

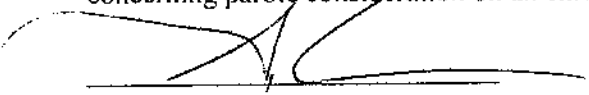
**CERTIFICATION OF OPERATIONAL NECESSITY**  
**[Per Penal Code Section 5058.3]**

This emergency rulemaking action implements Proposition 57, The Public Safety and Rehabilitation Act of 2016 (the "Act"), which was approved overwhelmingly by California voters on November 8, 2016. The Act amends the California Constitution by adding a new section 32 to Article I that substantially reformed the juvenile and adult criminal justice system in California. The Act gives the California Department of Corrections and Rehabilitation (CDCR or the "Department") broad powers to promulgate regulations that (1) define the terms under which non-violent offenders who have served the full term for their primary criminal offense in state prison may be considered for parole by the Board of Parole Hearings (the "Board"), and (2) award credits earned for good conduct and approved rehabilitative or educational achievements. The Act also amended the law to require judges, rather than prosecutors, to determine whether juveniles charged with certain crimes should be tried in juvenile or adult court.

Proposition 57 provides that the "Department of Corrections and Rehabilitation shall adopt regulations in furtherance of [the Act], and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety." (Cal. Const., art. 1, § 32(b).) As explained in the Notice of Proposed Emergency Regulations below, the immediate adoption of these regulations is necessary to implement the will of the people of California to establish a parole consideration process for non-violent offenders and an effective system of credits for inmates to take responsibility for their own rehabilitation. Adoption of these regulations will further the Act's primary goals to "[s]top the revolving door of crime by emphasizing rehabilitation..." and to "[p]revent federal courts from indiscriminately releasing prisoners" (The Public Safety and Rehabilitation Act of 2016, Section 2-Purpose and Intent).

With the immediate implementation of new and revised rules for inmate credit earning and parole consideration, the Department seeks to make our prisons and communities safer by encouraging and motivating inmates to participate in rehabilitative programs and service opportunities that create skills, employability, and hope. This in turn will lead to improved inmate behavior and a safer prison environment for inmates and staff alike. Almost every inmate will eventually return to society when they complete their sentence. Public safety is enhanced when inmates choose to pursue and accomplish tangible academic, vocational and personal/behavioral achievements to position themselves for earlier consideration before the Board or for successful transition to society. And if granted parole, these inmates enter our communities better equipped to find employment and be productive members of that community. Successful implementation also gives the Department a better chance to end federal court oversight of our prisons and prevent indiscriminate court-ordered releases of prisoners.

I, Scott Kernan, Secretary, CDCR, certify that these regulations protect and enhance public safety and that the constitutional changes made by Proposition 57, as well as the operational needs of the Department, require the immediate revision of California Code of Regulations (CCR) Title 15, Division 3, Sections 3042, 3043, 3043.1, 3043.2, 3043.3, 3043.4, 3043.5, 3043.6 and 3043.8, as well as the adoption of new Sections 3043, 3043.1, 3043.3, 3043.4, 3043.5, 3043.6, concerning inmate credit earning opportunities. In addition, the Department proposes to revise section 3044 inmate work groups. Finally, CDCR and the Board propose to adopt new Sections 3490, 3491, 3492 and 3493 of the CCR; and Sections 2449.1, 2449.2, 2449.3, 2449.4 2449.5 Division 2, Title 15, concerning parole consideration on an emergency basis.

  
SCOTT KERNAN  
Secretary  
Department of Corrections and Rehabilitation

3-23-17  
Date

**NOTICE OF PROPOSED EMERGENCY REGULATIONS**  
**(Government Code § 11346.1(b)(2))**

**INFORMATIVE DIGEST (Gov. Code § 11346.5 (a)(3))**

This action provides the following:

**Credit Earning and Parole Consideration**

**I. Introduction**

Passage of The Public Safety and Rehabilitation Act of 2016 (the “Act”) by the people of the State of California on November 8, 2016 authorizes the California Department of Corrections and Rehabilitation (CDCR or the “Department”) to develop regulations that (1) create a process for non-violent offenders who have served the full term for their primary criminal offense in state prison to become eligible for parole consideration by the Board of Parole Hearings (the “Board”) and, (2) award credits earned for good conduct and approved educational or rehabilitative achievements. The Act also amends the law to require judges, rather than prosecutors, to determine whether juveniles charged with certain crimes should be tried in juvenile or adult court.

