

**State of California  
Office of Administrative Law**

**In re:**  
Department of Corrections and  
Rehabilitation

**Regulatory Action:**

**Title 15, California Code of Regulations**

**Adopt sections:** 2449.1, 2449.2, 2449.3,  
2449.4, 2449.5, 2449.6,  
2449.7, 3043.1, 3043.2,  
3043.3, 3043.4, 3043.5,  
3043.6, 3490, 3491, 3492,  
3493

**Amend sections:** 3043, 3043.5 (renumbered  
to 3043.7), 3043.6  
(renumbered to 3043.8),  
and 3044

**Repeal sections:** 2449.2, 2449.3, 2449.5,  
3042, 3043.1, 3043.2,  
3043.3, 3043.4, 3043.7

**NOTICE OF APPROVAL OF CERTIFICATE OF  
COMPLIANCE**

**Government Code Sections 11349.1 and  
11349.6(d)**

**OAL Matter Number: 2018-0320-01C**

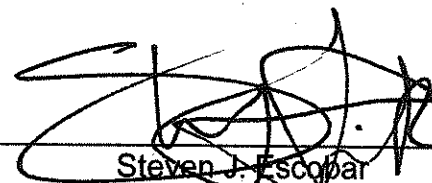
**OAL Matter Type: Certificate of Compliance  
(C)**

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

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

**Date:** May 1, 2018



**Steven J. Escobar  
Attorney**

**Original:** Scott Kernan, Secretary  
**Copy:** Laura Lomonaco

**For:** Debra M. Cornez  
Director

## **TEXT OF ADOPTED REGULATIONS**

### **Title 15. Crime Prevention and Corrections**

#### **Division 3. Adult Institutions, Programs and Parole**

#### **Chapter 1. Rules and Regulations of Adult Operations and Programs**

#### **Article 3.5. Credits**

#### **Section 3042. Penal Code 2933 Credits. [Repealed]**

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

#### **Section 3043. Credit Earning.**

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

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

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

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

setting prior to parole, including a pre-parole or re-entry program, are eligible to participate in Good Conduct Credit, Milestone Completion Credit, Rehabilitative Achievement Credit, Educational Merit Credit, and Extraordinary Conduct Credit. Placement in an alternative custody setting means transfer of an inmate, prior to parole, to serve the remainder of his or her term of incarceration in a community based re-entry facility administered by the department in lieu of confinement in a state prison or Department of Forestry and Fire Protection fire camp.

(e) Participation by Inmates Housed In A Different Jurisdiction. Inmates serving criminal sentences under California law but housed in a different jurisdiction, including those participating in the Western Interstate Corrections Compact, participating in the Interstate Corrections Compact Agreement, housed in a facility administered by a county sheriff, housed in a facility administered by the California Department of State Hospitals, or housed in a facility administered by the Federal Bureau of Prisons, are only eligible to participate in Good Conduct Credit, Educational Merit Credit, or Extraordinary Conduct Credit as described in this article, subject to the criteria set forth in subsection (b) of this section.

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

#### **Section 3043.1. Pre-Sentence Credit.**

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

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

#### **Section 3043.2. Good Conduct Credit.**

(a) The award of Good Conduct Credit requires that an inmate comply with departmental regulations and local rules of the prison and perform the duties assigned on a regular and satisfactory basis.

(b) Notwithstanding any other authority to award or limit credit, effective May 1, 2017, the award of Good Conduct Credit shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole pursuant to the following schedule:

(1) No credit shall be awarded to an inmate sentenced to death or a term of life without the possibility of parole;

(2) One day of credit for every four days of incarceration (20%) shall be awarded to an inmate serving a determinate or indeterminate term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code, unless the inmate qualifies under paragraph (4)(B) of this section or is statutorily eligible for greater credit pursuant to the provisions of Article 2.5 (commencing with section 2930) of Chapter 7 of Title 1 of Part 3 of the Penal Code;

(3) One day of credit for every two days of incarceration (33.3%) shall be awarded to an inmate sentenced under the Three Strikes Law, under subdivision (c) of section 1170.12 of the Penal Code, or under subdivision (c) or (e) of section 667 of the Penal Code, who is not serving a term

for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code, unless the inmate is serving a determinate sentence and qualifies under paragraph (5)(B) of this section;

(4) One day of credit for every day of incarceration (50%) shall be awarded to:

(A) An inmate not otherwise identified in paragraphs (1)-(3) above;

(B) An inmate serving a determinate term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code who has successfully completed the requisite physical fitness training and firefighting training to be assigned as a firefighter to a Department of Forestry and Fire Protection fire camp or as a firefighter at a Department of Corrections and Rehabilitation firehouse; or

(C) An inmate serving a determinate term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code who is housed at a Department of Forestry and Fire Protection fire camp in a role other than firefighter.

