PROPOSITION 57:

"THE PUBLIC SAFETY AND REHABILITATION ACT OF 2016"

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I. INTRODUCTION

"The Public Safety and Rehabilitation Act of 2016" (the Act; Gen. Elec. (Nov. 8, 2016) Prop. 57) states that its purpose and intent is to:

- Protect and enhance public safety
- Save money by reducing wasteful spending on prisons
- Prevent federal courts from indiscriminately releasing prisoners
- Stop the revolving door of crime by emphasizing rehabilitation, especially for juveniles
- Require a judge, not a prosecutor, to decide whether juveniles should be tried as adults

The Act seeks to accomplish these objectives with the enactment of two major revisions of the criminal law: (1) a change to the rules governing parole and the granting of custody credits to inmates in state prison; and (2) requiring a judge, rather than a prosecutor, to determine whether a juvenile may be tried as an adult.

II. EFFECTIVE DATE

Unless it specifies otherwise, an initiative becomes effective the day after it is enacted by the voters. The Act contains no specified effective date, nor does it expressly indicate any of its provisions should be applied retroactively. Accordingly, the Act became effective November 9, 2016, the day after it was enacted. Clearly, the Act applies to all crimes committed on or after its effective date. The more difficult question, however, is whether and to what extent it applies to persons convicted of crimes committed prior to the effective date.

A. Parole and credit provisions

The provisions related to parole eligibility and custody credits likely will apply to any person in state prison, regardless of whether the crime was committed before or after the effective date of the Act. The Act specifies the provisions relating to eligibility for parole consideration apply to "[a]ny person convicted . . . and sentenced." (Cal. Const., art. I, § 32, subd. (a)(1).) Nothing in the initiative limits its application to crimes committed after enactment. Similarly, California Constitution, article I, section 32, subdivision (a)(2), presently confers on the California Department of Corrections and Rehabilitation (CDCR) the power to award credits without limitation as to crimes committed after enactment. Nothing in the Act restricts CDCR from determining an inmate's current credit for actual

time served, whether before or after enactment, and make a new determination of the allowable conduct credit.

It appears from the Act's preamble that the intent of the initiative is to facilitate the release of suitable inmates by increasing CDCR's authority to award credits. Nothing in the Act, however, prohibits CDCR from *reducing* conduct credit. Likely such action would be limited by the ex post facto rule to crimes committed *after* the reduction of credit.

B. Juvenile proceedings

For a discussion of the retroactive application of Proposition 57 to juvenile proceedings, see Section IV(D), infra.

III. PAROLE AND CREDITS FOR STATE PRISON INMATES

The Act amends article I of the California Constitution by adding section 32, as follows:

> 32. (a) The following provisions are hereby enacted to enhance public safety, improve rehabilitation, and avoid the release of prisoners by federal court order, notwithstanding anything in this article or any other provision of law.
>
> (1) Parole consideration: Any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.
>
> (A) For purposes of this section only, the full term for the primary offense means the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.
>
> (2) Credit Earning: The Department of Corrections and Rehabilitation shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements.
>
> (b) The Department of Corrections and Rehabilitation shall adopt regulations in furtherance of these provisions, and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety.

A. Constitutional Amendment

The Act amends the California Constitution by adding section 32 to article I. The Act further provides that its provisions control "notwithstanding anything in this article or any

other provision of law." (Cal. Const., art. I, § 32, subd. (a).) These provisions assure that the Act will be the controlling law whenever there is a conflict with any other provision of the constitution, statute, or caselaw. Because it was enacted by the voters as an amendment to the constitution, the Act overrides conflicting provisions of previous initiatives enacted by the voters, such as the Three Strikes law (Pen. Code, §§ 667, subds. (b)-(e); 1170.12, subds. (a)-(d)) and Marsy's Law (Gen. Elec. (Nov. 4, 2008) Prop. 9 [the Victims' Bill of Rights Act]). For example, the Act overrides the provisions of Marsy's Law, enacted in 2008, which states in article I, section 28(f)(5), that sentences "shall not be substantially diminished by early release policies intended to alleviate overcrowding in custodial facilities."

B. Parole consideration

The Act provides that "[a]ny person convicted of a nonviolent felony offense" is eligible for parole consideration "after completing the full term of his or her primary offense." (Cal. Const., art. 1, § 32, subd. (a)(1).)

1. **Meaning of "nonviolent felony offense."** The Act does not specifically define "nonviolent felony offense." From the face of the Act, for example, it is not clear whether "nonviolent felony" means crimes other than those listed in Penal Code section 667.5, subdivision (c),[1] or whether it means "crimes committed without any violence." Where the language of an initiative is ambiguous, "courts will look to ' "other indicia of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet." ' [Citations.] Ultimately, the court's duty is to interpret and apply the language of the initiative 'so as to effectuate the electorate's intent.' [Citation.]" (*People v. Lewis* (2016) 4 Cal.App.5th 1085, 1093.) A review of the material provided by the 2016 voter information pamphlet suggests that the enactors define "nonviolent felony" as any crime not listed in section 667.5, subdivision (c).

   The analysis prepared by the Legislative Analyst observes: "Although the measure and current law do not specify which felony crimes are defined as nonviolent, this analysis assumes a nonviolent felony offense would include any felony offense that is not specifically defined in statute as violent." ("Official Voter Information Guide, California General Election Tuesday November 8, 2015, p. 56.) In their argument in favor of Proposition 57, the proponents state: "And as the California Supreme Court clearly stated: parole eligibility in Prop. 57 applies '*only to prisoners convicted of nonviolent felonies*.'" (Id. At p. 58; italics in original.) Finally, in their rebuttal to the argument against Proposition 57, the proponents state: "Prop. 57 . . . [d]oes NOT authorize parole for violent offenders. The California Supreme Court clearly stated that parole eligibility under Prop. 57 applies '*only to prisoners convicted of nonviolent felonies*.' (Brown v. Superior Court, June 6, 2016). Violent criminals as defined in Penal

[1] Unless otherwise indicated, all statutory references are to the Penal Code

Code 667.5(c) are excluded from parole." (Official Voter Information Guide, at p. 59; italics in original.)

As noted in the ballot arguments, the Supreme Court had an occasion to review the substance of Proposition 57 in the context of a challenge to the balloting of the initiative because of an alleged violation of election laws. (*Brown v. Superior Court* (2016) 63 Cal. 4th 335 (*Brown*).) The opinion, however, sheds little light on this issue. What constitutes a "violent felony" was not before the court. The court said: "The originally submitted statutory amendment proposed changes to the parole suitability review process for prisoners under the age of 23 at the time of their offense. It had two components: eliminating enhancements from the calculation of the relevant term of imprisonment, and removing the bar against parole hearings for Three Strikes offenders. The newly proposed constitutional provision also addresses parole suitability review. It would be significantly *more* restrictive in one way, because it would apply only to prisoners convicted of nonviolent felonies. It would be significantly *less* restrictive in another way, because it would apply to all prisoners regardless of their age at the time of the offense. It would also authorize the Department of Corrections and Rehabilitation to award credits for good behavior and rehabilitation." (*Brown*, at p. 352; italics in original.)

In a footnote to the opinion, the court observed: "We emphasize two points we have made before when reviewing initiative measures. We pass no judgment on the wisdom, efficacy, or soundness of the proposal before us. [Citations.] And we give no consideration to 'possible interpretive or analytical problems' that might arise should the measure become law. [Citation.]" (*Brown*, *supra*, 63 Cal.4th at p. 352, fn. 11.)

Justice Chin, in his dissent to the majority opinion in *Brown*, also had concerns about the failure to specifically define "nonviolent felony offense": "[T]he constitutional provision never defines the term 'nonviolent felony offense.' Because the United States Supreme Court recently declared unconstitutional as impermissibly vague the term 'violent felony' in a federal statute [citation], the absence of a definition is troublesome, to say the least. The Penal Code contains various lists of crimes satisfying various definitions, including a list of 'violent' felonies. (Pen.Code § 667.5, subd. (c).) Does that statute apply to mean that any crime not listed in it would be a nonviolent felony, even though many such crimes are arguably violent? Can a statute define a constitutional term? What if the Legislature amends the list? What happens if the term 'nonviolent felony offense' is also found to be void for vagueness? Would that mean all inmates would be eligible for parole? The amended measure could greatly benefit from a definition of the term." (*Brown*, supra, 63 Cal.4th at p. 360, dis. opn. of Chin, J.)

