted of violent crimes as "non-violent" offenders allowing for their release. The regulations define a "non-violent" offender as any inmate who has "completed a determinate or indeterminate term of incarceration and is currently serving a determinate term for a non-violent in-prison offense." This is internally self-contradicting. Any inmate who has completed an indeterminate term of incarceration is, by definition, a violent offender pursuant to Penal Code 667.5. The text does not clarify that the completed term must be for a nonviolent crime creating the possibility that an inmate convicted of a violent crime is eligible for early release.

Response S770.1: See Standard Response 18.

Comment S770.2: The department stipulates that "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 decision." Commenter believes this is an overboard and erroneous reading of those decisions which had to do with the ability to earn credits not parole eligibility. Proposition 57 limits early parole eligibility to "a person convicted of a non-violent" offense.

Response S770.2: See Standard Response 19.

Comment S770.3: As put forward, the language of the proposed regulations would diminish and dilute the rights of victims and provide them only with "an opportunity to submit a written statement." The California Constitution states that a victim should receive "reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole and other post-conviction release proceedings, and to be present at all such proceedings." The Constitution also states that victims have a right to "be heard, upon request, at any proceedings, including any delinquency

Comment 1: The Commenters want nonviolent third strikers to be eligible for nonviolent parole consideration.

Response 1: See Standard Response 14.

Comment 2: The Commenters want good time credits to be applied retroactively.

Response 2: See Standard Response 1.

Commenters S1285, S1298, S1300, S1301, S1302, S1303, S1327, S1328, and S1331

Comment 1: The Commenters want third strikers to be eligible for nonviolent parole consideration and for credits to be retroactive.

Response 1: See Standard Responses 1 and 14.

Commenter S1288

General Comment: The Commenter states his case factors.

Response: See Standard Response 29.

Comment S1288.1: The Commenter wants nonviolent third strikers whose current crimes are not violent to be included in the nonviolent parole process, and states that the regulations are contrary to the language of Proposition 57.

Response S1288.1: See Standard Response 14.

Commenter S1311

General Comment: The Commenter states his case factors.

Response: See Standard Response 29.

Comment S1311.1: The Commenter is concerned that "a prisoner who is serving a mix of violent and nonviolent offences of consecutive sentences is not eligible" and proposes that the regulations be changed to "allow a mix of violent and nonviolent offences to become eligible after finishing the violent offence."

Response S1311.1: See Standard Response 19.

regulations because there was no language that "references second-strike nonviolent inmates nor a Court-Ordered parole process in effect since 2014" (sic).

Response S1334.1: See Standard Response 29.

Commenter S1341

General Comment: The Commenter states his case factors.

Response: See Standard Response 29.

Comment S1341.1: The Commenter wants nonviolent third strikers to be eligible for nonviolent parole consideration.

Response S1341.1: See Standard Response 14.

Comment S1341.2: The Commenter wants nonviolent "sex registrants" to be eligible for nonviolent parole consideration.

Response S1341.2: See Standard Response 15.

Commenter S1346

Comment S1346.1: The Commenter states his case factors. The Commenter states that inmates who have completed their base term for a violent offense and who are currently serving time as a result of nonviolent enhancements should be eligible for nonviolent parole consideration.

Response S1346.1: See Standard Response 19.

Commenter S1400

Comment S1400.1: The Commenter wants nonviolent third strikers to be eligible for nonviolent parole consideration.

Response S1400.1: See Standard Response 14.

Comment S1400.2: The Commenter think that "credits should be awarded for all 'programmer's' who are trying to improve their lives, and become a better person" (sic).

prisons, not society, not the inmates' families and the department should keep these inmates in prison to serve their time.

Response E1044.1: See Standard Responses 28 and 29.

Commenter E1062

Comment E1062.1: Releasing inmates from prison early does not serve the best interest of the community, and instead puts the community in harm's way. Commenter reiterates that Proposition 57 provides for parole consideration for nonviolent offenders who have served the full sentence for their primary offense and who would not pose an unreasonable risk to the community if release.