(5) Two days of credit for every day of incarceration (66.6%) shall be awarded to:

(A) An inmate eligible to earn day-for-day credit (50%) pursuant to paragraph (4)(A) above who is assigned to Minimum A Custody or Minimum B Custody pursuant to section 3377.1;

(B) An inmate serving a determinate sentence who is not serving a term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code who has successfully completed the requisite physical fitness training and firefighting training to be assigned as a firefighter to a Department of Forestry and Fire Protection fire camp or as a firefighter at a Department of Corrections and Rehabilitation firehouse; or

(C) An inmate serving a determinate sentence who is not serving a term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code who is housed at a Department of Forestry and Fire Protection fire camp in a role other than firefighter.

(c) For purposes of placement in an alternative custody setting the department shall consider the Good Conduct Credit that may be earned during the inmate's incarceration. An inmate who is placed in an alternative custody setting, including a pre-parole or re-entry program, shall be awarded the same Good Conduct Credit that the inmate earned prior to that placement.

(d) Credit Forfeiture and Restoration. Good Conduct Credit shall be forfeited in whole-day increments upon placement in a zero-credit work group pursuant to subsection 3044(b)(4) or 3044(b)(6) or a finding of guilt of a serious rule violation in accordance with section 3323. Forfeited credit under this section shall be restored if the disciplinary action is reversed pursuant to an administrative appeal or court of law. Forfeited credit may also be restored in accordance with Article 5.5 of Subchapter 4 of Chapter 1 of Division 3 of Title 15 of the California Code of Regulations.

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

### **Section 3043.3. Milestone Completion Credit.**

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

duration of the program, to include any subcomponents required in the curriculum for that program. Passing an exam alone shall not qualify for the award of such credit.

(b) Milestone Completion Credit for completing academic courses related to a high school diploma shall not be awarded to inmates already possessing a high school diploma, high school equivalency approved by the California Department of Education, or college degree.

(c) Notwithstanding any other authority to award or limit credit, effective August 1, 2017, all inmates eligible for Good Conduct Credit pursuant to section 3043.2 shall be eligible for Milestone Completion Credit pursuant to this section. The award of Milestone Completion Credit shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole. Milestone Completion Credit shall be awarded in increments of not less than one week, but no more than twelve weeks in a twelve-month period. Milestone Completion Credit earned in excess of this limit shall be awarded to the inmate on his or her next credit anniversary, defined as one year after the inmate completes his or her first Milestone Completion Credit program, and each year thereafter. Upon release to parole, release to community supervision, or discharge from parole, any excess credit under this section shall be deemed void. If instead an inmate completes one term and immediately begins serving a consecutive term, any excess credit awarded under this section shall be applied to that consecutive term. One week is equivalent to seven calendar days.

(d) A Milestone Completion Credit Schedule (REV 11/17), approved by the Director of the Division of Adult Institutions under the direction of the Secretary, is hereby incorporated by reference. The schedule identifies all of the approved Milestone Completion Credit programs, the corresponding credit reduction for successful completion of each program, and whether credit for repeating the program is authorized. The director may authorize a program be repeated for credit if there are significant rehabilitative benefits to be gained by those inmates who retake the program.

(e) Standard Performance Criteria. Standard performance criteria for the award of Milestone Completion Credit include the mastery or understanding of course curriculum by the inmate as demonstrated by completion of assignments, instructor evaluations, and testing processes. Within ten business days of completion of an approved credit earning program under this section, the instructor shall verify completion of the program in the department's information technology system. Within ten additional business days, a designated system approver shall verify the inmate's eligibility for such credit.

(f) Modified Performance Criteria.