The Act likely will be applied on a count-by-count basis. Because the Act provides early parole to "any person convicted of a nonviolent felony offense," there is no general disqualifier because the defendant is also convicted of a violent felony offense

in the same proceeding. If the defendant is convicted of a mixture of violent and nonviolent offenses, likely the defendant will be required to serve the full term for any violent offenses, then be eligible for early release on parole as to any time remaining on nonviolent offenses. A similar count-by-count approach was taken by the California Supreme Court in a Proposition 36 case. (See *People v. Johnson* (2015) 61 Cal.4th 674.) If the Act is applied on a count-by-count basis, the following example demonstrates its application. If the defendant has been sentenced to prison on a rape (a violent felony) for 6 years, a residential burglary (a nonviolent felony) for 16 months consecutive, and a commercial burglary (a nonviolent felony) for 8 months consecutive, the defendant will be eligible for parole on the two burglaries after serving the six years for the rape.

In re Mohammad (2019) 42 Cal.App.5th 719, review granted February 19, 2020 (S259999) (*Mohammad*), holds the phrase "nonviolent felony offense" does not mean "nonviolent *offender*." In that case, the defendant was convicted and sentenced on nine counts of second degree robbery and six counts of receiving stolen property. One of the receiving counts was designated the principal term, the balance being sentenced consecutively. The total sentence was 29 years in state prison. Existing CDCR regulations denied early parole consideration to anyone currently serving a term for a violent felony. (*Mohammad*, at p. 724.)

The court held the regulation conflicts with the clear language of Proposition 57: "Section 32(a)(1) makes early parole hearings available to '[a]ny person convicted of a nonviolent felony offense' upon completion of 'the full term of his or her primary offense.' The phrase 'a nonviolent felony offense' takes the singular form, which indicates it applies to an inmate so long as he or she commits 'a' single nonviolent felony offense—even if that offense is not his or her only offense. This interpretation is reinforced by the term 'primary offense,' which demonstrates the provision assumes an inmate might be serving a sentence for more than one offense, i.e., a primary offense and other secondary offenses. [¶] Section 32(a)(1)(A) also defines the 'full term for the primary offense' to mean 'the longest term of imprisonment imposed by the court for any offense, *excluding the imposition of* an enhancement, [*a*] *consecutive sentence*, or [an] alternative sentence.' (Emphasis ours.) Nothing in the Constitution's text suggests a 'consecutive sentence' is disqualifying if it is a consecutive term for a violent felony. This further reinforces our conclusion that the text the voters approved when passing Proposition 57 is in no way ambiguous: under sections 32(a)(1) and 32(a)(1)(A), an inmate who is serving an aggregate sentence for more than one conviction will be eligible for an early parole hearing if one of those convictions was for 'a' nonviolent felony offense." (*Mohammad*, supra, 42 Cal.App.5th at p. 726; italics in original.)

The full scope of *Mohammad* is not entirely clear. The forgoing portions of the opinion suggest early parole consideration may be granted to anyone convicted of a nonviolent offense, without regard to whether "the longest term of imprisonment" is

a violent or nonviolent offense, the consecutive or concurrent sentencing structure, or the number of violent vs. nonviolent offenses. So long as the defendant is sentenced on at least one nonviolent offense, he will be entitled to early parole consideration after the completion of "the longest term of imprisonment," whether such term is imposed for a violent or nonviolent felony. *Mohammad* was a case where the nonviolent offense was "the longest term of imprisonment." The opinion appears equally applicable to circumstances where the "the longest term of imprisonment" is violent felony.

The court's interpretation of Proposition 57 may conflict with the intent of the voters, which can be gleaned from the ballot materials. In their argument in support of the enactment of Proposition 57, the sponsors stated "Prop.57 is straightforward – here's what it does: . . . [It] [a]llows parole consideration for people with nonviolent convictions who complete the full prison term for their primary offense. . . . [¶] And as the California Supreme Court clearly stated: parole eligibility in Prop. 57 applies '*only to prisoners convicted of nonviolent felonies*.' " (Official Voter Information Guide, *supra*, at p. 58, italics in original.) In their rebuttal to the argument against Proposition 57, the sponsors stated: "Prop. 57: . . . Does NOT authorize parole for violent offenders. The California Supreme Court clearly stated that parole eligibility under Prop. 57 applies, '*only to prisoners convicted of nonviolent felonies.'* (*Brown v. Superior Court*, June 6, 2016). Violent criminals as defined in Penal Code 667.5(c) are excluded from parole." (*Id.* at pp. 58-59, italics in original.)

In the absence of statutory ambiguity, however, *Mohammad* expressly rejected consideration of the voter materials: "There is nothing ambiguous about what section 32(a)(1) means in this case, and there is accordingly no cause to look beyond the text to ballot materials or other extrinsic evidence of the voters' intent. [Citation.] [¶] We do acknowledge, however, that the argument for reaching a different result has some intuitive appeal. It cannot be, the argument goes, that voters intended a defendant who is convicted of more crimes, i.e., both violent and nonviolent felonies, to be eligible for early parole consideration while a defendant convicted of fewer crimes, i.e., the same violent felony but no nonviolent felonies, is not. But we look for evidence of the voters' intent, not intuition, and as our Supreme Court has said repeatedly, the best evidence we have is the text the voters put in the Constitution. [Citations.] The Constitution's text compels the result we reach, and we are not prepared to declare that result so absurd [citation] as to disregard the Constitution's plain meaning—and, indeed, the Attorney General does not ask us to." (*Mohammad*, *supra*, 42 Cal.App.5th at pp. 727-728.)

In a later portion of the opinion, the court observed: "[I]t bears emphasizing that Mohammad's case is an unusual one. The court at Mohammad's sentencing designated one of the receiving stolen property convictions—i.e., one of the *non*violent felonies—as the principal term of Mohammad's sentence. Often, however, an inmate convicted of both violent and nonviolent felonies will have the

most serious of his or her violent felonies set as the principal term. Thus, the situation we confront in this case when an inmate becomes eligible for early parole consideration before serving time for any of his or her violent felony offenses will not frequently arise." (*Mohammad*, *supra*, 42 Cal.App.5th at p. 728.)

Mohammad has been granted review by the Supreme Court, as have the following additional cases.

In re Douglas (2021) 62 Cal.App.5th 726 (*Douglas*), contrary to *Mohammad*, concluded that early parole consideration under Proposition 57 is not available to a person currently serving a sentence for a violent felony, whether or not the violent felony is the primary offense. "Because the words of section 32(a)(1) support a conclusion that an inmate is eligible for early parole consideration after completing his or her primary offense if the inmate was convicted of a nonviolent offense, even if the term for that nonviolent offense was not designated as the primary offense, and even if the inmate was also convicted of one or more violent offenses, we must interpret it that way unless to do so would lead to absurd results the voters did not intend. As we explain in the remainder of this opinion, such an interpretation would in fact lead to absurd results the voters did not intend. [¶] Here is but one example of an absurd result. The literal language of section 32(a)(1) suggests that an inmate convicted of 10 violent felonies and one nonviolent felony would be eligible for early parole consideration after serving the full term of his or her primary offense, whatever that primary offense might be. But an inmate convicted of the same 10 violent felonies without a nonviolent felony conviction would be ineligible for early parole consideration under section 32(a)(1). Such a result would encourage and reward a violent felon's commission of at least one additional nonviolent felony, would be inconsistent with sound public policy, and would make no sense." (*Douglas*, *supra*, 62 Cal.App.5th at pp.731-732.) *Douglas* has been granted review.

Substantially in accord with *Douglas* is *In re Viehmeyer* (2021) 62 Cal.App.5th 973, *In re Ontiveros* (2021) 65 Cal.App.5th 899, and *In re Guice* (2021) 66 Cal.App.5th 933. *Viehmeyer*, *Ontiveros* and *Guice* have been granted review.

Nonviolent sex offenders

CDCR adopted a regulation which prohibited early parole consideration of nonviolent offenders who are required to register as a sex offender for a current or prior crime under section 290. *In re Gadlin* (2020) 10 Cal.5th 915 (*Gadlin*), holds the regulation is unconstitutional under Proposition 57. "[T]he regulations entirely exclude from nonviolent offender parole consideration inmates previously convicted or currently convicted of any registerable sex offense. We conclude that this categorical exclusion conflicts with the constitutional directive that inmates 'convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration.' (Art. I, § 32(a)(1).) [¶] We emphasize that this determination does not require the

release on parole of any inmate. The evaluation of an inmate's suitability for parole and the processes involved in conducting that evaluation remain squarely within the purview of the Department and the Board of Parole Hearings. We emphasize, too, that our conclusion here does not disturb the Department's exclusion from parole consideration of inmates currently incarcerated for violent felony sex offenses as defined in Penal Code section 667.5, subdivision (c). The Department is not permitted, however, to entirely exclude from parole consideration an entire class of inmates when those inmates have been convicted of nonviolent felony offenses." (*Gadlin*, *supra*, 10 Cal.5th at p. 920.)