The Act’s primary purposes are to “Stop the revolving door of crime by emphasizing rehabilitation” and “Prevent federal courts from indiscriminately releasing prisoners.” To achieve these goals, the Department proposes to establish a parole consideration process for non-violent offenders and to increase the credit earning opportunities for inmates who successfully complete approved rehabilitative programs. In this way, the Department seeks to create incentives for inmates to take responsibility for their own rehabilitation while incarcerated, enhance public safety by encouraging inmates to pursue educational, vocational, and self-improvement programs, and reduce recidivism by increasing the likelihood that inmates will better prepare themselves for their eventual return to society.

**II. Credit Earning**

The Act amends the California Constitution to authorize the Department to award credits earned in state prison for good behavior and approved rehabilitative or educational achievements. Using this authority, the Department proposes to revise the complex system of credits that currently exists in the Penal Code and regulation (see A Short History of Credit Earning ‘101’ Programs in California below). These proposed regulations revise and simplify several existing forms of credit and adopt new ways inmates may earn credit based on their participation in and completion of specific rehabilitative or educational programs. Such credits may advance an inmate’s release date if sentenced to a determinate term or advance an inmate’s initial parole consideration hearing if sentenced to an indeterminate term. Condemned inmates and those serving a sentence of life without the possibility of parole will remain ineligible to earn any credit. Inmates who violate the rules and regulations of the Department shall have their credits forfeited. Some forfeited credits may be restored if the inmate remains free of disciplinary violations for a specified timeframe; other forfeited credits cannot be restored.

Activation of the revised and new credit earning categories will be phased-in during the initial implementation of these regulations because of the significant training, case records and information technology infrastructure changes and programming needed to support each credit earning change. Good Conduct Credit shall take

effect on May 1, 2017, and the remaining credit provisions described below shall take effect on August 1, 2017. With the exception of Educational Merit Credit, all new or revised credit provisions will be applied prospectively from the date of implementation.

Inmates shall not be awarded credit or have credit restored which advances the date of his or her transition to parole to a date less than 60 calendar days from the date the credit is applied. This will ensure that the Department has adequate time to conduct pre-parole assessments and planning to provide inmates with the best possible opportunity to succeed upon their transition to the community, as well as provide, where applicable, advance notification to crime victims, prosecutors, and law enforcement (as required by Penal Code sections 3058.6 and 3058.9) of the inmate's pending transition to parole supervision.

There are five categories of credit earning programs that are the subject of this rulemaking action.

*A. Good Conduct Credit*

Good Conduct Credit is an existing type of credit awarded to eligible inmates who comply with the regulations and rules of the Department and perform the duties assigned to him or her. These proposed regulations will simplify the credit-earning categories for various offenders, incentivize more inmates to comply with prison regulations, and create a durable solution to prison overcrowding by incorporating mandatory federal court-ordered credit increases. Since Good Conduct Credit is awarded conditionally based on an expectation that each inmate will comply with prison rules and perform the duties as assigned, Good Conduct Credit is subject to forfeiture for disciplinary reasons.

*B. Milestone Completion Credit*

Milestone Completion Credit is an existing type of credit awarded to eligible inmates for successful completion of approved rehabilitative or educational programs. The awarding of Milestone Completion Credit requires the mastery of certain performance measures that demonstrate an understanding of course curriculum (either academic or vocational) through completion of assignments, instructor evaluations, and standardized testing. Each milestone credit is weighted based on the number of hours of classroom time and assignments. In keeping with the intent of the Act, the maximum amount of Milestone Completion Credit an inmate may be awarded in a 12-month period will increase from six (6) to twelve (12) weeks, and all inmates eligible for Good Conduct Credit shall be eligible to earn Milestone Completion Credit. These proposed regulations will incentivize more inmates to seek out educational or vocational training opportunities available to them and to strive to complete the longer and more complex programs. The revised Milestone Completion Credit Schedule (Rev 3/17) is incorporated by reference. Milestone Completion Credit is subject to forfeiture for disciplinary reasons.