Response E1062.1: See Standard Responses 28 and 29.

Commenter E1065

Comment E1065.1: Both Proposition 57 and Proposition 47 increased crime and were misleading to the public, and should be overturned. Commenter is opposed to any proposition that would reduce criminal penalties for property or drug crimes and that would release inmates from prison sooner.

Response E1065.1: See Standard Response 28.

Commenter E1070

Comment E1070.1: There should be no early release for inmates. They did the crime and should do the time. No exceptions.

Response E1070.1: See Standard Responses 28 and 29.

Commenter E1095

Comment E1095.1: Commenter states that the department betrayed the citizens of California because the citizens voted for a proposition that would not release violent offenders early and states the proposed regulations should be amended to specify that if an inmate is convicted of both a violent and nonviolent offense, the inmate will be ineligible for early release.

Response E1095.1: See Standard Response 19.

Comment E572.3: Commenter states the proposed regulations expand the definition of "nonviolent offender," beyond what the language of Proposition 57 envisioned. Commenter states the voters believed Proposition 57 affected "nonviolent" offenders; however the language of the California Constitution, as enacted, limits early parole eligibility to "a person convicted of a nonviolent offense."

Response E572.3: See Standard Response 20.

Comment E572.4: Commenter states section 3490(b)(1) has expanded the definition of a person convicted of a nonviolent offense to include inmates convicted of a violent offense, if the inmate is also serving time for additional nonviolent offenses. Commenter contends that the department's reliance on case law *In re Reeves* relating to issuance of conduct credits cannot reasonably be construed as permitting the department to define a person convicted of a violent offense as "a person convicted of a nonviolent offense." Commenter disagrees that a person who stands convicted of a violent crime can be considered a "nonviolent offender," because they are also convicted of a nonviolent offense.

Response E572.4: See Standard Response 19.

Comment E572.5: Commenter disagrees with the definition of "nonviolent offender," as defined in section 3490(b)(2). Regarding the language of "an inmate who has completed an indeterminate term of incarceration and is currently serving a determinate term for a nonviolent in-prison offense;" Commenter specifically states, that all indeterminate terms (i.e. life sentences) are specifically defined as violent by Penal Code section 667.5. Therefore, an inmate serving a life sentence is a person convicted of a violent offense, and cannot be defined as a person convicted of a nonviolent offense. Commenter asserts that an indeterminate term is only "completed" when an inmate is paroled or when an inmate dies; therefore, it is disingenuous to redefine that an inmate serving a life sentence for a violent crime as a "nonviolent offender," because they committed a new crime while in prison.

Response E572.5: See Standard Response 18.

Comment E572.6: Commenter states that Sections 2449.2, 2449.3, 2449.4 and 2449.5, of the regulations, violates Proposition 9 (Marsy's Law), an initiative that was to protect victim's right to justice and due process. Commenter states victims are to be provided "reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and prosecutor are entitled to be present at parole or post-conviction release proceedings. Commenter states, the victim also has the right, to be heard, upon request, at any proceeding release decisions, or any proceeding where the rights of the victim are an issue. Commenter asserts the

Response E1091.2: The language quoted by the Commenter is actually from Section 2449.1(b)(2) and, therefore, Section 2449.1(b)(2) is used as the basis for this response. **See Standard Response 18.**

Commenter E1093

Comment E1093.1: Commenter opposes the changes of regulations, specifically citing Sections 2449.1 (a)-(f), 2449.2, 2449.3, 2449.4, and 2449.5, stating the emergency regulations violate case law and the California Constitution, article 11, sections (b)(7) and (8), which allow a victim to be heard at any parole or other post-conviction review proceeding.

Response E1093.1: For purposes of this response, it is assumed the Commenter intended to refer to article 1, section 28, subdivisions (b)(7) and (8) governing victims' rights. Please **See Standard Response 21.**

Comment E1093.2: Commenter states Section 2449.1(b)(1) of the proposed regulations is an effort to grant Proposition 57 relief to "violent offenders" and contradicts the states intent of Proposition 57, as it would only apply to "nonviolent" inmates, and is in violation of statutory and case law.

