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*In the*  
**Supreme Court**  
*of the*  
**State of California**

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IN RE ROY BUTLER ON HABEAS CORPUS

SUPREME COURT  
**FILED**

MAR 21 2017

Jorge Navarrete Clerk

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Deputy

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CALIFORNIA COURT OF APPEAL · FIRST APPELLATE DISTRICT · NO. A139411  
SUPERIOR COURT OF ALAMEDA · HONORABLE LARRY GOODMAN · NO. 91694B

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**MOTION FOR JUDICIAL NOTICE**

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DECLARATION OF SERVICE

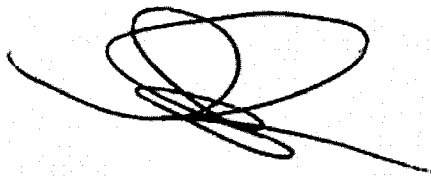
**MOTION FOR JUDICIAL NOTICE**

Pursuant to California Evidence Code § 459, along with California Rules of Court 8.252(a) and 8.520(g), Roy Butler moves the Court for judicial notice of the California Adult Authority Chairman's Directive Nos. 75/30 and 75/20. This motion is based on the attached Memorandum of Points and Authorities and Declaration of Andrea Nill Sanchez.

Respectfully submitted,

Dated: March 20, 2017

KEKER, VAN NEST & PETERS LLP



By: \_\_\_\_\_

SHARIF E. JACOB

Attorneys for

ROY BUTLER

By Appointment of the Court of

Appeal of the First Appellate

District

## MEMORANDUM OF POINTS AND AUTHORITIES

California Evidence Code Sections 459(a) and 452(c) provide in pertinent part that, on motion of a party, the appellate court may take judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” Roy Butler seeks judicial notice of Chairman’s Directive Nos. 75/30 and 75/20, both of which were “[o]fficial acts of the . . . executive . . . department[]” of the State of California when they issued. *See Associated Builders & Contractors, Inc. v. San Francisco Airports Com.*, 21 Cal. 4th 352, 374 n.4 (1999) (holding that the proceedings of executive agencies are the proper subjects of judicial notice). The Chairman’s Directives are attached as Exhibits A and B to the accompanying Declaration of Andrea Nill Sanchez.

Chairman’s Directive No. 75/30<sup>1</sup> represents the California Adult Authority’s remedial response to the due process and disproportionality challenges in *In re Rodriguez*, 14 Cal. 3d 639, 642 (1975). *See Cassou & Taugher, Determinate Sentencing in California: The New Numbers Game*,

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<sup>1</sup> Directive No. 75/30 amends Directive No. 75/20. One Directive cannot be understood fully and completely without the historical context provided by the other. Although Directive 75/20, which addresses parole release criteria, was invalidated by the California Supreme Court in *In re Stanley*, 54 Cal. App. 3d 1030, 1040-41 (1976), because it failed to provide for individualized consideration of parole potential based on post-incarceration behavior, Directive 75/30, which deals separately with term-setting, was left undisturbed in *In re Stanley*.

9 Pacific L.J. 5, 13-16 (1978) (discussing origin and promulgation of Chairman's Directives 75/20 and 75/30); *see also In re Stanley*, 54 Cal. App. 3d 1034-1036 (same). Mr. Butler raised a *Rodriguez*-type challenge in Case No. A139411, which is currently the subject of this appeal.

Pursuant to California Rules of Court 8.252(a)(2)(B) and 8.520(g), Mr. Butler hereby informs the Court that the Chairman's Directives were not presented to the trial court. Mr. Butler came into possession of the Directives by virtue of the December 13, 2013 motion of Rodolfo Gonzalez.

However, the Chairman's Directives *were* presented to the Court of Appeal. On January 8, 2014, Mr. Butler sought judicial notice of both documents. *See* Pet'r's Mot. for Judicial Notice, Jan. 8, 2014. The Court of Appeal granted Mr. Butler's motion on February 20, 2014. *See* Order Granting Pet'r's Request for Judicial Notice, Feb. 20, 2014.

Chairman's Directive No. 75/30 is relevant here because any analysis of the scope of the stipulated Settlement Order in Case No. A139411 should be aware not just of *Rodriguez*, but of the Adult Authority's policy response to *Rodriguez*—which is embodied in Chairman's Directive 75/30. The Court of Appeal's opinion denying the Board of Parole Hearings' motion to modify heavily relies on *Rodriguez* as a legal authority. *See* Order Denying Resp't's Mot. to Modify Order Regarding Stip. Settlement ("Mot. to Modify Order") at 8.

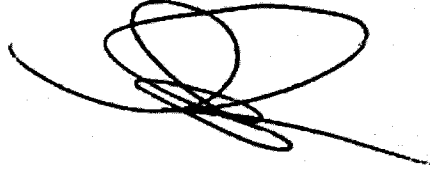
Pursuant to California Rule of Court 8.252(a)(2)(D), Mr. Butler hereby informs the Court that the matters to be noticed do not “relate[] to proceedings occurring after the order or judgment that is the subject of the appeal.” Chairmen’s Directive Nos. 75/30 and 75/20 were issued on September 2, 1975 and April 15, 1975, respectively.

Accordingly, the Court should grant this motion for judicial notice.