*C. Rehabilitative Achievement Credit*

Rehabilitative Achievement Credit is a new type of credit for eligible inmates who participate in approved group or individual programs designed to further the educational, behavioral, or rehabilitative development of an inmate, such as alcohol and substance abuse support groups and counseling, anger management, life skills, victim awareness, restorative justice, and parenting classes. Inmate group programs must be organized to achieve educational or rehabilitative goals, must be sponsored by Department staff or volunteers, and must be approved by the institutional warden. All inmates eligible for Good Conduct Credit shall be eligible to earn Rehabilitative Achievement Credit. Inmates may earn up to a maximum of four weeks of credit per year. Rehabilitative Achievement Credit is subject to forfeiture for disciplinary reasons.

#### *D. Educational Merit Credit*

Educational Merit Credit is a new type of credit for eligible inmates who successfully complete, while incarcerated, a high school diploma or equivalent, an associate of arts or science degree, a bachelor's degree or graduate level college degree, or an alcohol and drug counselor certification. This is a one-time credit awarded for each level of educational achievement and must be earned during the inmate's current term of incarceration. All inmates eligible for Good Conduct Credit shall be eligible to earn Educational Merit Credit. Educational Merit Credit will not be subject to forfeiture for disciplinary reasons.

#### *E. Extraordinary Conduct Credit*

Extraordinary Conduct Credit is an existing type of credit awarded pursuant to Penal Code section 2935, under which the Secretary of the Department may grant up to twelve (12) months of credit to a prisoner 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. Extraordinary Conduct Credit is not subject to forfeiture.

### **III. Non Violent Parole Consideration**

In 2014, a federal Three Judge Court ordered the Department to implement a parole consideration process for non-violent second-strike offenders who have served 50 percent of their sentence. This court-ordered process requires prison officials to carefully review and screen out inmates based on public safety criteria. Inmates who satisfy these rigorous public-safety screens are then referred to the Board. Within five days of any referral, the Board notifies the prosecutor from the county of commitment and any registered victims. Interested parties are afforded 30 days to provide written comment and input concerning the inmate's potential parole.

A hearing officer with the Board reviews all relevant information, including the inmate's criminal history, behavior in prison, rehabilitative efforts, and written statements from interested parties, and approves or denies the inmate's parole. The Board's decision to grant or deny parole follows established legal standards and is based on whether the inmate poses an unreasonable risk of violence to the community. If parole is approved, the Department notifies registered victims, local law-enforcement agencies and probation officers, and the Division of Adult Parole Operations completes its normal pre-parole review process.

Under section 32(a)(1) of Article I of the California Constitution, adopted under Proposition 57, the Department is directed to establish a process by which 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. 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.

These regulations establish a non-violent parole process that mirrors the existing court-ordered non-violent second strike parole process. Key terms such as "nonviolent," "full term," and "primary offense" are defined, and rules established when and how a nonviolent offender may become eligible for parole consideration. To further the goal of protecting public safety, the Department will maintain the same public safety screening

criteria and notification procedures for registered victims and prosecuting agencies, and the Board will review all relevant evidence and apply the same legal standard for reviewing an inmate's suitability for parole—whether the inmate poses an unreasonable risk of violence to the community. For nonviolent offenders granted parole, the Department proposes to clarify the timing of release and the application of other laws to this parole process, such as laws governing holds, writs, detainers, notification laws, and serving additional sentences for in-prison offenses.

#### **AUTHORITY AND REFERENCE CITATIONS (Gov. Code § 11346.5 (a)(2))**

In California, adopting, amending, or repealing a regulation requires an express grant of authority in law. As stated in subdivision (b) of section 11349 of the Government Code, "'Authority' means the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation."

Ordinarily, the authority to adopt, amend, or repeal regulations in Division 3 of Title 15 ("Adult Institutions, Programs and Parole") is found in subdivision (a) of section 5058 of the Penal Code: "The [Secretary] may prescribe and amend rules and regulations for the administration of the prisons . . . ." Authority to do the same in Division 2 of Title 15 ("Board of Parole Hearings") is found in section 3052 of the Penal Code, which states, "The Board of Parole Hearings shall have the power to establish and enforce rules and regulations under which inmates committed to state prisons may be allowed to go upon parole outside the prison buildings and enclosures when eligible for parole." Furthermore, pursuant to section 5058.3 of the Penal Code, the Department is authorized to promulgate emergency regulations, as it proposes to do here, "to expedite the exercise of its power to implement regulations as its unique organizational circumstances require."

