



# Proposition 57 Regulations Public Comment Period: Responses to Frequent Comments

*(Updated November 29, 2017)*

The California Department of Corrections and Rehabilitation (CDCR) amended the Proposition 57 regulations on November 29, 2017. Pursuant to the Administrative Procedure Act, the public will be given a 15-day period to submit comments on the amendments to the regulations.

During the previous 45-day comment period, CDCR received comments from approximately 12,000 individuals. Some of the changes included in the amended text are a result of CDCR's consideration of the public comments. CDCR continues to work diligently to prepare responses to the public comments, which will be provided to the Office of Administrative Law in a final statement of reasons. In the meantime, CDCR provides the following responses to some of the most frequent public comments.

## **COMMENT: Allow Inmates to Earn Credits Retroactively**

**DEPARTMENT RESPONSE:** CDCR has not amended the regulations to allow inmates to earn Good Conduct Credit, Milestone Completion Credit or Rehabilitative Achievement Credit retroactively. Notably, both Educational Merit Credit and Extraordinary Conduct Credit may be earned retroactively.

Good Conduct Credit is not earned retroactively because prior to the passage of Proposition 57, inmates already earned the equivalent of Good Conduct Credit pursuant to Penal Code sections 2930 through 2935. Milestone Completion Credit and Rehabilitative Achievement Credit are not earned retroactively because to do so would lead to disparate treatment of the inmate population. First, inmates could not have predicted in the past that they would earn credit for these programs so instead of participating in these programs inmates may have selected other activities, such as work assignments. Similarly, CDCR did not predict these new credit-earning programs so documentation of inmate completion of these programs in the past was not uniformly tracked in CDCR's information technology system. Therefore, to retroactively award credit only to those inmates who happened to take the right programs in the past or to rely on incomplete documentation would disadvantage many inmates and would lead to significant inconsistencies in the award of such credit. However, all eligible inmates will be allowed to repeat programs previously taken to earn Milestone Completion Credit if they did not earn credit when they took the program previously.



**COMMENT: Allow Third Strikers to Participate in Nonviolent Parole Process**

**RESPONSE:** CDCR has not amended the regulations to allow Third Strikers to participate in the Nonviolent Parole Process (NVPP), including those who may be serving a third strike for a nonviolent offense. However, under the Proposition 57 regulations, Good Conduct Credit for nonviolent third strikers went from zero-percent credit earning to 33.3 percent. In addition, these inmates are able to earn Milestone Completion Credit, Rehabilitative Achievement Credit, and Educational Merit Credit toward their parole consideration hearing with the Board of Parole Hearings.

In 2012, the voters approved Proposition 36 which amended the Three Strikes Law to provide that the third strike must be for a serious or violent felony as defined in the Penal Code. Pursuant to Proposition 36, Third Strikers already in prison for a third strike that was not serious or violent can petition a court to resentence them. This process involves the court making a determination whether resentencing the inmate to a lesser term would pose an “unreasonable risk of danger to public safety” (Penal Code section 1170.126(f)).

Criminal sentencing is the exclusive role of the courts and CDCR will defer to the process set forth in Proposition 36 and will not unilaterally “resentence” a Third Striker to a lesser term so that he or she can participate in the NVPP.

Furthermore, Penal Code section 667.5 (c)(7) identifies all inmates who are serving a life sentence, such as Third Strikers, as having committed a violent offense. Thus, inmates sentenced to a third strike are specifically excluded from participation in the NVPP. Finally, including Third Strikers was also determined to be inconsistent with public safety.

**COMMENT: Expand the List of Violent Offenses That Would Exclude Inmates from the Nonviolent Parole Process**

**RESPONSE:** CDCR has not amended the regulations to expand the list of violent offenses that would exclude inmates from the NVPP. Instead, CDCR continues to rely on the definition of “violent offense” found in Penal Code section 667.5(c) to exclude inmates from the NVPP, as well public safety concerns to exclude inmates serving a life-term (including Third Strikers) or a determinate term for a sex offense. By relying on this definition of violent offenses, the NVPP aligns with the statutory definition used by prosecutors and the courts in charging and sentencing offenders. Although the public may debate whether additional offenses are inherently “violent” and should be excluded from the NVPP, CDCR will defer to the Legislature to make any revisions to the list of violent offenses in Penal Code section 667.5(c).



**COMMENT: Increase the Rate of Good Conduct Credit Earning**

**RESPONSE:** CDCR has not amended the regulations to increase the rate of Good Conduct Credit earning. Some commenters to the regulations have suggested increasing the rate of Good Conduct Credit earning, with suggestions of 33 percent or even 50 percent for all inmates. Prior to the passage of Proposition 57, Good Conduct Credit was set pursuant to Penal Code sections 2930 through 2935, which provided varying rates of credit based on the gravity of the inmate's offense, ranging from zero percent to 50 percent.

CDCR maintained the Legislative intent of providing different rates of Good Conduct Credit based on the gravity of the inmate's offense. This allows for the gravity of the inmate's offense to be factored into the rate of Good Conduct Credit, thus achieving the goal of Proposition 57 to "enhance public safety." Specifically, inmates who are condemned or serving a sentence of life-without-the-possibility-of-parole are not eligible for Good Conduct Credit because such credit has no effect on the length of their term. Inmates serving a determinate or indeterminate term for a violent offense receive 20 percent Good Conduct Credit. Inmates serving a second or third strike under the Three Strikes Law for a non-violent offense receive 33.3 percent Good Conduct Credit. The remaining inmates receive 50 percent Good Conduct Credit. Additionally, inmates involved in firefighting or who are classified as minimum custody receive an enhanced 66.6 percent Good Conduct Credit.

**COMMENT: Apply Credits to Advance the Timing of Youth Offender Hearings**

**RESPONSE:** CDCR has not amended the regulations to allow credits to apply to the timing of a youth offender hearing before the Board of Parole Hearings. As a general matter, earning credit helps an inmate serving a determinate term advance his or her release date and earning credit helps an inmate serving an indeterminate term advance the date of his or her initial parole consideration hearing before the Board. And inmates who committed their crimes as a youth, like all inmates, will receive the benefit of an advanced release date or advanced initial parole consideration hearing by earning such credit.

However, according to Penal Code section 3051, youth offenders are to be provided an earlier opportunity for a parole consideration hearing than otherwise provided by law. This is a unique opportunity for a youth offender to be heard by the Board of Parole Hearings and, if granted parole, be released prior to the completion of their determinate term or the minimum duration of their life term. The youth offender law specifically set forth that these earlier-than-normal parole consideration hearings shall occur after the inmate has served 15, 20, or 25 continuous years of incarceration, depending on the sentence imposed by the court. While the purpose of the statutory youth offender law



was to provide an opportunity for parole consideration after 15, 20 or 25 years of incarceration for youth offenders with extremely long sentences, it did so without regard to credits earned.

Accordingly, CDCR has maintained the Legislative intent behind the youth offender law and does not apply credits to advance the timing of youth offender hearings. Nevertheless, pursuant to Penal Code section 3051, youth offenders will receive early parole consideration hearings as intended by the Legislature and will, like all inmates, receive the benefit of an advanced release date or advanced initial parole consideration hearing by earning such credit.