Third strike offenders

It is not entirely clear how third strike offenders will be treated under the new law. A person convicted only of a specific violent crime listed in section 667.5, subdivision (c), will be disqualified from early parole consideration. Such a conviction would not qualify as a "nonviolent felony offense." However, the same cannot be said for a person sentenced as a third strike offender for a "serious felony" that is not also a violent felony, such as residential burglary. Whether such an offender is disqualified likely will depend on how the courts apply section 667.5, subdivision (c)(7), which defines a violent felony as "[a]ny felony punishable by . . . imprisonment in the state prison for life." Courts have interpreted this provision to apply only to persons who are convicted of a base crime punishable by life in prison, not to persons who receive a life sentence because of recidivist behavior. (See *People v. Thomas* (1999) 21 Cal.4th 1122, 1127-1130 [the credit limitations of section 2933.1 do not apply unless the base crime is punishable by life in prison].)

In re Edwards (2019) 26 Cal.App.5th 1181 (*Edwards*), specifically rejected the notion that a third strike offender serving an indeterminate life term would be excluded as a violent offender, provided the underlying crime was not a violent felony. (*Edwards*, at pp. 1191-1192.)

2. **Current crime.** Eligibility for parole will be based solely on the crimes that result in the current prison commitment: "[A]ny person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration. . . ." (Cal. Const., art I, § 32, subd. (a)(1); *see In re Gadlin* (2020) 10 Cal.5th 915, 931-932, 943.) The person's past criminal record is irrelevant to statutory eligibility for early release on parole. As observed in *In re Schuster* (2019) 42 Cal.App.5th 943 (*Schuster*), in striking down a CDCR regulation baring sex offender registrants from early parole consideration: "[T]he focus of the Amendment for early parole consideration is on the inmate's current conviction, not on any prior convictions. The Amendment makes no mention of prior convictions or an inmate's status as a section 290 sex registrant. 'Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent

and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.' (Gov. Code, § 11342.2.) To the extent that Title 15, section 3491, subdivision (b)(3) is applied to bar inmates with prior sex offenses requiring registration from early parole consideration, it conflicts with the Amendment and is invalid." (*Schuster*, at p. 955.) Accordingly, so long as the current offense is not a "violent felony," the person will be eligible for early release on parole on that offense, even though he or she has previously been convicted of a violent felony. *Schuster* has been granted review by the Supreme Court.

Unlike Propositions 36 and 47, the Act does not exclude from its benefits any persons required to register as a sex offender, unless the commitment is for a sex crime designated as a violent felony. *In re Gadlin* (2019) 31 Cal.App.5th 784, 789-790 (*Gadlin*), holds the fact that an inmate has a prior conviction for a registerable sex offense will not exclude him from eligibility under the Act. *Gadlin* has been granted review. Generally in accord with *Gadlin* is *In re Chavez* (2020) 51 Cal.App.5th 748, and *Alliance for Constitutional Sex Offense Laws v. Department of Corrections & Rehabilitation* (2020) 45 Cal.App.5th 225 (*Alliance*); *Alliance* has been granted review.

The Act will apply to persons serving a sentence imposed under the Three Strikes law, so long as the specific crime under consideration is not a violent felony listed in section 667.5, subdivision (c). The Act specifically excludes consideration of alternative sentencing schemes such as the Three Strikes law. (See discussion, *infra*.)

3. Parole consideration. The Act clearly applies to the determination of eligibility for release on "parole." "Parole," however, is a concept narrowly defined by a series of statutes in the Penal Code. (See § 3000 *et seq*.) The Act makes no mention of persons released on postrelease community supervision (PRCS). (See § 3450 *et seq*.) The differences between these two statutory schemes are significant. Eligibility for parole, for example, is limited to persons who have been committed to prison for "serious" or "violent" felonies, persons sentenced as third-strike offenders under the Three Strikes law, high risk sex offenders, and persons who must undergo treatment with the Department of State Hospitals. (§ 3000.08, subd. (a).) A literal application of the Act only to persons who will be released on parole would limit its provisions to a relatively small group of inmates. Most likely courts will interpret the Act to include persons who will be released on PRCS – by far the largest group of inmates being housed in state prison. Such an interpretation is consistent with the obvious intent of the Act to give an incentive to engage in rehabilitation programs to as many inmates as possible, and is consistent with the direction of the Act that its provisions "shall be liberally construed to effectuate its purposes." (See the Act, § 9.) In any event, concepts of equal protection may well compel such a broad application.

In re McGhee (2019) 34 Cal.App.5th 902 (*McGhee*), invalidated CDCR's screening process for parole eligibility. The process was described as follows: " 'The first phase of the process objectively evaluates whether the inmate's file contains one or more

of the eight criteria [the department] has identified as categorical proof the inmate being reviewed "pose[s] an unreasonable risk of violence" based on he or she having "recently committed serious [in-prison] misconduct." . . . If none of the eight criteria are present, the inmate's file is next reviewed holistically by a board official to determine whether the inmate's release poses an unreasonable risk of future violence and/or risk of significant criminal activity.' The department contends that inmates who 'fail to advance to the second phase of the parole-review process are not deprived of parole consideration.' Rather, 'those inmates are considered but denied parole during the first stage of the process.' " (*McGhee*, at p. 908.) The court held Proposition 57 contemplated that eligible inmates would have parole suitability determined by the *parole board*, not by a preliminary screening process. (*McGhee*, at p. 909.)

In re Bailey (2022) 76 Cal.App.5th 837 (*Bailey*), holds inmates are not entitled to an in-person parole hearing when being considered for early release on parole. "We conclude Proposition 57 neither requires nor impliedly incorporates an in-person hearing requirement, and the Department acted within its delegated authority under section 32, subdivision (b) when it adopted the parole regulations, which do not provide for an in-person hearing." (*Bailey*, *supra*, 76 Cal.App.5th at p. 842.)

Meaning of "full term of primary offense"

In re Canady (2020) 57 Cal.App.5th 1022 (*Canady*), affirmed the definition of "full term of primary offense" as stated in CDCR regulations. As observed in *Canady*: "The Department defined the 'full term' as used in article I, section 32, subdivisions (a)(1) and (a)(1)(A) 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.' (Tit. 15, § 3490, subd. (e).) The Department defined inmates' 'nonviolent parole eligible' date as: 'the date on which a nonviolent offender who is eligible for parole consideration under [Title 15,] 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.' (*Id.*, § 3490, subd. (f).)" (*Canady*, *supra*, 57 Cal.App.5th at p. 1028.)

4. **State prison inmates**. By its express terms, the Act only applies to persons who are committed to state prison. It has no effect on persons committed to county jail under the provisions of section 1170, subdivision (h). It is unlikely that such a distinction will raise any substantial equal protection concerns. The simple reason is that most persons committed to county jail under section 1170, subdivision (h), already receive an "early release" from the custody portion of their sentence for service of mandatory supervision.

5. **Meaning of "primary offense."** The Act makes persons convicted of a nonviolent felony eligible for parole after the completion of the full term imposed by the court for their "primary offense." (Cal. Const., art. I, § 32, subd. (a)(1).) The "full term of the primary offense" is defined as "the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence." (*Id*., art. I, § 32, subd. (a)(1)(A).) In most respects the definition is straight forward. A person is eligible for parole after service of the base term in a single count commitment, the longest base term of crimes sentenced concurrently, or after service of the principal term in a multi-count commitment sentenced consecutively. The parole eligibility date will be set without reference to any conduct or status enhancements (unless the enhancement makes the crime a violent felony), or any subordinate, consecutive terms imposed for nonviolent felonies. The practical effect of the change is to make a person eligible for parole on multiple qualified crimes, with enhancements, the same as if he had committed only one crime without any enhancements.

The Act requires service of "the longest term of imprisonment imposed by the court for *any* offense. . . ." (Cal. Const., art. I, § 32, subd. (a)(1)(A); italics added.) The reference to "any" offense means that the "primary" offense can be either a violent or nonviolent crime, depending on which term is the longest.

Because the Act provides that a prison inmate "shall be eligible for parole consideration after *completing* the full term for his or her primary offense," computation of the minimum eligibility date likely must take into account the actual time and conduct credits earned by the inmate under section 2933. (Cal. Const., art I, § 32, subd. (a)(1), italics added.) Both types of credit apply to the completion of a prison sentence.

The net effect of the Act is to make a person eligible for parole irrespective of the number of crimes committed or enhancements imposed. For example, a person convicted of one count of assault with a deadly weapon on a police officer may be sentenced to state prison for 5 years. A person convicted of assaulting four officers may be sentenced to state prison, if consecutive sentences are imposed, for 9 years. The latter defendant will be eligible for parole, however, after service of only 5 years – the same as the person who commits an assault against only one officer.