Respectfully submitted,

Dated: March 20, 2017

KEKER. VAN NEST & PETERS LLP



By: \_\_\_\_\_

SHARIF E. JACOB

Attorneys for

ROY BUTLER

By Appointment of the Court of  
Appeal of the First Appellate  
District

## DECLARATION OF ANDREA NILL SANCHEZ

I, ANDREA NILL SANCHEZ, declare and state as follows:

1. I am duly licensed to practice law in the State of California and am an attorney with the law firm of Keker, Van Nest & Peters LLP. I have been appointed to represent Roy Butler on this matter.

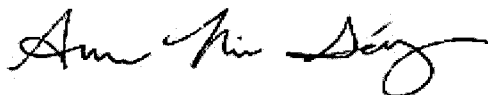
2. I am familiar with the facts stated herein, and if called to testify as a witness thereto, could do so competently under oath.

3. Attached as Exhibit A is a true and correct copy of a document entitled Chairman's Directive No. 75/30, dated September 2, 1975.

4. Attached as Exhibit B is a true and correct copy of a document entitled Chairman's Directive No. 75/20, dated April 15, 1975.

5. I notified counsel for the Board of Parole Hearings ("Board"), Aimee Feinberg, of Mr. Butler's intent to seek judicial notice of the Chairman's Directives. She informed me that the Board will not take a position on Mr. Butler's request until it reviews the motion for judicial notice.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on March 20, 2017, at San Francisco, California.



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ANDREA NILL SANCHEZ

# **EXHIBIT A**

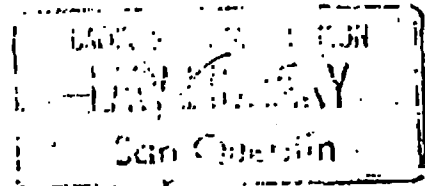


State of California  
CALIFORNIA ADULT AUTHORITY  
Sacramento 95814

September 2, 1975

CHAIRMAN'S DIRECTIVE NO. 75/30

SUBJECT: Implementation of In re Rodriguez



PURPOSE:

This Directive establishes procedures designed to bring Adult Authority term setting practices into compliance with recent changes in the law. Guidelines describing "normal" ranges for sentences are provided to assist in assuring equal treatment in sentencing practices, to allow articulation of the important elements of a particular sentence and to assure that reasons are given for sentences of unusual severity or lenience.

This Directive establishes distinct procedures for term fixing. Parole granting procedures are unaffected by this Directive, and continue to be covered by Chairman's Directive 75/20. The two procedures are different in significant respects and should not be confused.

SUBJECT MATTER:

I. General

A primary term will be fixed for each offense in conformance with these procedures and guidelines. Once fixed, the primary term for that offense cannot be refixed upward. A discharge date earlier than the primary term may legally be fixed, but that discharge date may be refixed upward to the primary term if the inmate or parolee engages in conduct which affords cause to believe he cannot or will not conform to the conditions of parole, or would pose a danger to society if free.

In the vast majority of cases, the inmate will serve a portion of his primary term inside prison and a portion of it on parole. He will ordinarily be discharged earlier than his primary term, since his case is reviewed frequently after release on parole under Adult Authority Resolution 275.

As a matter of practice, no discharge date earlier than the primary term will ordinarily be fixed except under Resolution 275, unless the inmate already has a discharge date established or should be immediately discharged.

## II. Inmate Rights at Term Fixing Hearing

Each inmate will have the same rights at his term fixing hearing as he has at his parole consideration hearing.

## III. Scheduling Term Fixing Hearings

Terms will be fixed in conjunction with regularly scheduled parole consideration or parole violation hearings. Special panels of hearing officers will be hired to hear additional cases, but no inmate will have his regularly scheduled Board appearance advanced without special arrangements between the Department and the Adult Authority.

## IV. Information Considered at Term Fixing

### A. General

#### 1. Information which may be considered.

Information which indicates the inmate's personal culpability in the offense for which he was sentenced to prison, his past history and his individual personality may be considered.

#### 2. Information which may not be considered.

Information concerning conduct subsequent to the offense will not be considered. For example, information concerning subsequent parole violations, disciplinaries, institutional conduct and present psychiatric condition will not be considered.

### B. Documents Considered

The following sources of information from the inmate's central file will be considered as appropriate in each case:

1. The Cumulative Case Summary, excluding any information on institutional behavior, disciplinaries and other conduct subsequent to the offense.
2. The Probation Officer's Report. This document will be relied on to resolve any disputes over the facts of the crime which cannot be settled otherwise.
3. Rap Sheet, excluding offenses subsequent to the commitment offense.
4. Arrest and Crime Reports.

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5. Legal Documents, such as the abstract of judgment, the judgment, and transcript at the time of sentencing.
  6. Comments concerning the inmate's personal culpability submitted under Penal Code section 1203.1, 3022 and 3042.

Any other documents which are considered will be specifically listed on CDC Form 279C. Documents considered in term fixing need not be physically separated from the remainder of the file.

C. Inmate's Version

The facts of the crime should be discussed with the inmate to verify their accuracy and to determine the extent of his personal culpability.

Written materials submitted by him relating to his personal culpability in the crime should be considered.

D. Postponements

Any time insufficient facts are available to determine the extent of the inmate's culpability, the hearing should be postponed to the next calendar. Institutional staff should be specifically instructed to obtain the necessary information. No primary term should be set until sufficient information is obtained on all counts of a commitment.