Response E1093.2: The language quoted by the Commenter is actually from Section 2449.1(b)(2) and, therefore, Section 2449.1(b)(2) is used as the basis for this response. **See Standard Response 18.**

Comment E1093.3: Commenter states the proposed regulations expand the definition of "nonviolent offender," beyond what the language of Proposition 57 envisioned. Commenter states the voters believed Proposition 57 affected "nonviolent" offenders; however the language of the California Constitution, as enacted, limits early parole eligibility to "a person convicted of a nonviolent offense."

Response E1093.3: See Standard Response 20.

Comment E1093.4: Commenter states subdivision 3490(b)(1) has expanded the definition of a person convicted of a nonviolent offense to include inmates convicted of a violent offense, if the inmate is also serving time for additional nonviolent offenses. Commenter contends that the department's reliance on case law *In re Reeves* relating to issuance of conduct credits cannot reasonably be construed as permitting the department to define a person convicted of a violent offense as "a person convicted of a nonviolent offense." Commenter disagrees that a person who stands convicted of a violent crime can be considered a "nonviolent offender," because they are also convicted of a nonviolent offense.

Response E1093.4: See Standard Response 19.

Comment E1093.5: Commenter disagrees with the definition of "nonviolent offender," as defined in subdivision 3490(b)(2). Regarding the language of "an inmate who has completed an indeterminate term of incarceration and is currently serving a determinate term for a nonviolent in-prison offense;" Commenter specifically states, that all indeterminate terms (i.e. life sentences) are specifically defined as violent by Penal Code section 667.5. Therefore, an inmate serving a life sentence is a person convicted of a nonviolent offense, and cannot be defined as a person convicted of a nonviolent offense. Commenter asserts that an indeterminate term is only "completed" when an inmate is paroled or when an inmate dies; therefore, it is disingenuous to redefine that an inmate serving a life sentence for a violent crime as a "nonviolent offender," because they committed a new crime while in prison.

Response E1093.5: See Standard Response 18.

Comment E1093.6: Commenter states that Sections 2449.2, 2449.3, 2449.4 and 2449.5, of the regulations, violate Proposition 9 (Marsy's Law), an initiative that was to protect victim's right to justice and due process. Commenter states victims are to be provided "reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and prosecutor are entitled to be present at parole or post-conviction release proceedings. Commenter states, the victim also has the right, to be heard, upon request, at any proceeding release decisions, or any proceeding where the rights of the victim are an issue. Commenter asserts the regulations deprive the victims of these rights by limiting their participation to a written statement rather than a right to be heard by the parole board. Commenter states the department has no legal authority to eliminate the victims' rights as provided with Marsy's Law.

Response E1093.6: See Standard Response 21.

Commenter S1111

Comment S1111.1: Commenter states Section 2449.1(a)(3), which is also in Section 3490, violates the Sixth and Fourteenth Amendments of the U.S. Constitution and article I, section 32(a)(1) of the California Constitution; therefore, these sections should be reviewed and revised.

Response S1111.1: See Standard Response 15.

Comment S1111.2: Commenter requests that Section 2449.1(a)(3) be deleted because it violates the constitution.

Response S1111.2: See Standard Response 15.

that if "those people are not pro Prop 57. They should not be taking part in the submission to the secretary of state" (sic).

Response S277.1: See Standard Response 29.

Comment S277.2: The Commenter wants all nonviolent offenders to be eligible for parole consideration and 50% credit earning. The Commenter also states that credit earning should apply retroactively.

Response S277.2: See Standard Responses 5, 14, and 15.

Commenter E38

Comment E38.1: The Commenter states that the proposed definition of "nonviolent offender" does not support the mandate that the Department's regulations "'protect and enhance public safety'" in that it "seems to allow an individual who was convicted of a 'violent' offense to be considered a 'nonviolent' offender for purposes of any remaining custody time, thereby making him eligible for parole."