The Act excludes any "alternative sentence" in determining eligibility for parole. (Cal.Const., art. I, § 32, subd. (a)(1)(A).) Although the phrase is not specifically defined in any statute, it includes sentencing schemes such as the Three Strikes law. (*In re Edwards* (2019) 26 Cal.App.5th 1181, 1189-1190; see, *e.g*., *People v. Superior Court (Romero)* 1996) 13 Cal. 4th 497, 527 ["The Three Strikes law . . . articulates an alternative sentencing scheme for the current offense rather than enhancement."].) For a second strike offender, who receives a term of twice the length of a non-strike sentence, it would mean the defendant would be eligible for parole after service of

the term imposed by the court without the multiplier of the Three Strikes law. For example, a person who receives a mid-term second strike sentence of 12 years for rape of an unconscious person would be eligible for parole after service of 6 years.

It is not entirely clear how the law will be applied to persons sentenced as third strike offenders. In certain circumstances, such as where the sentence is a basic 25-year-to-life term under Option II of the Three Strikes law, the term for the underlying crime from the determinate triad is not considered. *Edwards, supra,* 26 Cal.App.5th 1181, holds for eligible third strike offenders, the parole eligibility date will be the maximum determinate sentence. (*Edwards*, at p. 1192.)

Edwards concerns the application of Option II under the Three Strikes law, which provides that regardless of the normal determinate sentence specified for the underlying crime, the punishment is 25 years to life. *Edwards* did not discuss situations where the court actually selects a term on the triad as the basis for the calculation of the third strike sentence. Under Option I, the minimum term is three times the punishment otherwise specified; under Option III, the minimum term is whatever the law specifies as punishment without the effect of the Three Strikes law. In any case where the underlying felony is punishable under the Determinate Sentencing law, the court must select a term from the triad in calculating the minimum term under either Options I or III. (*People v. Nguyen* (1999) 21 Cal.4th 197, 205; *People v. Thomas* (1997) 56 Cal.App.4th 396; see also *People v. Dotson* (1997) 16 Cal.4th 547.) Since the Act specifies eligibility for parole after the defendant completes "the full term of his or her primary offense" without consideration of the Three Strikes law, it seems the third strike, nonviolent offender sentenced under Options I or III would be eligible for parole after service of the underlying term selected by the court as the basis for calculating the minimum term – it would not automatically be the upper term as stated in *Edwards*. For example, if the defendant was convicted of residential burglary, normally punishable by 2, 4 or 6 years in prison, and the court imposed sentencing under Option II (25 years to life), *Edwards* would specify parole eligibility after the completion of 6 years in custody. However, if the court had used Option III (the term without consideration of the Three Strikes law) and selected the low term of 2 years as the basis for the calculation, a compelling argument may be made that the defendant is eligible for parole consideration after completion of two years in custody since the low term was the basis of the term actually imposed by the court.

6. The court's statement under section 1203.01

As is evident from the provisions of Proposition 57, determination of parole eligibility for any given inmate will be based on the person's background, the circumstances of the offense, and how the person has conducted himself while in prison. Given the very individualized determination of parole eligibility, it is very important that CDCR be given all relevant information concerning the defendant. The statutory vehicle for

conveying such information is section 1203.01(a), the relevant portions of which provide: "Immediately after judgment has been pronounced, the judge and the district attorney, respectively, may cause to be filed with the clerk of the court a brief statement of their views respecting the person convicted or sentenced and the crime committed, together with any reports the probation officer may have filed relative to the prisoner. The judge and district attorney shall cause those statements to be filed if no probation officer's report has been filed. The attorney for the defendant and the law enforcement agency that investigated the case may likewise file with the clerk of the court statements of their views respecting the defendant and the crime of which he or she was convicted."

California Rules of Court, rule 4.480, facilitates the application of section 1203.01, subdivision (a), the relevant portions of which provide: "A sentencing judge's statement of his or her views under section 1203.01 respecting a person sentenced to the Department of Corrections and Rehabilitation, Division of Adult Operations is required only in the event that no probation report is filed. Even though it is not required, however, a statement should be submitted by the judge in any case in which he or she believes that the correctional handling and the determination of term and parole should be influenced by information not contained in other court records. [¶] The purpose of a section 1203.01 statement is to provide assistance to the Department of Corrections and Rehabilitation, Division of Adult Operations in its programming and institutional assignment and to the Board of Parole Hearings with reference to term fixing and parole release of persons sentenced indeterminately, and parole and postrelease community supervision waiver of persons sentenced determinately. It may amplify any reasons for the sentence that may bear on a possible suggestion by the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings that the sentence and commitment be recalled and the defendant be resentenced. To be of maximum assistance to these agencies, a judge's statements should contain individualized comments concerning the convicted offender, any special circumstances that led to a prison sentence rather than local incarceration, and any other significant information that might not readily be available in any of the accompanying official records and reports."

C. Conduct credits

The Act provides that CDCR "shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements." (Cal. Const., art I, § 32, subd. (a)(2).) The Act imposes no limitations on the amount of credit that may be awarded by CDCR.

Before passage of the Act, the matter of conduct credits earned in prison previously was strictly governed by statute. The credit for most inmates was two-for-one – for every day in custody with good conduct, an inmate received two days of credit against the sentence – if all conduct credits were earned, an inmate would only serve 50% of the sentence imposed by the court. (See § 2933.) CDCR also was allowed to award limited credit for

participation in designated rehabilitation programs. (See § 2933.05.) Credits for certain crimes were restricted. Inmates sentenced for a violent felony received only 15% conduct credit, those serving a sentence imposed under the Three Strikes law received only 20% credit, and those committed for murder received no conduct credit. (See §§ 1170.12, subd. (a)(5), 2933.1, and 2933.2.)

Application of the Act's new credit provision is not clear in two major respects. First, it is not clear whether the provisions will apply to all persons in prison or only those who have committed a nonviolent felony. The plain meaning of the Act is that its credit provisions apply to all persons in prison, regardless of the nature of the crimes committed. The "nonviolent felony" restriction only appears in the section dealing with parole eligibility – it is not in the section dealing with credits, nor is it in the general provisions of section 32. Thus, the Act appears to override the restrictions on credits required for persons who commit violent felonies, sentences imposed under the Three Strikes law, and persons convicted of murder.

Second, it is not clear whether the credits awarded by CDCR for good behavior are *in addition to* the credits currently authorized under sections 2933 and 2933.05, or whether CDCR has *exclusive jurisdiction* to determine all good conduct and rehabilitation credits earned by inmates. It is unlikely that it was the intent of the sponsors of the Act to simply confirm CDCR's existing authority to grant conduct credits. Rather, the Act is intended to *increase* the authority of CDCR to grant conduct credits for good behavior and participation in rehabilitation programs. At a minimum, therefore, the Act likely gives CDCR authority to award credits in addition to those already provided by statute, and not to be limited because of the nature of the current crime. If CDCR has exclusive jurisdiction to determine conduct credits, presumably it may set credits at a higher or lower rate than currently provided by statute. It is at least arguable that CDCR is given total control over credits because the Act specifies that CDCR "shall have authority to award credits" "notwithstanding . . . any other provision of law."

The matter of awarding conduct credits was addressed by Justice Chin in his dissent to the majority opinion in *Brown*: "The constitutional amendment would also give the Department of Corrections and Rehabilitation (department) constitutional authority to award behavior and other credits. The Legislature has already enacted detailed mandatory provisions for the department to award conduct and participation credits. (See Pen. Code, § 2931 et seq.) But the amended measure's proposed constitutional language is permissive. Presumably, authority to award credits includes authority *not* to award credits or to award lower credits than the statutes currently require. Because the Constitution prevails over mere statutes, it appears the proposed constitutional amendment would displace the current statutory provisions for credits and shift authority over such credits from the legislative to the executive branch of government." (*Brown*, supra, 63 Cal.4th at p. 359 (dis. Opn. Of Chin, J.).)

Justice Chin continued: "The proposed constitutional amendment gives the department 'authority to award credits earned for good behavior and approved rehabilitative or educational achievements.' (Amended measure, § 3, adding art. I, proposed § 32, subd. (a)(2).) But it does not explain how this new, apparently permissive constitutional provision would interact with the detailed, mandatory provisions for credits the Legislature has enacted. As I have already discussed, the constitutional provision would seem to displace the statutory scheme. But I am not sure that is the intent. Displacing the statutory credit scheme might be one of the measure's 'unintended consequences' the Legislature sought to avoid in amending section 9002. (Stats.2014, ch. 697, § 2, subd. (b)(3).) If something else is intended—perhaps that any credits the department awards under its new constitutional authority would be in addition to, rather than instead of, the statutory credits—the measure should so explain." (*Brown*, supra, 63 Cal.4th at p. 361 (dis. opn. of Chin, J.).)

D. Regulations

The Act requires CDCR to adopt regulations "in furtherance of" the Act's provisions. The Secretary of CDCR is to certify that the regulations "protect and enhance public safety." (Cal. Const., art, I, § 32, subd. (b).) The text of the regulations is found in Appendix I, *infra*.