With the passage of The Public Safety and Rehabilitation Act 2016 (the "Act"), the California Constitution was amended to specifically require the Department to promulgate regulations in furtherance of the Act's parole and credit provisions. Specifically, Proposition 57 states that, "notwithstanding anything in this article or any other provision of law," CDCR "shall adopt regulations in furtherance of [the Act], and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety." (Cal. Const., art. 1, § 32, subs. (a)-(b).) Accordingly, the Secretary has been granted broad rulemaking authority under the California Constitution to adopt, amend, or repeal regulations in furtherance of the Act, notwithstanding other provisions of law, and hereby invokes that constitutional grant of authority in support of this rulemaking action.

Other relevant authority: Penal Code section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations. Penal Code section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished. Penal Code section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR. Penal Code section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

**SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS  
(Gov. Code § 11346.5(a)(3)(C))**

The proposed regulations regarding credit earning will benefit our criminal justice system and our communities by creating incentives and opportunities for inmates to take responsibility for their own conduct and rehabilitation while incarcerated. These regulations enhance public safety by encouraging inmates to pursue educational and vocational achievement, engage in self-improvement programs and make personal preparation for the transition to state parole supervision or Post Release Community Supervision. Providing incentives to inmates to engage in rehabilitative programming also reduces inmate disciplinary misconduct and violence in the prisons, yielding safer conditions for inmates and a safer workplace for staff.

Successful implementation of these regulations will help reduce overcrowding in state prisons and aid the Department in keeping its inmate prison population below the 137.5 percent of design capacity threshold ordered by the federal Three Judge Court. Furthermore, by maintaining the inmate population below the federal court cap, the Department and the State avoid the possibility of indiscriminate court-ordered early releases of prisoners. Establishing a durable remedy to prison overcrowding can eventually lead to the end of federal court intervention and substantial savings from reduced litigation costs.

The establishment of the nonviolent offender parole consideration process will also make our prisons and communities safer by encouraging and motivating inmates to participate in rehabilitative programs and service opportunities that create skills, employability and hope. The proposed regulations establish rigorous screening criteria and notification procedures for registered victims and prosecuting agencies. Establishing screening criteria benefits public safety because it excludes inmates who are more likely to pose a risk to the public and provides nonviolent offenders with substantial motivation to avoid prison misconduct and focus on their rehabilitation. Establishing notification processes benefits public safety by ensuring that registered victims and prosecuting agencies, as well as other interested parties, have the opportunity to submit additional information regarding the nonviolent offender for the Board's consideration. Under the proposed regulations, the Board will review all relevant evidence, including an inmate's full criminal history, institutional behavior, rehabilitative efforts, and written statements from interested parties and determine whether the inmate poses an unreasonable risk of violence to the community. This process will enhance public safety by motivating eligible inmates to take responsibility for their own rehabilitation and work to prepare themselves to be productive members of the community upon their release.

**EVALUATION OF CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS (Gov. Code § 11346.5(a)(3)(D))**

The Department must evaluate whether the proposed regulations are inconsistent or incompatible with existing State regulations. Pursuant to this evaluation, and because the Act allows the Department to adopt regulations "notwithstanding anything in this article or any other provision of law" (Cal. Const., art. 1, § 32, subd. (a)), it has determined these proposed regulations are not inconsistent or incompatible with and existing regulations within CCR, Title 15, Division 3 and Division 2.

**STATUTORY REQUIREMENTS, IF ANY, SPECIFIC TO AGENCY (Gov. Code § 11346.5(a)(4))**

N/A

**LOCAL MANDATE DETERMINATION (Gov. Code § 11346.5(a)(5))**

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 - 17630.