V. Term Fixing

A. Fix the Base Term

1. Evaluate the Inmate's Culpability.

The facts and circumstances surrounding each offense should be evaluated to determine the extent of the individual's culpability for his crime, based on the listed general and specific criteria.

2. General Criteria - Seriousness of the Offense.

The most important factor to be considered is the seriousness of the inmate's participation in the crime. General factors to be considered include:

- a. The seriousness or triviality of the offense itself in terms of the potential harm posed by this individual's offense to other individuals or society.

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- b. The presence or absence of violence, including the seriousness of any injuries actually inflicted; the number of victims actually injured, the degree to which the individual actually participated in inflicting injury or assisting to inflict injury, and the realistic potential for serious violence.
- c. The possession or use of weapons, including the type of weapon, and whether the weapon was merely available, was brandished, or whether it was actually used to inflict injury.
- d. The extent of damage or loss to property.
- e. The sophistication or professionalism with which the crime was carried out.
- f. The quantities of contraband possessed or sold.

3. General Criteria - Characteristics of the Offender.

Also to be considered are the particular characteristics of the offender, including:

- a. Age.
- b. Defective reasoning ability. Whether the crime was committed by an individual possessing less than full mental faculties, including whether the condition is (1) long-standing, such as low intelligence, low education, serious psychiatric problems; (2) temporarily induced, such as rage, emotion, or a brief psychotic episode, or (3) temporarily self-induced, such as conditions resulting from use of drugs or alcohol.
- c. Degree of premeditation of the crime.

4. Specific Criteria.

Various specific criteria are listed in the Guidelines.

5. Select the Typical or Aggravated Range.

Using the general and specific criteria, the typical or aggravated range should be selected. If the aggravated range is chosen, the specific factual reasons for choosing that range must be listed in same order on CDC Form 279C. A choice of the aggravated range may be based only on the seriousness of the offense in question; it must be an aggravated crime of that type. A man's criminal history or pattern will not affect the range chosen.

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6. Establish the Base Term

Using the general and specific criteria, the base term should be selected from the suggested range. Panels are free to select a term above or below the suggested range as the individual facts and circumstances indicate. Any time a base term is established outside the suggested range, the specific factual reasons for going outside the range must be listed in numeric order on CDC Form 279C.

B. Adjust the Base Term

Once the base term is established, it should be adjusted, using the suggested adjustment ranges, for other serious criminal behavior. The other criminal behavior should be evaluated for its seriousness under the general and specific criteria and characterized as less serious or more serious.

## 1. Other Crimes Part of Same Commitment.

If the inmate has been sentenced to prison on several offenses as part of the same commitment, any other prior offense will be used to adjust the base term from the adjustment ranges.

If the inmate received several commitments to prison, no adjustment for later commitments will be made. Earlier commitments may be used for adjustment as a prior prison commitment (see below).

## 2. Prior Prison Commitments.

If the inmate was previously sentenced to prison, the base term should be adjusted, using the suggested adjustment ranges, for each previous commitment to prison. If the inmate was released from prison on the prior commitment, and was not again received back in prison for a period of five years from the date of actual release, that commitment will not be used to adjust the base term unless the specific reasons for using it are listed in numerical order on CDC Form 279C.

Prior prison commitments include any conviction in a state or federal court which was not subsequently reversed by an appeals court, and which resulted in the individual actually being committed to any state or federal prison. Prior prison commitments include previous commitments to the Department, whether or not the inmate was ever released on that commitment.

A previous single commitment to prison for several crimes should be treated as a single prior prison commitment, although a commitment for multiple offenses may warrant characterizing that commitment as more serious.

When prior prison commitments are used to extend the base term, those specific commitments and dates should be noted on CDC Form 279C.

3. Adjustments Outside the Suggested Adjustment Ranges.

Each panel is free to adjust the base term for a period above or below the suggested adjustment range. If the base term is adjusted for a period outside the suggested adjustment range, the specific reasons for going outside the range must be listed in numeric order on CDC Form 279C.

4. Other Crimes Not Resulting in a Prison Commitment.

Other crimes which were committed by an inmate prior to commitment to prison will not result in the addition of an increment to the base term from the adjustment ranges, but may be considered in establishing the base term. In general, only the most serious crimes (those resulting in commitment to prison) are used to add an increment to the base term, and those less serious crimes (those resulting in a local sentence) are considered as part of the individual's pattern of criminality.

C. Fix the Primary Term.

The adjustments will be added to the base term to establish the primary term. A primary term will be fixed for each offense. No primary term will be fixed above 25 years unless the specific factual reasons for going above 25 years are listed in numeric order on CDC Form 279C.

D. Checking the Minimum and Maximum Terms.

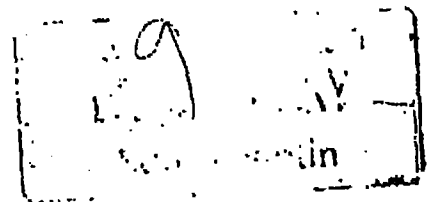
Each primary term established will be checked to assure that it is being fixed within the minimum and maximum term for that offense.

E. Documentation

Records Officers will complete the following portions of CDC Form 279C:

1. Offense, minimum and maximum.
2. Case number and count number.

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3. Discharge date. No discharge date will be calculated for the first of several consecutive offenses; only the effective discharge date for the series will be noted.
4. The panel hearing the case.
5. The name, number, institution, and calendar and date of hearing. The panel hearing the case will complete the remainder of the information.