In re Kavanaugh (2021) 61 Cal.App.5th 320 (*Kavanaugh*), upheld the parole regulations adopted by CDCR against a challenge based on the fact the regulations do not guarantee the right to counsel to potential parolees, they do not require in-person parole hearings, and they permit individual hearing officers – rather than multi-member panels – to make release decisions. In upholding the regulations, the court found "the parole regulations do not conflict with the constitutional guarantee of parole consideration or violate due process. Section 32 broadly ensures parole consideration for eligible felons, but it does not specify the procedures governing the parole consideration process. Rather, it vests CDCR with authority to adopt regulations in furtherance of its guarantee of parole consideration. CDCR acted within its mandate by enacting the parole regulations. Further, the parole regulations do not impinge on the procedural due process rights of prisoners seeking parole. They require annual parole eligibility reviews, set forth sufficiently definite criteria governing parole release decisions, mandate a written statement of reasons for each parole release decision, and grant prisoners notice of the parole proceeding, an opportunity to submit a written statement to the Board of Parole Hearings (the Board), and the right to seek review of an adverse decision. These features adequately safeguard against arbitrary and capricious parole release decisions." (*Kavanaugh*, *supra*, 61 Cal.App.5th at pp. 704-705.)

E. No resentencing relief

Proposition 57 does not grant jurisdiction to a trial court to resentence or otherwise modify a sentence of a defendant committed to state prison. (*People v. Dynes* (2018) 20 Cal.App.5th 523, 528-529.) (*Dynes*).) In *Dynes*, the defendant sent a letter to the trial

court, which the court interpreted as "an ex-parte request for resentencing, modification of sentence, reclassification, or recalculation of credits pursuant to Proposition 57." (Id. at p. 527.) The appellate court affirmed the trial court's denial of the defendant's motion, explaining: "Section 32, as enacted by Proposition 57, authorizes the California Department of Corrections and Rehabilitation (CDCR) to adopt regulations in furtherance of its resentencing provisions. In contrast to resentencing initiatives, section 32 did not create or authorize 'a substantial right to be resentenced' or provide 'a remedy by way of a statutory postjudgment motion' for an inmate to file a petition with the superior court for recall or resentencing in the first instance. (See, e.g., *Teal v. Superior Court, supra*, 60 Cal.4th at p. 598, 179 Cal.Rptr.3d 365, 336 P.3d 686; § 1170.126 [Prop. 36]; § 1170.18 [Prop. 47].)" (*Dynes*, at p. 528.) The court observed that the defendant's remedy is with CDCR once its regulations have been adopted.

IV. ELIMINATION OF DIRECT FILING IN JUVENILE CASES

The third major change brought by the Act is the elimination of the ability of prosecutors to "direct file" in adult court certain crimes committed by juveniles.

A. History of prosecuting juvenile offenses in criminal court

People v. Superior Court (Alexander C.) (2019) 34 Cal.App.5th 994, briefly summarizes the history of the process of prosecuting criminal cases against juveniles in criminal court:

> Historically, the laws of this state required a juvenile court to declare a minor unfit for the juvenile system before a district attorney could prosecute that minor in criminal court. (*People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 305, 228 Cal.Rptr.3d 394, 410 P.3d 22 (*Lara*).) This changed approximately 20 years ago through a series of amendments to the Welfare and Institutions Code, culminating in March 2000 with the passage of Proposition 21. (*Ibid.*) For specified murders and sex crimes, Proposition 21 required district attorneys to charge minors 14 years old or older directly in criminal court. (Former Welf. & Inst. Code, § 602, subd. (b), repealed by Initiative Measure (Prop 57, § 4.1, approved Nov. 8, 2016, eff. Nov. 9, 2016).) For other specified serious offenses, Proposition 21 provided district attorneys with discretion to charge minors 14 or older in criminal court instead of juvenile court. (Former Welf. & Inst. Code, § 707, subd. (d), repealed by Initiative Measure (Prop 57, § 4.2, approved Nov. 8, 2016, eff. Nov. 9, 2016).)
>
> The changes implemented by Proposition 21 were rolled back in November 2016 with the passage of Proposition 57, the Public Safety and Rehabilitation Act of 2016. Proposition 57 implemented a series of criminal justice reforms designed to "focus[ ] resources on keeping dangerous criminals behind bars, while rehabilitating juvenile and adult inmates and saving tens of millions of taxpayer dollars." (Ballot Pamp., Gen. Elec. (Nov. 8, 2016) argument in favor of Proposition 57, p. 58.) For juvenile offenders, Proposition 57 "largely returned California to

the historical rule" by eliminating direct filing in criminal court. (*Lara*, *supra*, 4 Cal.5th at p. 305, 228 Cal.Rptr.3d 394, 410 P.3d 22.) Under Proposition 57, " '[c]ertain categories of minors ... can still be tried in criminal court, but only after a juvenile court judge conducts a transfer hearing to consider various factors such as the minor's maturity, degree of criminal sophistication, prior delinquent history, and whether the minor can be rehabilitated.' " (*Id.* at pp. 305–306, 228 Cal.Rptr.3d 394, 410 P.3d 22.) For minors 16 or older, district attorneys can seek transfer to criminal court for any felony offense. (Former Welf. & Inst. Code, § 707, subd. (a)(1).) For 14- and 15-year-olds, district attorneys could seek transfer to criminal court only for specified serious or violent offenses. (Welf. & Inst. Code, § 707, subds. (a)(1) and (b), repealed by Stats. 2018, ch. 1012 (SB 1391), § 1, eff. Jan. 1, 2019.)

In September 2018, the Governor approved Senate Bill No. 1391 (2017–2018 Reg. Sess.) (SB 1391) (Stats. 2018, ch. 1012, § 1), which went into effect January 1, 2019. SB 1391 eliminates the district attorneys' ability to seek transfer of 14- and 15-year-olds from juvenile court to criminal court, save for a narrow exception if the minor is "not apprehended prior to the end of juvenile court jurisdiction." (Welf. & Inst. Code, § 707, subd. (a)(2).) The Legislature declared that SB 1391 amended Proposition 57 and "is consistent with and furthers the intent of Proposition 57." (SB 1391, § 3.) (*Alexander C.*, at pp. 997-998.)

B. The provisions of Proposition 57

Under the Act, the prosecutor is required to petition the court for approval to transfer *any* juvenile case to adult court. The new law authorizes the transfer of two groups of crimes: (1) any felony committed by a juvenile aged 16 or older; and (2) designated crimes committed by a juvenile aged 14 or 15. (Welf. & Inst. Code, § 707, subd. (a)(1)-(2).) The latter group of crimes includes the more dangerous crimes such as murder, rape and robbery. (Welf. & Inst. Code, § 707, subd. (b).)

The decision to transfer is subject to consideration of the same general factors previously used to determine suitability for transfer. (Welf. & Inst. Code, § 707, subd. (a)(3)(A).) The Act eliminates the following presumptions contained in Proposition 21:

- A minor with a history of felony offenses or who commits specified serious or violent felonies is presumed unfit for treatment in juvenile court.
- A juvenile 16 years of age or older with two prior felonies committed when 14 years of age or older is presumed unfit for juvenile court.
- A juvenile aged 14 years of age or older who commits a serious or violent felony is presumed unfit for treatment in juvenile court.

Under the Act, as it was under the law prior to 1998, it is the prosecution's burden to establish that the minor is unfit for treatment in juvenile court.

C. Senate Bill No. 1391

Senate Bill No. 1391 (SB 1391), enacted by the Legislature in 2018, effective January 1, 2019, amended Welfare and Institutions Code, section 707,subdivision (a)(1), to eliminate the ability of the prosecution to seek transfer of *any* cases to criminal court for persons under the age of 16. The only exception is persons aged 14 or 15 who are both (1) charged with a crime listed in subdivision (b) *and* (2) "not apprehended prior to the end of juvenile court jurisdiction." (Welf. & Inst. Code, § 707, subd. (a)(2).)

SB 1391 has been challenged as an unconstitutional amendment of Proposition 57. The appellate courts are not in agreement on the resolution of the issue.

People v. Superior Court (Alexander C.)(2019) 34 Cal.App.5th 994, concludes the change is constitutional as being consistent with the intent of Proposition 57: "Proposition 57 sought to promote juvenile rehabilitation by channeling more minors into the juvenile system, where they are 'generally treated quite differently [than inmates in the prison system], with rehabilitation as the goal.' [Citation.] To increase the number of minors in the juvenile system, Proposition 57 eliminated Proposition 21's system of direct filing in criminal court, meaning minors 'would no longer automatically be tried in adult court and no youth could be tried in adult court based only on the decision of a prosecutor.' [Citation.] [¶] SB 1391 takes Proposition 57's goal of promoting juvenile rehabilitation one step further by ensuring that almost all who commit crimes at the age of 14 or 15 will be processed through the juvenile system. As the Assembly Committee on Public Safety concluded: 'Keeping 14 and 15 year olds in the juvenile justice system will help to ensure that youth receive treatment, counseling, and education they need to develop into healthy, law abiding adults.' [Citation.] It is apparent that SB 1391 is consistent with and furthers Proposition 57's goal of emphasizing rehabilitation for juvenile offenders." (*Alexander C.*, at p. 1000.)