Response E38.1: See Standard Responses 18 and 19.

Comment E38.2: The Commenter states that "victims of a crime must be given a significant role in parole proceedings, including having their voice heard with, at a minimum, a time frame for comment of no less than ninety days and they should have the ability to communicate in confidentiality with the hearing officer" (sic).

Response E38.2: See Standard Responses 21, 25, and 26.

Commenter E65

Comment E65.1: The Commenter does not like "list" of nonviolent offenders "for early release," stating that it is "beyond comprehension" that these offenders are nonviolent.

Response E65.1: See Standard Response 20.

Commenter E349 (eight signatures)

E349.1: The Commenter is the Secretary of the Board of Trustees of the Capistrano Unified School District; the comment consists of a resolution that went before the aforementioned Board of Trustees and was unanimously confirmed. The resolution states that "the early release of

Comment 3: Commenter states a violent versus nonviolent determination should be based on actual events (Johnson 2015) verses a category and District Attorney theory.

Response 3: The intent of the comment is unclear. However, to the extent the Commenter is suggesting that the department should determine whether an inmate's crime is "nonviolent" or "violent" by reviewing the underlying facts of the crime rather than the sentence imposed by the court, **See Standard Response 20.**

Comment 4: Commenter states for all people in prison; make 50% good time credits earnable and attainable via Education; i.e. Associates Degree, Bachelor's Degree, Vocation, Self Help, etc.; including Lifer Parole Eligibility Board Dates.

Response 4: See Standard Responses 5 and 29.

Comment 5: Mixed Sentences should be eligible for parole consideration after completing their violent sentence time.

Response 5: For the reasons stated in **Standard Response 19**, inmates who are concurrently sentenced to a violent felony and a nonviolent felony are excluded from the nonviolent offender parole process. Additionally, if a single sentencing court or separate sentencing courts impose one or more consecutive terms or enhancements that result in one aggregate term of incarceration and at least one term or enhancement is listed in subdivision (c) of section 667.5 of the Penal Code then all terms and enhancements shall be considered violent.

Commenter S1763

General Comment: Commenter provides personal feelings regarding her and others' efforts put into rehabilitation while incarcerated, and presents her issues below which she believes should be implemented for fairness.

Response: See Standard Response 29.

Comment S1763.1: Allow all who have been disciplinary free for five years to earn 50% off their time.

Response S202.2: See Standard Response 10. Proposed Section 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. The department has updated the Milestone Completion Credit Schedule (rev. 3/17) of programs that qualify for Milestone Completion Credit, which is incorporated into the new regulations at proposed Section 3043.3(d) by reference.

Proposed Section 3043.4(a) establishes uniform criteria for inmate participation and institutional approval of programs that qualify for Rehabilitative Achievement Credit. 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. 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.

The limitations placed on awards of Milestone Completion Credit and Rehabilitative Achievement Credit described above ensures the regulations protect and enhance public safety in accordance with the Act. Work assignments are important, but absent meeting the requirements outlined above, they are ineligible for credit earning at this time.

Commenter S203

Comment S203.1: Commenter states the proposed regulations impermissibly expand the definition of the term "nonviolent offense" to include inmates who have completed a term for a violent offense and are now serving a determinate term for a nonviolent offense. This "turns violent offenders into nonviolent" which circumvents the intent of Proposition 57.

Response S203.1: See Standard Response 19.

Comment S203.2: Commenter states the proposed regulations are inconsistent in the definitions of terms such as "primary offense," "full term," and "Nonviolent Parole Eligible Date." The definition of "full term" excludes sentencing credits, while the definition of "Nonviolent Parole

Commenter would like for there to be no limitations on the 180 days imposed under subsection 3492(b)(7) [now section 3492(c)(9) as modified on December 8, 2017]. Subsection 3072(c)(9) states that a nonviolent offender's Nonviolent Parole Eligible Date must fall at least 180 calendar days prior to his or her Earliest Possible Release Date and he or she must be at least 180 days from reaching his or her Earliest Possible Release Date in order to be eligible for referral to the board for parole consideration.