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

(2) In lieu of the above standard performance criteria, enhanced outpatient program participants, developmentally disabled program participants, and participants in an approved mental health inpatient program, excluding those in a mental health crisis bed, shall be awarded credit under this section upon successfully completing scheduled, structured therapeutic activities in

accordance with their mental health treatment plan or, if applicable, their developmentally disabled program, in the following increments: one week of credit (the equivalent of seven calendar days) for every 60 hours completed up to a maximum of six weeks of credit for 360 hours completed in a twelve-month period. Within ten business days of completing 60 hours of scheduled, structured therapeutic activities under this subsection the Chief of Mental Health at each institution shall be responsible for verifying and awarding credit to such participants.

(g) For purposes of placement in an alternative custody setting the department shall consider the Milestone Completion Credit that may be earned during the inmate's incarceration.

(h) Credit Forfeiture and Restoration. Milestone Completion Credit shall be forfeited in whole-day increments upon a finding of guilt of a serious rule violation in accordance with section 3323, only after all Good Conduct Credit is exhausted. Forfeited credit under this section shall be restored if the disciplinary action is reversed pursuant to an administrative appeal or court of law.

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

#### **Section 3043.4. Rehabilitative Achievement Credit.**

(a) The award of Rehabilitative Achievement Credit requires verified attendance and satisfactory participation in approved group or individual activities which promote the educational, behavioral, or rehabilitative development of an inmate. To qualify for credit under this section, the purpose, expected benefit, program materials, and membership criteria of each proposed activity, as well as any affiliations with organizations or individuals outside of the department, must be pre-approved by the institution. The meeting frequency and location of each activity shall only be approved under safe and secure conditions. Inmate participation in such activities shall be consistent with his or her custodial classification, work group assignment, privilege group, and other safety and security considerations.

(b) Notwithstanding any other authority to award or limit credit, effective August 1, 2017, all inmates eligible for Good Conduct Credit pursuant to section 3043.2 shall be eligible for Rehabilitative Achievement Credit pursuant to this section. The award of Rehabilitative Achievement Credit shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole.

(c) Standard Award Increments. Rehabilitative Achievement Credit shall be awarded in the following increments: one week of credit for every 52 hours of participation in approved rehabilitative activities up to a maximum of four weeks of credit for 208 hours of participation in a twelve-month period.

(d) Modified Award Increments. Rehabilitative Achievement Credit shall be awarded to inmates housed in a facility administered by the department's Division of Juvenile Justice or placed in an alternative custody setting prior to parole, including a pre-parole or re-entry program, in the following increments: one week of credit for every three months of participation up to a maximum of four weeks of credit in a twelve-month period.

(e) Rehabilitative Achievement Credit earned in excess of the four-week limit identified in subsections (c) and (d) of this section during a single year (which shall commence after the inmate earns his or her first week of such credit and each year thereafter) shall be deemed void. Upon release to parole, release to community supervision, or discharge from parole, any excess

credit under this section shall also be deemed void. One week is equivalent to seven calendar days.

(f) Under the direction of the Secretary and in conjunction with the Director of the Division of Adult Institutions, every warden shall periodically (but no less than once per year) issue a separate local rule in compliance with subdivision (c) of section 5058 of the Penal Code for each particular prison or other correctional facility identifying the Rehabilitative Achievement Credit activities which comply with subsection (a) of this section and are approved at that location.

(g) Within ten business days of completing 52 hours of approved activity under this section, staff designated by the warden at each institution shall verify the inmate's completion of the hours necessary for this credit, confirm the inmate's eligibility to receive this credit, and ensure the credit is awarded to the inmate in the department's information technology system.

(h) For purposes of placement in an alternative custody setting the department shall consider the Rehabilitative Achievement Credit that may be earned during the inmate's incarceration.

(i) Credit Forfeiture and Restoration. Rehabilitative Achievement Credit shall be forfeited in whole-day increments upon a finding of guilt of a serious rule violation in accordance with section 3323, only after all Good Conduct Credit is exhausted. Forfeited credit under this section shall be restored if the disciplinary action is reversed pursuant to an administrative appeal or court of law.

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

### **Section 3043.5. Educational Merit Credit.**

(a) The award of Educational Merit Credit requires the achievement of a significant academic accomplishment which will provide inmates with life-long rehabilitative benefits. Specifically, the achievement of a high school diploma (or high school equivalency approved by the California Department of Education), a collegiate degree (at the associate, bachelor, or post-graduate level), or a professional certificate as an Alcohol and Drug Counselor shall entitle an inmate to the benefits of this credit.