F. Immediate Discharge Cases.

Prior to Rodriguez, the Adult Authority could refix terms based on events subsequent to the commitment offense, such as for new crimes, disciplinaries and parole violations. Some inmates are presently serving terms disproportionate to the commitment offense, based on their subsequent history. These inmates will be entitled to discharge under the new procedures.

1. Non-dangerous Inmates

If the panel interviewing the inmate determines that he will be entitled to discharge under these procedures within 15 days and that he poses no substantial danger to the public, a discharge date should be set as soon as possible, allowing institutional staff sufficient time to arrange the discharge.

2. Dangerous Inmates

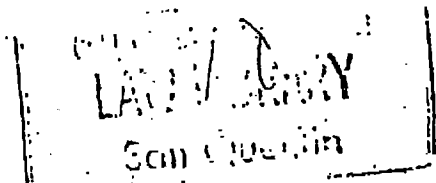
If the panel interviewing the inmate feels that the inmate apparently will be entitled to discharge under these procedures within 15 days, but feels that he still poses a substantial danger to the public if released, the reasons for the danger should be noted on CDC Form 279C and the case should immediately be referred to the Review Committee for decision.

G. Time Credits

Records officers will deduct all time credits legally available for each offense from the primary term established for that offense.

In some cases, the amount of time credits may be so large (such as with Department of Health, CRC and probation revoked time credits) that when deducted from the primary terms established a completely inadequate term of jurisdiction remains to carry out the intent of the commitment to prison. In those cases, an amount sufficient to allow

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an adequate period of jurisdiction should be added to the primary term which would otherwise be established.

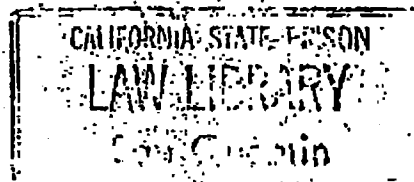
For example, a man committed to the Department of Health as an MDSO prior to commitment to prison for the same offense may ordinarily be entitled to a primary term of 6 years. However, if he spent 7 years at Atascadero prior to commitment to prison, an additional period should be added to the primary term to allow sufficient jurisdiction. In this case, a primary term of eleven years may be necessary.

The amount added simply to have adequate jurisdiction, and the reason for adding the time should be noted on the CDC Form 279C.

EFFECTIVE:

These procedures become effective September 2, 1975, and apply to any inmate heard or reheard personally for any reason on and after that date.

*R. K. Procunier*  
R. K. PROCUNIER  
Adult Authority Chairman



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# **EXHIBIT B**

April 15, 1975

CHAIRMAN'S DIRECTIVE NO. 75/20

SUBJECT: Parole Consideration Hearing Procedures

PURPOSE: To establish procedures to apply to all parole consideration hearings.

A. Establishing Parole and Discharge Dates

Every effort will be made to establish parole and discharge dates the first time an inmate appears for his regularly scheduled parole consideration hearing. These dates will be computed as follows:

1. Evaluate the Information

a. Information Considered

Information which may be considered includes but is not limited to: the contents of the central inmate file, the preboard report, the cumulative case summary, comments received under Penal Code sections 1203.01, 3022 and 3042, any written material submitted by the inmate, the amount of time in custody prior to reception by the Department and information gained as a result of the personal interview with the inmate.

Any time a hearing officer reviews confidential case records in establishing, denying, revoking or rescinding parole or discharge dates, a notation on CDC Form 279 or 266E will be made stating whether the decision was based on the confidential records, and if so, the specific documents will be identified (See Chairman's Directive 75/11).

b. Postponements

If the information at the hearing is insufficient to make a decision, staff should be instructed to obtain the necessary information, and the case should be postponed until the documentation is complete, and the reason for the postponement will be noted on CDC Form 279. A case will not be postponed longer than 90 days.

c. Further Diagnosis

If further diagnosis of an inmate is necessary, such as SAU or Category "D" evaluation, parole should be denied. The diagnostic program and the questions to be resolved will be specified on CDC Form 279, along with instructions to staff to place the case back on a hearing calendar as soon as possible after completion of the study but not later than one year.

If either member of the panel ordering diagnosis wishes to be on the panel that rehears the case, an instruction will be so noted on CDC Form 279.

The reasons for the denial of parole must be noted on CDC Form 279.

## 2. Set the Base Period of Confinement

### a. Select base offense

The base period of confinement should be established for the commitment offense; if there are multiple commitment offenses, the basic range used should be that for the most serious offense.

The offense used as the base offense should be noted on the CDC Form 279; if the inmate is committed for multiple offenses, the base offense used should be listed and the other offenses listed as concurrent or consecutive offenses.

If no suggested ranges have been established for the crime in question, every effort will be made to set a parole release date for the individual. An attempt will be made to set time comparable to a similar crime. Each of these cases will be referred to the Vice-Chairman by letter, with a copy of the CDC Form 279 noting the reasons for the decision made.

Parole violators returned to finish their term who did not have parole and discharge dates established at the parole revocation hearing will not have a base offense specified, but the parole violation (TFT) box on CDC Form 279 will be marked.