In general agreement with *Alexander C.* are *People v. Superior Court (K.L.)* (2019) 36 Cal.App.5th 529; *People v. Superior Court (I.R.)* (2019) 38 Cal.App.5th 383; *People v. Superior Court (T.D.)* (2019) 38 Cal.App.5th 360; *People v. Superior Court (S.L.)* (2019) 40 Cal.App.5th 114; *B.M. v. Superior Court* (2019) 40 Cal.App.5th 742; and *Narith S. v. Superior Court* (2019) 42 Cal.App.5th 1131. The Supreme Court has granted review of *I.R., T.D., S.L.,* and *B.M.*

O.G. v. Superior Court (2019) 40 Cal.App.5th 626 (*O.G.*), disagrees with the foregoing cases. Relying primarily on *People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, *O.G.* concludes S.B. 1391 is unconstitutional because it prohibits what Proposition 57 permits. In the words of *O.G.*: "*Pearson*, *supra*, 48 Cal.4th at page 571, posits the determinative question: 'In deciding whether this particular provision [S.B. 1391] amends Proposition [57], we simply need to ask whether it prohibits what the initiative authorizes, or authorizes what the initiative prohibits.' Here, the superior court correctly ruled that the initiative authorizes the possibility of treating a 15-year-old alleged murderer as an adult

and that S.B. 1391 precludes this possibility." (*O.G.*, at p. 630.) The Supreme Court has granted review of *O.G.*

D. Return of case to juvenile court for disposition (AB 1423)

Prior to 2020, once a juvenile case was transferred to criminal court, it could not be returned to juvenile court – it remained in criminal court for any applicable sentencing proceeding. (Welf. & Inst., § 707.1, subd. (a).) Effective January 1, 2020, Welfare & Institutions Code, section 707.5 permits the limited transfer of criminal cases involving minors back to juvenile court for disposition.

Because the return of the case to juvenile court may result in more lenient consequences for the minor, the new transfer provisions likely will be applicable to all cases not yet final as of January 1, 2020. (See *People v. Superior Court (Lara)*(2018) 4 Cal.5th 299.)

People v. Ramirez (2021) 71 Cal.App.5th 970 (*Ramirez*), holds petitioner, a juvenile at the time of the underlying crime, who successfully petitions the court pursuant to section 1170.95, is entitled to "resentencing" in juvenile court pursuant to Proposition 57 and Senate Bill 1391. (*Ramirez*, *supra*, 71 Cal.App.5th at pp. 996-1000.) "Because Ramirez was 15 at the time of the offenses, pursuant to the changes made by Senate Bill 1391 to Welfare and Institutions Code section 707, subdivision (a), Ramirez's remaining counts are not subject to a motion to transfer to adult criminal court. Therefore, we remand with directions for the trial court to transfer the matter to the juvenile court. The juvenile court shall treat Ramirez's remaining convictions as juvenile adjudications and impose an appropriate disposition." (*Ramirez*, *supra*, 71 Cal.App.5th at p. 1000.)

1. Cases eligible for transfer

Upon conviction or plea in criminal court, the minor may request transfer to juvenile court for disposition in the following circumstances:

- "If the person is *convicted at trial* in criminal court solely of a misdemeanor or misdemeanors, upon request by the defense, the case *shall* be returned to juvenile court, as provided in subdivisions (d) and (e)." (Welf. & Inst. Code, § 707.5, subd. (b)(1), italics added.) The mandatory return of the case to juvenile court appears limited to circumstances where the minor is convicted after a court or jury trial, and not by plea. It appears irrelevant that the complaint charged any felonies or any offenses listed in Welfare and Institutions Code, section 707, subdivision (b) – if the person is convicted only of misdemeanor offenses, the case must be returned to the juvenile court for disposition.

- "If any of the allegations in the juvenile court petition that were the basis for transfer involved an offense listed in subdivision (b) of Section 707, and the person

is *convicted at trial* in criminal court only of felony offenses that are not listed in subdivision (b) of Section 707, or a combination of such felony offenses and misdemeanors, upon request by the defense, the court shall have the *discretion* to return the case to juvenile court for further proceedings pursuant to subdivision (c)." (Welf. & Inst. Code, § 707.5, subd. (b)(2) italics added.)

- "If the allegations in the juvenile court petition that were the basis for transfer involved only offenses not listed in subdivision (b) of Section 707, and pursuant to a *plea agreement* the person pleads guilty only to a misdemeanor or misdemeanors, or if any of the allegations in the juvenile court petition that were the basis for transfer involved an offense listed in subdivision (b) of Section 707, and pursuant to a *plea agreement* the person pleads guilty only to a misdemeanor or misdemeanors, felony offenses that are not listed in subdivision (b) of Section 707, or a combination of such felony offenses and misdemeanors, *upon agreement and request of the parties, and subject to the approval of the court*, the case shall be returned to juvenile court for further proceedings pursuant to subdivision (c)." (Welf. & Inst. Code, § 707.5, subd. (b)(3), italics added.) To obtain transfer to juvenile court under these provisions, the person must not plead to an offense listed in Welfare and Institutions Code, section 707, subdivision (b), and the transfer must be approved by all parties and the court.

2. Factors the court must consider in making transfer decision

"In determining whether the case should be returned to juvenile court pursuant to paragraph (2) of subdivision (b), or in determining whether to approve the agreement pursuant to paragraph (3) of subdivision (b), the court shall make a finding by a preponderance of the evidence that a juvenile disposition is in the interests of justice and the welfare of the person, *and shall so state on the minute order with the specific reasons for making that finding.* In making the determination, the court shall consider the transcript and minute order of the transfer hearing, the time that the person has served in custody, the dispositions and services available to the person in the juvenile court, and any relevant evidence submitted by either party. A case that is ordered returned to juvenile court shall comply with subdivisions (d) and (e)" (Welf. & Inst. Code, § 707.5, subd. (c), italics added.) Note the obligation of the court to find that transfer is in the interests of justice and the welfare of the minor, and to state the reasons for the finding in the minutes of the court proceeding.

3. Procedure after transfer order

When the case is transferred back to juvenile court, it must be calendared for hearing within two court days. (Welf. & Inst. Code, § 707.5, subd. (d).)

The *juvenile court* must order the probation department to prepare the disposition report. The case then proceeds to disposition as required by the juvenile court law. "A

conviction or guilty plea that is returned to juvenile court shall be considered an adjudication or admission before the juvenile court for all purposes." (Welf. & Inst. Code, § 707.5, subd. (e).)

"The *clerk of the criminal court* shall report the return to juvenile court to the probation department, the law enforcement agency that arrested the minor for the offense, and the Department of Justice. The clerk of the criminal court shall deliver to the clerk of the juvenile court all copies of the minor's record in criminal court and shall obliterate the person's name for any index maintained in the criminal court. The clerk of the juvenile court shall maintain the criminal court records as provided by Article 22 (commencing with Section 825) until such time as the juvenile court may issue an order that the records be sealed." (Welf. & Inst. Code, § 707.5, subd. (f), italics added.)

E. Retroactive application to juvenile cases

1. Proposition 57

Appellate courts were in conflict over whether the portions of Proposition 57 dealing with juvenile proceedings are retroactive. The Supreme Court resolved the issue in *People v. Superior Court (Lara)*(2018) 4 Cal.5th 299 [*Lara*]. It found the provisions of the initiative relating to the adjudication of crimes committed by juveniles apply to all cases not yet final at the time of enactment. The court summarized its holding as follows: "In *In re Estrada* (1965) 63 Cal.2d 740, 48 Cal.Rptr. 172, 408 P.2d 948 (*Estrada*), we held that a statute that reduced the punishment for a crime applied retroactively to any case in which the judgment was not final before the statute took effect. In *People v. Francis* (1969) 71 Cal.2d 66 (*Francis*), we applied *Estrada* to a statute that merely made a reduced punishment possible. *Estrada* is not directly on point; Proposition 57 does not reduce the punishment for a crime. But its rationale does apply. The possibility of being treated as a juvenile in juvenile court—where rehabilitation is the goal—rather than being tried and sentenced as an adult can result in dramatically different and more lenient treatment. Therefore, Proposition 57 reduces the possible punishment for a class of persons, namely juveniles. For this reason, *Estrada* 's inference of retroactivity applies. As nothing in Proposition 57's text or ballot materials rebuts this inference, we conclude this part of Proposition 57 applies to all juveniles charged directly in adult court whose judgment was not final at the time it was enacted." (*Lara*, at pp. 303-304.) Generally in accord with *Lara* is *People v. Vela* (2018) 21 Cal.App.5th 1099.