The rule addresses the fact that determinately sentenced inmates can be released from incarceration to community supervision by two means: (1) approval of release by the board or (2) an inmate reaches their Earliest Possible Release Date. If the inmate's Earliest Possible Release Date is imminent, a Public Safety Screening and Referral to the board is unnecessary since the inmate will soon parole without an action by the board. The Initial Statement of Reasons on page 18 says: "this subsection screens out any nonviolent offenders who are scheduled to be released on their Earliest Possible Release Date if the date falls within 180 days of their screening date or their Nonviolent Parole Eligible Date. Parole consideration (by the board) 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."

Commenter would also like to "include statements from Family, Friends, [and] Cellmates" in public safety screening and referral process under section 3492. The public safety screening and referral process in section 3492 is an objective process that protects public safety by screening out inmates who have demonstrated negative institutional behavior and ensures that the board focuses its resources on inmates who are more likely to be approved for release. For these reasons, the department declines to expand the public safety screening criteria to include statements from the inmate's family, friends, and cellmates.

Comment R179.13: Commenter states that Section 3493 "must be completed prior to the NPRD."

Response: Section 3493 gives the department calendar 60 days to release a nonviolent offender who has been approved for release by the board. Commenter suggests that inmates must be released before their "NPRD" (it is assumed the commenter is referring to an inmate's Nonviolent Parole Eligible Date or NPED). The time period for release suggested by the commenter is not feasible. The express terms of the Proposition state that an inmate will only be eligible for *parole consideration* "after *completing* the full term for his primary offense." The department has interpreted this to mean that the board may not consider an inmate for parole until he or she has completed serving his or her primary term. Under sections 3490(f) and 2449.1(f), an inmate's NPED is the date upon which a nonviolent offender has served the full

term of his or her primary offense. Commenter's suggestion would require the department to release an inmate, if approved for release, on the first day he or she is eligible for parole consideration, leaving no time for the department to conduct meaningful parole planning and provide statutorily-required notices to law enforcement and victims. In addition, inmates who are denied release will be reviewed again the following year, at which time their NPED will be a date in the past, making it impossible for the department to release them before their NPED if they are subsequently approved for release by the board. For these reasons, the department declines to amend section 3493 as suggested.

Comment R179.14: Regarding subsection 2449.1(b)(1), the commenter states, "a determinate violent term [unintelligible word] is serving a concurrent term, Article 32 says nothing about concurrent term so a correction of a consecutive term shall be the same." Commenter states that credit earning shall "include all the time whether convicted on a concurrent term or a consecutive done prior to [the department] receiving inmate shall be calculated as time impose completed."
Response: The underlying premise for the comment is no longer accurate. Inmates who have completed a determinate term of incarceration for a violent felony and who are currently serving a concurrent term for a nonviolent felony offense are no longer eligible for the nonviolent offender parole consideration process. Please **see Standard Response 19** for an explanation of the relevant modifications to the regulatory text made on December 8, 2017. As a result of the modifications, inmates whose current term of incarceration includes a term for a violent felony are excluded from the nonviolent offender parole consideration process, regardless of whether they also have concurrent or consecutive terms for nonviolent offenses or enhancements. Please **see Standard Response 20** for additional information concerning the definition of "nonviolent offender" for purposes of the nonviolent offender parole consideration process. For these reasons, and the reasons stated in the **Standard Responses 20 and 19,** inmates whose current term includes a term for a violent felony as defined in Penal Code section 667.5, subdivision (c), are excluded from the nonviolent offender parole consideration process.

With respect to the application of pre-sentence credits being "calculated as time imposed completed" the department believes the commenter is referring to the application of credits toward an inmate's nonviolent parole eligible date.