### b. Select typical or aggravated range

If there are typical and aggravated ranges for the commitment offense, a decision must be made whether the offense in question falls within the typical or aggravated range. This decision will be made by evaluating the relative seriousness of the offense for which the person was committed to prison. This evaluation should be made from the summary of the probation report describing the crime, from the individual's version, from the arrest report and any other information describing the crime. In case of a conflict, the probation report's description of the crime will be controlling. Factors to be considered in deciding whether the offense is typical or aggravated include:

-the seriousness of any personal injury to victims of the crime

-the number of victims of the crime

-the extent to which the individual was involved in inflicting personal injury

-the extent of damage to or loss of property

-the professionalism with which the crime was carried out

-possession or use of weapons

-quantities of contraband possessed or sold.

The same factors apply in deciding whether a parole violation is more or less serious.

c. Establish base period of confinement

Once the basic range, either the typical or aggravated range, has been chosen, the base period of confinement should be established within that range, unless unusual factors warrant a period of confinement below or above the range.

The primary factor to be considered in setting the base period of confinement is the seriousness of the commitment offense (see factors listed in step 2b above). Other factors to be considered in setting the period of confinement within the range, or in unusual cases outside the range, include but are not limited to:

-the individual's age

-the individual's pattern of criminality, including felony convictions not otherwise used.

-whether the individual is a professional, systematic criminal or an amateur, occasional offender.

-serious or major disciplinary offenses.

Factors which may justify establishing a base period of confinement outside the suggested ranges include:

-a lengthy period of incarceration prior to actual reception by the Department, such as incarceration on a prior commitment, which was reversed on appeal, retried and resulted in recommitment to prison; time served pursuant to mentally disordered sex offender proceedings; or incarceration prior to commitment for diagnosis under Penal Code section 1203.03.

-unusual brutality during commission of the crime.

-relatively minor participation in the crime.

-a recent serious or major disciplinary offense requiring a "disciplinary free" period of time.

### 3. Adjust the Base Period of Confinement

Once the base period of confinement has been established, it may be extended for other felony convictions, and it may be reduced for a commitment under Penal Code section 1202b.

The series of suggested ranges for prior felony convictions is divided into three groups: (a) prior felony convictions which resulted in a prison term (prior prison terms); (b) other felony convictions for which the individual was sentenced on this commitment along with the base offense (concurrent and consecutive sentences); and (c) other felony convictions not part of the present sentence, which did not result in a prison term, but which were pled and proven in court (prior felony convictions pled and proven). Other felony convictions not resulting in prison terms, not part of the present commitment and which were not pled and proven in court should be considered as part of the individual's pattern of criminality in establishing the base period of confinement.

These categories are mutually exclusive; care must be taken to assure that the same felony conviction does not result in additional time under more than one category. In complicated cases, the commitment papers should be examined and discussed with the inmate and staff to assure that the proper ranges are used.

#### a. Prior prison terms

The period of confinement may be extended for prior prison terms.

Each prior offense for which a prison term was served should be evaluated to determine whether it warrants extending the base period of confinement. Prior convictions which are old, and are followed by a subsequent period of freedom which is relatively crime free may be disregarded and not used to extend the base period of confinement. If an offense is to be used to adjust the base period of confinement, it should be evaluated in terms of its seriousness and the additional period of confinement should be added to the base period.

The same procedure should be followed for two or more prior terms.

Prior prison terms include any conviction in a state or federal court which was not subsequently reversed by an appeals court, and which resulted in the individual actually serving a prison term in any state or federal prison. Prior prison terms include previous commitments to the Department where the inmate was released on parole and returned as a parole violator with a new term (WNT).

Parole violators returned WNT whose new term is concurrent to the previous term will have an amount chosen from the prior prison term suggested ranges added to the base period of confinement; parole violators returned WNT whose new term is consecutive to the previous term will have an amount chosen from the suggested consecutive range added to the base period of confinement.

A previous single commitment to prison for several crimes should be treated as a single prison term.

The additional period of confinement should be established within the suggested ranges unless unusual factors justify setting it outside these ranges.

When prior convictions are used to extend the base period of confinement, those specific offenses and dates should be noted on CDC Form 279.

The above extensions (for prior prison terms) do not apply to concurrent or consecutive sentences which are part of the present commitment, or crimes for which the inmate was not previously committed to prison, or a prior conviction which was pled and proven in court, but did not result in commitment to prison. The extensions for these felonies are below.

b. Concurrent and consecutive sentences

If the inmate has received concurrent or consecutive sentences as part of the present commitment, the base period of confinement should be extended for a period within the suggested ranges commensurate with the seriousness of the concurrent or consecutive sentences, unless unusual factors justify setting it outside the suggested ranges.

The additional time should be specified on CDC Form 279.

These concurrent and consecutive ranges apply only to offenses other than the base offense which are part of the present commitment to prison, and include commitments to prison for offenses committed prior to reception at CDC, but which are not received from the court until after the inmate is received.

c. Prior Felony Convictions Pled and Proven in Court

If prior felony convictions for which the individual was not committed to state prison are pled and proven in court, the inmate may serve an additional period of confinement.

Prior felony convictions which did not result in a prison term and were not pled and proven in court are part of the individual's pattern of criminality, and may be considered in setting the time within the suggested base ranges.

d. Youthful Offenders (Penal Code section 1202b)

Individuals whose minimum term has been reduced to six months under Penal Code section 1202b may have their period of confinement reduced.

e. Dismissed Charges

Counts or charges dismissed for any reason in court, whether or not part of a plea bargain, will not be considered in selecting the suggested base ranges. However, all the circumstances surrounding the offense for which the inmate was committed to prison will be considered in establishing the base period of confinement.

f. WEAPONS

If the use or possession of weapons is pled and proven in court under Penal Code sections 12022 or 12022.5, an additional period of confinement should be added to the base period of confinement from the range suggested for consecutive sentences.