**FISCAL IMPACT STATEMENTS OF COST OR SAVINGS FOR THE FOLLOWING (Gov. Code § 11346.5(a)(6)):**

- Cost to any local agency or school district requiring reimbursement: *None*
- Cost or savings to any state agency: **Cost:** Fiscal Year 2016-17 \$0;  
Fiscal Year 2017-18 \$5.7 Million and Fiscal Year 2018-19 \$5.9 Million.
- Cost or savings in federal funding to the state: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*

**TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS RELIED UPON (Gov. Code. § 11346.1(b)(2)):**

1. Official Voter Information Guide, Proposition 57, November 8, 2016 Election.  
<http://voterguide.sos.ca.gov/en/propositions/57/arguments-rebuttals.htm>
2. Governor's Budget Summary for Fiscal Year 2017-2018 – Public Safety.  
<http://www.ebudget.ca.gov/2017-18/pdf/BudgetSummary/PublicSafety.pdf>
3. Report Filed with Three Judge Panel Regarding Non-Violent Second Striker Process.  
<http://www.cdcr.ca.gov/News/docs/3JP-Dec-2014/State%27s-report-on-new-parole-process-for-non-violent-second-strike-inmates.pdf>
4. 2015 Outcome Evaluation Report-CDCR Office of Research.  
[http://www.cdcr.ca.gov/Adult\\_Research\\_Branch/Research\\_Documents/2015\\_Outcome\\_Evaluation\\_Report\\_8-25-2016.pdf](http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/2015_Outcome_Evaluation_Report_8-25-2016.pdf)
5. Three-Judge Court Order Granting in Part and Denying in Part the State's Request for an Extension of the Population Reduction Deadline.  
<http://www.cdcr.ca.gov/News/docs/3jp-Feb-2014/Three-Judge-Court-order-2-20-2014.pdf>
6. Short History of Credit Earning '101' Programs in California (see below).

**CALIFORNIA DEPARTMENT OF CORRECTIONS & REHABILITATION  
CREDIT EARNING '101'**

**Penal Code Section - Credit Earning**

- 2920** Effective 1941 (all sentences are indeterminate)  
• The Adult Authority granted credits for inmates based upon recommendations from the Department of Corrections
- 3046** Effective 1941 (life)  
• 0 credit earning for 7 years to life sentences
- 2931** Effective 7/1/1977 (determinate) & 11/8/1978 (15 & 25 year to life indeterminate sentences)  
• 33.3 percent earnings reflected as Behavior and Participation Credits
- 2933** Effective 1/1/1983 (Day-for Day) (eligible life and determinate sentences)  
• One day of additional credit for every actual day served in state prison
- 2933.5** Effective 1/1/1991 (life and determinate sentences)  
• 0 credit earning when serving a term for a felony listed under this section with two or more prior prison terms for those specified offenses
- 2933.6** Effective 1/1/1993 (life and determinate sentences)  
• 0 credit earning when housed in a Security Housing/Administrative Segregation Unit due to a disciplinary Rules Violation Report
- 2933.6** Effective 1/25/2010 expanded to include (life and determinate sentences)  
• 0 credit earning when housed in a Security Housing/Administrative Segregation Unit due to gang affiliation.
- 667(b)(1)/1170.12** Effective 3/7/1994 (Second Striker) (life and determinate sentences)  
• 20 percent earning = 1 day of additional credit for every 4 actual days served
- 667(b)(1)/1170.12** Effective 2/10/2014 (Second Striker - determinate sentences)  
• 33.3 percent earnings for non-violent Second Strikers (excluding PC 290 sex registrants) = 1 day of additional credit for every 2 actual days served pursuant to Federal Court Order
- 667(b)(1)/1170.12** Effective 3/7/1994 (Third Striker - Life)  
• 0 credit earning, *People vs. Stoffe (1996) 45 Cal.App.4th 417*
- 2933.1** Effective 9/21/1994 (violent offenders pursuant to PC 667.5(c) (life and determinate sentences)  
• 15 percent earning = 1 day of additional credit for every 5.66 actual days served
- 664(f)** Effective 1/1/1998 (Life)  
• 0 credit earning for persons convicted of attempted murder of a peace officer or firefighter
- 2933.2** Effective 6/3/1998 (Life)  
• 0 credit earning for persons convicted of murder
- 2933.3** Effective 1/2/2003 (two for one) (determinate sentences)  
• 2 days of additional credit for every actual day served at a conservation camp
- 2933.3** Effective 1/25/2010 expanded to include (determinate sentences)  
• 2 days of additional credit for every actual day served at Forestry Training Program and Institution firefighters