Sections 3490(f) and 2449.1(f) state that a nonviolent offender will be eligible for referral once he or she has served the full term of his or her primary offense, less pre-sentence credits applied by the sentencing court for time served under Penal Code section 2900.5 and any time spent in custody between sentencing and the date the inmate is received by the department. Thus, the intent of sections 3490(f) and 2449.1(f) is to ensure that pre-sentence credits for actual time served are applied when determining the date upon which an inmate will have served the full term of his or her primary offense.

Commenter A20:

Comment A20.1: Commenter explains how his girlfriend is an inmate housed in Chowchilla's woman facility, and states he was advised that good programming credit is only available to those in "special housing/the honor dorm". Commenter states no all inmates want to live there, or beds are limited. Commenter asserts good programming credit should be available to everyone.

Response: Pursuant to Government Code section 11346.8, subdivision (c), the department need not respond to a comment submitted during the public re-notice period if it does not specifically relate to the changes to the Addendum to the Initial Statement of Reasons or regulation text announced during the re-notice period.

Commenter A21:

Comment A21.1: Commenter agrees with the definition as listed in Section 3490, however, feels it should go further. Commenter states a person, who is serving a violent offense term with a nonviolent term, should be eligible for parole consideration.

Response: See Standard Response 19.

Commenter A22

Comment A22.1: Commenter states the regulations don't benefit all inmates, and that all inmates in California should receive 50% half time credits off their sentence, regardless if they have a determinate sentence or an indeterminate sentence. Commenter asserts "crime will always be around regardless, so why can't all inmates in California state prison at least get/receive "retroactive" time credits under Prop. 57 on their sentence starting when the voters voted Prop. 57 into law on November 8, 2016." Commenter states if credits are awarded retroactively, it will lower the prison population.

Response: Pursuant to Government Code section 11346.8, subdivision (c), the department need not respond to a comment submitted during the public re-notice period if it does not specifically relate to the changes to the Addendum to the Initial Statement of Reasons or regulation text announced during the re-notice period.

Commenter A23

Comment A23.2: Commenter states "I still don't think CDCD is doing enough in the "credit earning" category, for inmates who no longer pose a risk to public safety."

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

Case Name: **In re Mohammad Mohammad** Case No.: **S259999**

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 collecting and processing electronic and physical correspondence. 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. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On May 4, 2020, I electronically served the attached MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF HELEN H. HONG by transmitting a true copy via this Court's TrueFiling system and electronic mail. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on May 4, 2020, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Clerk of the Court
For: The Honorable William C. Ryan
Los Angeles County Superior Court
111 North Hill Street
Los Angeles, CA 90012
Served via U.S. Mail

California Appellate Project (LA)
capdocs@lacap.com
Served via email

Los Angeles County District Attorney's Office
truefiling@da.lacounty.org
Served via email

Court of Appeal
Second Appellate District-Div. 5
2d1.clerk5@jud.ca.gov
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 May 4, 2020, at San Diego, California.

STEPHEN MCGEE
Declarant

/s/ *Stephen McGee*
Signature

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **MOHAMMAD (MOHAMMAD) ON H.C.**
Case Number: **S259999**
Lower Court Case Number: **B295152**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **helen.hong@doj.ca.gov**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
MOTION	S259999 Motion for Judicial Notice

Service Recipients:

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Michael Satris Law Offices of Michael Satris 67413	satris@sbcglobal.net	e-Serve	5/4/2020 4:14:16 PM
Michael Satris Law Office of Michael Satris 67413	satrislaw.eservice@gmail.com	e-Serve	5/4/2020 4:14:16 PM
Helen Hong California Department of Justice, Office of the Solicitor General 235635	helen.hong@doj.ca.gov	e-Serve	5/4/2020 4:14:16 PM
Charles Chung Office of the Attorney General 248806	charles.chung@doj.ca.gov	e-Serve	5/4/2020 4:14:16 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

5/4/2020
Date

/s/Helen Hong
Signature

Hong, Helen (235635)
Last Name, First Name (PNum)

California Department of Justice, Office of the Solicitor General

Law Firm