Weapons which are pled and proven under Penal Code section 3024 should be treated as part of the individual's overall pattern of criminality.

4. Set the Parole Release Date

The actual period of confinement as determined by the panel members should be added to the date the inmate was most recently received at the Department of Corrections Reception Center. For new commitments, this date is the date of the initial arrival at the Reception Center; for parolees, this date is the date the parolee was again received at the Reception Center or Parole Violator Processing Unit.

The date additional commitments were received from the court for offenses committed prior to reception should not be used. For the proper date to use for offenses committed while in prison, see section D below.

The parole date must always be set beyond the minimum eligible parole date.

5. Parole Discharge Date

Normally the period to be served under parole supervision should be three years. This parole period will be added to the period of confinement to set the term. If a period other than three years is chosen, the reasons for the decision must be listed on CDC Form 279. The discharge date must always be set beyond the minimum term.

The discharge date must be entered on CDC Form 279.

6. Fixing Sentences Outside the Suggested Ranges

Panels are free to set time above or below the suggested ranges as the circumstances of each individual case may require.

7. Documentation

Any time the figure used for setting, extending, or reducing the period of confinement is outside the suggested ranges, the reasons for going outside the range should be noted on the CDC Form 279.

Figures set within the ranges need not be specifically justified. No reason for choosing a typical or aggravated range need be given.

8. Checking Minimum Eligible Parole Date, Minimum Term and Maximum Term

Care must be taken to assure that no parole release date is set at less than the minimum eligible parole date, and that no discharge date is set at less than the statutory minimum or more than the statutory maximum terms.

In cases of multiple commitments to prison where one commitment discharges at its statutory maximum before the discharge date fixed by the panel, records officers will automatically discharge that term.

9. Informing the Inmate

The inmate should be informed of his parole and discharge dates as soon as possible, preferably by the panel making the decision. To avoid correctable errors, the method of arriving at the dates should be reviewed with the inmate.

B. Time Credits

All records officers will automatically deduct time credit from the minimum eligible parole date and the statutory minimum and maximum terms. No time will be deducted by records officers from the parole release date or the discharge date as fixed by the board.



Each panel will consider time in custody prior to reception by the department in setting parole release and discharge dates.

C. "Good Time"

The period of confinement established assumes that the inmate will maintain a disciplinary free record in the institution, and that he will perform satisfactorily any work assignment he may be given in the institution.

D. Subsequent Offenses

Inmates who commit serious offenses while in prison may serve additional time in prison for these offenses.

1. Court Convictions

Court convictions for offenses which are committed while in prison which are less serious than the commitment offense will result in the addition to the period of confinement of an amount of time from the range suggested for subsequent court convictions.

Court convictions for offenses which are committed while in prison which are more serious than the commitment offense will require the recalculation of the period of confinement. The new, more serious commitment should be used as the base offense, and the original commitment results in additional time under the ranges suggested for concurrent or consecutive commitments, as appropriate. The most recent reception date is then the date the inmate was received on the new commitment.

2. Disciplinary Offenses

Inmates who are found guilty of a serious or major disciplinary offense may receive a rescission hearing at which the parole and discharge dates may be extended for a period commensurate with the new offense.

Disciplinary charges which are dismissed or result in a finding of not guilty will not be considered as a basis for rescission.

3. Mental Deterioration

Inmates whose mental condition deteriorates to the extent that release to the community would be unsafe should be calendared for a rescission hearing under existing procedures.

#### E. Parole Violators

Parole violators returned to finish term (TFT) should have the additional period of confinement to be served established at the revocation hearing.

Parolees returned with very serious violations may have their terms refixed at the indeterminate maximum until evidence of a change for the better has been demonstrated.

Parolees returned with a new term (WNT) will be handled as new commitments with prior prison terms.

#### F. Indeterminate Maximums

Inmates with significant psychiatric problems, particularly complex cases, or multiple termers and parole violators whose criminal behavior has been so persistent that they need to demonstrate substantial evidence of change for the better before they can be released, will not have their terms fixed. Instead, the terms will continue to run at the indeterminate maximum. The panel will calendar the inmate for another board appearance in one, two or three years.

#### G. Review of Difficult Cases

If a panel is unable to make a decision in a particular case because of a difference of opinion, the case should be referred to the Review Committee. The panel submitting the case will note on CDC Form 279 the reasons the case is being submitted and specify to field or institutional staff which material should be included for the Review Committee.

#### H. Appeal

A decision to deny parole or to fix parole and discharge dates may be appealed under Chairman's Directive 75/20.

#### I. Subsequent Review

A decision to set parole and discharge dates may be subsequently reviewed if the inmate wishes.

If the period of time between the date of the hearing at which the sentence was fixed and the parole date established is 23 months or less, the inmate may, at his option, request that his correctional counselor arrange for a review hearing at 2/3 of that period. This request must be made in writing at least 8 weeks before the 2/3 review date under procedures established by the Department.

If the period of time between the date of the hearing at which the sentence was fixed and the parole date established is 24 months or more, the inmate will be heard at 2/3 of that period. The inmate may make a written waiver of this hearing.