The rule established in Lara was applied by the Supreme Court in *People v. Padilla* (2022) 13 Cal.5th 152 (*Padilla*). The issue was phrased by the court: "The question here is whether Proposition 57 applies during resentencing when a criminal court sentence imposed on a juvenile offender before the initiative's passage has since been vacated. Defendant Mario Salvador Padilla was originally sentenced before Proposition 57 was enacted, but his judgment later became nonfinal when his sentence was vacated on habeas corpus and the case was returned to the trial court for imposition of a new

sentence. Consistent with our decisions articulating the scope of the *Estrada* presumption, we hold that Proposition 57 applies to his resentencing." (*Padilla*, *supra*, 13 Cal.5th at p. 158.) As the court observed: "The Attorney General concedes that the vacatur of Padilla's sentence made the judgment in his case nonfinal. We agree. A case is final when 'the criminal proceeding as a whole' has ended [citation] and 'the courts can no longer provide a remedy to a defendant on direct review' [citation]. When Padilla's sentence was vacated, the trial court regained the jurisdiction and duty to consider what punishment was appropriate for him, and Padilla regained the right to appeal whatever new sentence was imposed. His judgment thus became nonfinal, and it remains nonfinal in its present posture because the Court of Appeal ordered a second resentencing, from which the Attorney General now appeals. There is no 'constitutional obstacle' to applying the *Estrada* presumption to his case. [Citation.]" (*Padilla*, *supra*, 13 Cal.5th at pp. 161-162.)

As observed in *People v. Phung* (2018) 25 Cal.App.5th 741 (*Phung*), *Lara* outlined the appropriate remedy for a Proposition 57 violation: "The *Lara* court expressly approved of the disposition reached in *Vela*, *supra*, 11 Cal.App.5th 68, review granted. [Citation.] *Vela* provided the following instructions to the trial court, which were republished in *People v. Vela*, *supra*, 21 Cal.App.5th 1099, following remand from the Supreme Court: 'The cause is remanded to the juvenile court with directions to conduct a transfer hearing, as discussed within this opinion, no later than 90 days from the filing of the remittitur. If, at the transfer hearing, the juvenile court determines that it would have transferred [the defendant] to a court of criminal jurisdiction, then the convictions shall be reinstated as of that date.' [Citation.] 'If, at the transfer hearing, the juvenile court determines that it would not have transferred [the defendant] to a court of criminal jurisdiction, then [the defendant's] criminal convictions and enhancements will be deemed to be juvenile adjudications as of that date. The juvenile court is then to conduct a dispositional hearing within its usual time frame.' [Citation.]" (*Phung*, at p 762; see also, *People v. Ramirez* (2019) 35 Cal.App.5th 55, 59.)

People v. Barboza (2018) 21 Cal.App.5th 1315 (*Barboza*) describes when a case is final for purposes of the *Estrada* rule: "When a trial court imposes a state prison sentence and suspends execution of that sentence during a probationary period, the judgment rendered is a final judgment for the purposes of appeal. [Citations.] 'For purposes of the *Estrada* rule, a judgment is "not final so long as the courts may provide a remedy on direct review [including] the time within which to petition to the United States Supreme Court for writ of certiorari." ' [Citations.] In this case, the time for filing an appeal expired 60 days after July 25, 2016, the date the court imposed sentence, i.e., September 26, 2016. Defendant did not appeal. Therefore, his conviction became final before Proposition 57 went into effect on November 9, 2016." (*Barboza*, at pp. 1318-1319.)

The defendant is entitled to a transfer hearing even though the passage of Proposition 57 occurred after the appellate court in his criminal case had issued a limited remittitur. *People v. Hargis* (2019) 33 Cal.App.5th 199 (*Hargis*), holds "[u]nder the unique

circumstances of this case, and in light of the California Supreme Court's conclusion Proposition 57 applies to *all* juveniles whose cases were filed directly in adult court and whose convictions were not final at the time of its enactment [Citation.], we conclude the trial court should have entertained and granted defendant's motion for a juvenile fitness/transfer hearing. We do not believe our limited remand constituted a straightjacket for the trial court such that it had no power to hear a motion on an issue that could not have been raised on defendant's prior appeal, and which concerned a change in the law that altered the court's authority to adjudicate defendant's case in criminal (adult) court in the first instance. [Citation.]" (Hargis, at pp. 207-208, italics in original.)

People v. Ramirez (2019) 35 Cal.App.5th 55 {*Ramirez*), holds the juvenile court has the jurisdiction to hold a transfer hearing, even though at the time of the hearing the defendant is no longer subject to traditional juvenile court jurisdiction. "[U]nder section 602, the juvenile court has jurisdiction to 'adjudge the minor to be a ward of the court.' Implicit in this grant of authority is the presumption that the prosecutor has filed a juvenile wardship petition to commence proceedings in juvenile court. (See § 650, subd. (c) ['Juvenile court proceedings to declare a minor a ward of the court pursuant to Section 602 are commenced by the filing of a petition by the prosecuting attorney.'].) The juvenile court therefore has jurisdiction to rule on the wardship petition. [¶] The juvenile court also has jurisdiction to issue rulings related to the wardship petition, including transferring the minor to adult court. Specifically, section 602 provides that the trial court may 'adjudge a minor to be a ward of the court' '[e]xcept as provided in Section 707.' As amended by Proposition 57, section 707 sets forth the procedure for a prosecuting attorney to request a transfer hearing and lists the five criteria the juvenile court must consider in ruling on the transfer motion. Notably, the fifth criterion requires consideration of '[t]he circumstances and gravity of the offense alleged in the [wardship] petition to have been committed by the minor.' (§ 707, subd. (a)(3)(E).) Similarly, section 606 provides that '[w]hen a petition has been filed in a juvenile court, the minor who is the subject of the petition shall not thereafter be subject to criminal prosecution based on the facts giving rise to the petition unless the juvenile court finds that the minor is not a fit and proper subject to be dealt with under this chapter and orders that criminal proceedings be resumed or instituted against him, or the petition is transferred to a court of criminal jurisdiction pursuant to subdivision (b) of Section 707.01.' Section 707.01 enumerates what happens in juvenile court '[i]f a minor is found an unfit subject to be dealt with under the juvenile court law pursuant to Section 707.' In sum, the juvenile court's 'initial' jurisdiction under section 602 includes jurisdiction to hold a transfer hearing under section 707." (*Ramirez*, at p. 67.)

The defendant is entitled to a transfer hearing under the procedures established by Proposition 57, even though he had a fitness hearing under the former provisions of Welfare and Institutions Code, section 707. (*People v. Castillero* (2019) 33 Cal.App.5th 393, 395-396; *People v. Garcia* (2018) 30 Cal.App.5th 316, 324-325.)

A defendant may be entitled to a new transfer hearing because of the enactment of Senate Bill No. 1437, which changes the law related to the felony murder rule and the law of natural and probable consequences. (See *D.W v. Superior Court* (2019) 43 Cal.App.5th 109, 118-119.)

In *People v. Federico* (2020) 55 Cal.App.5th 318 (*Federico*), defendant, when he was 15 years old, was convicted certain weapons and gang violations and was sentenced in 2008 to state prison. Ten years later CDCR notified the trial court that the sentence may have violated the holding of *People v. Gonzalez* (2009) 178 Cal.App.4th 1325, prohibiting the imposition of both GBI and gang enhancements. Defendant filed a motion agreeing with CDCR and requested a transfer hearing under Proposition 57. The trial court denied the transfer hearing but granted the *Gonzalez* relief. The defendant appealed the denial of the transfer hearing; the denial was affirmed. The court concluded that the reconsideration of defendant's sentence under section 1170, subdivision (d), does not have the effect of "reopening" the sentence for the purpose of Proposition 57. (*Federico*, at p. 327.)

People v. Lizarraga (2020) 56 Cal.App.5th 201, 206-207, holds petitioner's case was final for the purposes of relief under Proposition 57, even though there was a pending habeas petition and a motion under *People v. Franklin* (2016) 63 Cal.4th 261.