At a review hearing, it is the responsibility of the inmate to demonstrate unusual rehabilitation.

The Adult Authority expects that each inmate will take advantage of program opportunities offered by the Department while in prison. A clean disciplinary record and average participation in rehabilitative programs is anticipated in the setting of parole and discharge dates.

Any inmate who participates to an unusual degree in rehabilitative programs and can demonstrate his rehabilitation will have the opportunity to do so at his review hearing.

The failure to participate in rehabilitative programs will not cause a parole date to be extended.


① An inmate who wishes to have his case reviewed will be responsible for clearly stating in concise, numbered paragraphs evidence demonstrating rehabilitation, including any documentation he feels is important. These materials must be submitted to his correctional counselor at least 8 weeks prior to the 2/3 review date.

The correctional counselor will review the materials and prepare a brief summary of the activities of the inmate since his last hearing, comment as necessary on the material submitted by the inmate and evaluate the inmate's progress toward rehabilitation.

When possible, the correctional counselor is encouraged to attend the hearing.

② At any time, institutional staff may request that an inmate be re-heard under the procedures outlined in Adult Authority Policy Statement 1 and Resolution 184.

EFFECTIVE: Immediately.

  
R. K. PROGNIER  
Adult Authority Chairman

GUIDELINES  
ENCL. 104.01 RANGES

	PAROLE TYP	(MSE) AGG	TERM (YRS) TYP	(YRS) AGG
<b>1. HOMICIDE</b>				
Murder 1st (187, Life)	(96-	-56)	(8-10)	(11-14)
Murder 2nd (187, 5-Life)	(42-	-55)	(6-8)	(9-11)
M/S (Vol) (192.1, 5 mo.-15)	(35-	-46)	(3-6)	(7-9)
M/S (Invol) (192.2, 6 mo.-15)	(24-	-42)	(2-3)	(4-5)
M/S (By Auto) (192.3, 6 mo.-5)	(18-	-24)		

Specific Criteria for Aggravated Brackets

1) multiple victims. 2) vicious in nature where suffering is deliberately inflicted.

**2. VIOLENCE AGAINST A PERSON**

MORE SERIOUS

Administer Poison (226, 3 yr. 4 mo., 10-Life)	(40-	)	(10-11)	(12-14)
Pose as Kidnapper (220, 20 mo., 5-Life)			(8-10)	(11-14)
Assault on Police Officer/Fireman by Ex-Felon (245(b), 20 mo., 5-Life)	(	)	(8-10)	(11-14)
Hostage (4503, 20 mo., 5-Life)			(8-10)	(11-14)

SERIOUS . . . . . (24-32) (30-38) ( 6-8 ) ( 9-11 )

Kidnapping (207, 1 yr., 1 yr.-25)  
 Assault w/Intent to Commit Rape, etc. (220, 1 yr., 1 yr.-20)  
 Assault w/Deadly Weapon (245(a), 0 mo., 0 mo.-Life)  
 ADW on Police Officer/Fireman (245(b), 0 mo., 0 mo.-Life)  
 Child Stealing (278, 6 mo., 6 mo.-20)  
 Assault by Prisoner Serving Less than Life (4501, 1 yr., 5-Life)

SUGGESTED BASE RANGES

(Revised 4-18-75)

All references are to the Penal Code unless otherwise noted.

	TYPICAL	AGGRAVATED
<p>1st (187)                      assault by life prisoner -500                      assault for robbery or ransom w/out bodily harm (209)</p>	<p>[96-156]                      9 13</p>	
<p>2nd (187)                      assault w/intent to murder (217)</p>	[42-66]	
<p>MURDER (192)                      voluntary                      involuntary                      infanticide</p>	<p>[36-46]                      [24-32]                      [18-24]</p>	
<p>ROBBERY 1st (211)</p>	[30-38]	[35-44]
<p>ROBBERY 2nd (211)                      attempted robbery (664)</p>	[22-30]	[25-36]
<p>DOMESTIC VIOLENCE (457a-458)</p>	[18-30]	[25-42]
<p>CHILD ABUSE (245a), assault w/dw on Peace Officer (245b), battery on Peace Officer (242), assault with caustic chemicals (243), mayhem (204), discharge firearm at inhabited dwelling (246), assault by prisoner (247), false imprisonment (263), inflict traumatic injury on wife or child (273d), cruelty toward child (273a), kidnapping (207), child stealing (27c).</p>	[24-32]	[35-38]
<p>BURGLARY 1st (459)</p>	[24-30]	[25-34]
<p>BURGLARY 2nd (459)                      attempted burglary 1st (664), attempt. burg. 2nd (664)</p>	[16-22]	[20-29]
<p>IDENTIFICATION (473), fictitious checks (476), fraud-checks no funds (476a), Forg. document-seals (472), counterfeit dies &amp; plates (480), forg. tel. message (474), fraud. poss. of commercial paper (475, 475a), attempted forgery (664).</p>	[16-22]	[20-28]
<p>TRAVEL (489)                      embezzlement (484), Grand Theft Person (487).</p>	[22-28]	[25-34]
<p>SEXUAL CRIMES                      rape (261), assault with rape (220), attempted rape (664), rape w/bodily harm (264), seduce for prostitution (266), solicit for prostitution (267), pandering (266i), pimping (266j), lewd acts on child under 14 (288), crime against nature-sodomy (286), sex perversion (288a), incest (285), annoy child or loiter around school w/like prior (647a), indecent exposure w/like prior (314).</p>	[30-60]	

CONTROLLED SUBSTANCES (Heroin; Opium and its Derivatives; Hallucinogens)	[25-36]	
POSSESSION H&S 11350 (former 11500, 11712)		
POSSESSION FOR SALE H&S 11351 (former 11500.5)	[34-42]	
POSSESSION H&S 11352-11354 (former 11501, 11713; 11502; 11714.1)	[33-48]	
CONTROLLED SUBSTANCES (Marijuana and Dangerous Drugs)		
POSSESSION H&S 11357-11358; 11377 (former 11530; 11530.1; 11710)	[15-32]	
POSSESSION FOR SALE H&S 11359; 11378 (former 11530.5; 11711)	[28-38]	
POSSESSION H&S 11360-11361; 11379-50 (former 11531, 11713; 11532, 11714; 11912; 11913)	[36-44]	
PERJURY (68, 92, 138) PERJURY (125)	[12-24]	
POSSESSION WITH WEAPON (4502)	[9-18]	[18-36]
ESCAPE FROM COUNTY JAIL escapes or escapes which are more serious than the commitment offense)	[6-18]	[16-22]
POSSESSION OF WEAPON (12021) Sale or Mfg. Weapon (12020)	[9-18] [9-18]	[18-30] [18-36]
PAROLE VIOLATION	[0-9]	[9-18]
CONFINEMENT (Treat under consecutive sentence ranges)		
CONSPIRACY (Treat the same as the crime itself)		

Note: Crimes not listed above will be treated individually, but an attempt will be made to set time comparable to a similar crime, with a copy of the CDC Form 275 and Cumulative Case Summary Page sheet sent to the Vice-Chairman.

<u>SUGGESTED ADJUSTMENT RANGES</u>		
<u>FOR PRISON TERMS</u>	<u>SENTENCING STATUTE</u>	<u>SUBSEQUENT OFFENSES</u>
Less Serious (each)    +(3-9)	Youthful Offender 1202(b)    -(5-11)	Court Convictions (each)    +(6-24)
More Serious (each)    +(3-24)	Concurrent Sentence (each)    +(3-12)	Disciplinary Less Serious    +(3-9)
	Consecutive Sentence (each)    +(12-24)	More Serious    +(9-18)
	Prior Felony Convictions Fled and Proven (each)    +(0-5)	

Adopted by the majority votes as indicated below:

R. K. PROCUNIER, CHAIRMAN	Yes <u>X</u>	No <u>    </u>
R. C. BROWN, VICE-CHAIRMAN	Yes <u>X</u>	No <u>    </u>
H. W. KERR, MEMBER	Yes <u>X</u>	No <u>    </u>
C. O. LYNUM, MEMBER	Yes <u>X</u>	No <u>    </u>
J. H. HOOVER, MEMBER	Yes <u>X</u>	No <u>    </u>
R. HUSHEN, MEMBER	Yes <u>    </u>	No <u>    </u>
R. G. WOOD, MEMBER	Yes <u>X</u>	No <u>    </u>
R. C. GARCIA, MEMBER	Yes <u>    </u>	No <u>    </u>
M. QUEVEDO, JR., MEMBER	Yes <u>X</u>	No <u>    </u>

Case No. S237014

IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

*In re Roy Butler on Habeas Corpus*

**[PROPOSED] ORDER**

GOOD CAUSE APPEARING,

IT IS HEREBY ORDERED that Roy Butler's Motion for Judicial Notice of Chairman's Directives Nos. 75/30 and 75/20 (Exhibits A and B respectively), filed on March 20, 2017, is GRANTED.

Dated: \_\_\_\_\_ 2017 \_\_\_\_\_  
Presiding Justice



State of California )  
County of Los Angeles )  
 )

Proof of Service by:  
✓ US Postal Service  
Federal Express

I, Stephen Moore, declare that I am not a party to the action, am over 18 years of age and my business address is: 631 S Olive Street, Suite 600, Los Angeles, California 90014.

On 03/20/2017 declarant served the within: Motion for Judicial Notice

upon:

1 Copies FedEx ✓ USPS

Brian Campbell Kinney  
OFFICE OF THE ATTORNEY GENERAL  
455 Golden Gate Avenue  
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San Francisco, California  
  
Counsel for Non-Title Respondent,  
Department of Corrections and Rehabilitation

1 Copies FedEx ✓ USPS

Aimee Athena Feinberg  
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Sacramento, California  
  
Counsel for Non-Title Respondent,  
Department of Corrections and Rehabilitation

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the address(es) designated by said attorney(s) for that purpose by depositing **the number of copies indicated above**, of same, enclosed in a postpaid properly addressed wrapper in a Post Office Mail Depository, under the exclusive custody and care of the United States Postal Service, within the State of California, or properly addressed wrapper in an Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of California

I further declare that this same day the **original and** copies has/have been hand delivered for filing OR the **original and 8** copies has/have been filed by ✓ third party commercial carrier for next business day delivery to:

Office of the Clerk  
SUPREME COURT OF CALIFORNIA  
350 McAllister Street  
Room 1295  
San Francisco, California 94102-4797

I declare under penalty of perjury that the foregoing is true and correct:

Signature: Stephen Moore