People v. Guillory (2022) 82 Cal.App.5th 326 (*Gillory*) holds petitioner is not entitled to retroactive relief under Proposition 57. "Proposition 57 applies retroactively to all cases in which the judgment was not final when the proposition went into effect. [Citation.] After briefing was completed in this case, our Supreme Court held in *People v. Padilla* (2022) 13 Cal.5th 152, 162-163, 293 Cal.Rptr.3d 623, 509 P.3d 975 that a final judgment becomes nonfinal for purposes of *Lara* retroactivity when the sentence is vacated on collateral attack (there, a petition for habeas corpus). This is so, *Padilla* indicates, because at that point the trial court regains jurisdiction to consider the appropriate punishment and the defendant regains the right to appeal the new sentence. [Citation.] Conversely, *filing* a collateral attack does not make a judgment nonfinal. [Citation.] [¶] An order to show cause under section 1172.6 does not vacate the petitioner's sentence but, like the habeas petition in *Padilla*, sets in motion proceedings to determine whether the petitioner is entitled to vacatur and resentencing. [Citation.] The original judgment remains final until that determination is made. [Citations.] Guillory is thus ineligible for retroactive relief under Proposition 57." (*Gillory*, *supra*, 82 Cal.App.5th at pp. 335-336, italics original.)

2. Senate Bill No. 1391

There seems little doubt the provisions of SB 1391 will apply to all cases not final on January 1, 2019. The legislation reduces the ability of the prosecution to transfer cases to criminal court, thus lessening the potential punishment of the offender. Such was the very reason the Supreme Court applied *Estrada* to Proposition 57: "The possibility of being treated as a juvenile in juvenile court—where rehabilitation is the goal—rather than

being tried and sentenced as an adult can result in dramatically different and more lenient treatment. Therefore, Proposition 57 reduces the possible punishment for a class of persons, namely juveniles. For this reason, *Estrada* 's inference of retroactivity applies. As nothing in Proposition 57's text or ballot materials rebuts this inference, we conclude this part of Proposition 57 applies to all juveniles charged directly in adult court whose judgment was not final at the time it was enacted." (*People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 303-304.) By prohibiting transfer of most offenses committed by juveniles aged 14 or 15, S.B. 1391 reduces the potential punishment of these offenders, thus bringing their case squarely within *Estrada's* rationale. Therefore, likely SB 1391 will apply to all cases not final as of January 1, 2019.

F. The transfer hearing

1. Disqualification of judge

Relying on *Peracchi v. Superior Court* (2003) 30 Cal.4th 1245, *Andrew M. v. Superior Court* (2020) 43 Cal.App.5th 1116, holds a post-sentencing transfer hearing is not a "new trial" for purposes of exercising a Code of Civil Procedure section 170.6 challenge. The court explained a transfer hearing is not a "new trial" "merely because the court will exercise discretion or make factual findings. Nor is the transfer hearing a 'new trial' because the court may consider factors similar to those at issue when the court resentenced Andrew M. pursuant to *Miller v. Alabama, supra,* 567 U.S. 460, 132 S.Ct. 2455. [Citation.] At the transfer hearing, Judge Brady's 'function ... is not to go back and revisit any factual or legal terrain that has thus far been traversed, but to go *forward*,' to perform a judicial task required by new legislation. [Citation.]" Therefore, the defendant's attempt to disqualify the original sentencing judge under section 170.6, subdivision (a)(2), was properly denied.

2. Waiver of transfer hearing

People v. Johnson (2020 45 Cal.App.5th 123 (*Johnson*), holds the statutory right to a transfer hearing may be waived by counsel without the personal waiver of the defendant. "The statutory right to a juvenile fitness hearing does not qualify as the type of right that cannot be waived by counsel. Unlike the fundamental matters for which counsel cannot waive on behalf of his or her client, this right is 'merely statutory, not constitutional.' [Citations.] The decision to waive the right to a juvenile fitness hearing for an accused who has reached adulthood is a tactical decision that counsel can make on behalf of his or her client. [Citation.]" (*Johnson*, at p. 132.)

3. Order after hearing

Following a transfer hearing under Welfare and Institutions Code, section 701, the court must enter an order with findings on the relevant factors with sufficient clarity to permit meaningful appellate review. As observed in *C.S. v. Superior Court* (2018) 29 Cal.App.5th 1009 (*C.S.*): "[W]e conclude that the juvenile court's transfer decision does not permit

meaningful appellate review because the juvenile court did not clearly and explicitly 'articulate its evaluative process' by detailing 'how it weighed the evidence' and by 'identify[ing] the specific facts which persuaded the court.' [Citation.] In addition, and of particular importance to our decision, is the recent amendment to section 1769, which allows C.S. to be held in the Department of Corrections and Rehabilitation, Division of Juvenile Facilities (DJF) until he reaches age 25. We are unable to discern from the juvenile court's order whether the court would have reached a different conclusion regarding transfer had the law provided at the time of the transfer hearing that C.S. could be held in DJF until age 25." (*C.S.* at p. 1016.)

4. Appealability of transfer order

The trial court's transfer order is appealable under section 1238, subdivision (a)(5), as an "order made after judgment, affecting the substantial rights of the people." (*People v. Ramirez* (2019) 35 Cal.App.5th 55, 62.)

The standard of review of a transfer order is stated in *J.N. v. Superior Court* (2018) 23 Cal.App.5th 706 (J.N.): "We review the juvenile court's finding the minor was unsuitable for treatment in the juvenile court for error under an abuse of discretion standard. [Citation.] 'There must be substantial evidence adduced at the hearing that the minor is not a fit and proper subject for treatment as a juvenile before the court may certify him to the superior court for prosecution. [Citations.]' [Citation.] [¶] In reviewing the juvenile court's decision, '[t]he ... court's findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.' [Citation.] 'All exercises of discretion must be guided by applicable legal principles .... [Citations.] If the court's decision is influenced by an erroneous understanding of applicable law or reflects an unawareness of the full scope of its discretion, the court has not properly exercised its discretion under the law. [Citation.] Therefore, a discretionary order based on an application of improper criteria or incorrect legal assumptions is not an exercise of informed discretion and is subject to reversal. [Citation.]' [Citation.] The 'discretion must be exercised in accordance and within the framework prescribed by the Legislature.' [Citation.]"

Need for certificate of probable cause

Appellate courts are in disagreement regarding the need for a defendant to obtain a certificate of probable cause prior to challenging a sentence based on a plea where the defendant did not receive a transfer hearing.

People v. Baldivia (2018 28 Cal.App.5th 1071 (*Baldivia*), holds a certificate is not needed because these changes in the law were implicitly incorporated into [the defendant's] plea agreement. Consequently, his contentions do not challenge the validity of his plea." (*Baldivia*, at p. 1074; see also, *People v. Stamps* (2019) 34 Cal.App.5th 117, 120-122;

People v. Hurlic (2018) 25 Cal.App.5th 50, 57-59.) The Supreme Court has granted review of *Stamps*.

People v. Galindo (2019) 35 Cal.App.5th 658 (*Galindo*), disagrees with *Baldivia* and holds a certificate of probable cause is required to obtain an appeal based on a plea agreement. "Where the parties have agreed upon a stipulated sentence in the plea agreement, as here, courts have enforced the certificate requirement on appeal. [Citations.] 'Even when a defendant purports to challenge only the sentence imposed, a certificate of probable cause is required if the challenge goes to an aspect of the sentence to which the defendant agreed as an integral part of a plea agreement. [Citations.] ... [I]n such cases ..., as a consequence of the plea agreement, the validity of an agreed-upon aspect of the sentence is not in contention at the sentencing hearing. Such an agreed-upon aspect of the sentence cannot be challenged without undermining the plea agreement itself. Consequently, an attack upon an integral part of the plea agreement "is, in substance, a challenge to the validity of the plea ...." [Citations.]" (*Galindo*, at p. 665; see also, *People v. Kelly* (2019) 32 Cal.App.5th 1013, 1016-1017; *People v. Fox* (2019) 34 Cal.App.5th 1124, 1113-1119.) The Supreme Court has granted review of *Galindo, Kelly,* and *Fox*.

APPENDIX I: REGULATIONS FOR THE IMPLEMENTATION OF PROPOSITION 57

CALIFORNIA CODE OF REGULATIONS

Title 15. Crime Prevention and Corrections

Division 3. Adult Institutions, Programs and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

§ 2449.1. Definitions

For the purposes of this article, the following definitions shall apply:
(a) An inmate is a "determinately-sentenced 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;
(4) The inmate is currently serving a determinate term prior to beginning a term of life with the possibility of parole;
(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.
(g) A "hearing officer" is a commissioner, deputy commissioner, associate chief deputy commissioner, or the Chief Hearing Officer.
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.

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 postgraduate 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 and approved by the California Department of Health Care Services)	180 days
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 postgraduate 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 nonadverse 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 nonworking/ 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 nonworking/ 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 "determinately-sentenced 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;
(4) The inmate is currently serving a determinate term prior to beginning a term of life with the possibility of parole;
(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 an indeterminately-sentenced nonviolent offender as defined in section 3495, in which case he or she may be eligible for parole consideration under Article 2 of this subchapter;
(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).