(b) Notwithstanding any other authority to award or limit credit, effective August 1, 2017, all inmates eligible for Good Conduct Credit pursuant to section 3043.2 shall be eligible for Educational Merit Credit pursuant to this section. The award of Educational Merit Credit shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole. Educational Merit Credit shall be awarded in the increments set forth in the schedule below upon demonstrated completion of the corresponding diploma, certificate, or degree:

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

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

(c) Credit for each category listed in subsection (b) of this section shall only be awarded once to an inmate upon proof the diploma, certificate, or degree was conferred during the inmate's current term of incarceration. Educational Merit Credit for achieving a high school diploma or high school equivalency as approved by the California Department of Education shall not be awarded to inmates already possessing a high school diploma, approved equivalent, or college degree prior to the date the inmate was received in prison for his or her current period of incarceration. Educational Merit Credit shall not be awarded for an associate, bachelor, or post-graduate degree, unless the inmate earned at least 50 percent of the units necessary for that degree while serving his or her current term, the degree was conferred by a regionally accredited institution, and the inmate arranged for an official, sealed copy of their transcript to be sent by the educational institution directly to the Principal at the inmate's institution. Credit for such degrees earned before August 1, 2017, but during an inmate's current term of incarceration, shall be effective on the date the credit is entered into the department's information technology system.

(d) Within 30 calendar days of receiving documentation from an inmate indicating completion of an Educational Merit Credit, during the inmate's current term of incarceration, department staff shall verify completion of the diploma, certificate, or degree in the department's information technology system.

(e) Upon release to parole, release to community supervision, or discharge from parole, any excess credit under this section shall be deemed void. If instead an inmate completes one term and immediately begins serving a consecutive term, any excess credit shall be applied to that consecutive term.

(f) Credit Forfeiture. Educational Merit Credit shall not be forfeited due to disciplinary action.

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

**Section 3043.6. Extraordinary Conduct Credit.**

(a) Notwithstanding any other authority to award or limit credit, effective August 1, 2017, the Director of the Division of Adult Institutions, under the direction of the Secretary, may award up to twelve months of Extraordinary Conduct Credit to any inmate who has performed a heroic act in a life-threatening situation or who has provided exceptional assistance in maintaining the safety and security of a prison, in accordance with subsection 3376(d)(3)(C) or subsection 3376.1(d)(6). No credit shall be awarded to an inmate sentenced to death or a term of life without the possibility of parole.

(b) The award of such credit shall advance the inmate's release date if sentenced to a determinate term or advance the inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole.



(c) Upon release to parole, release to community supervision, or discharge from parole, any excess credit under this section shall be deemed void. If instead an inmate completes one term and immediately begins serving a consecutive term, any excess credit shall be applied to that consecutive term.

(d) Credit Forfeiture. Extraordinary Conduct Credit shall not be forfeited due to disciplinary action.

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

### **Section 3043.7. Special Assignments.**

(a) Special assignments include:

(1) The positions of chairperson and secretary of an institution's inmate advisory council may qualify as a full-time assignment to Work Group A-1.

(2) Assignment to an approved full-time pre-release program shall qualify as a full time assignment to Work Group A-1.

(3) Any Reentry program assignment shall qualify as a full-time assignment to Work Group A-1.

(b) Short Term Medical or Psychiatric Inpatient Hospitalization (29 calendar days or less). Inmates determined by medical or mental health staff to need short-term inpatient care shall retain their existing credit earning category. Inmates requiring longer periods of inpatient care shall be referred by the attending physician or mental health clinician to a classification committee for review. The classification committee shall confirm the inmate's unassigned inpatient category and change the inmate's work or training group status as follows:

(1) A general population inmate shall be assigned to Work Group A-2, effective the thirtieth calendar day of unassignment, unless the inmate is assigned to Work Group C or Work Group M in accordance with sections 3044(b)(4) or 3044(b)(8).

(2) An inmate who is assigned to Work Group A-1, Work Group B, Work Group F, or Work Group M and placed in segregated housing shall be assigned to Work Group D-1, effective the first day of placement into Administrative Segregation, unless the inmate is assigned to Work Group D-2, Work Group F, or Work Group M in accordance with sections 3044(b)(6), 3044(b)(7)(D), 3044(b)(7)(E), 3044(b)(8)(E), or 3044(b)(8)(F).

(3) Segregation inmates assigned to Work Group D-1 or D-2 shall retain their work group status.

(c) Long Term Medical or Psychiatric Unassigned Status. In cases where the health condition necessitates that the inmate becomes medically unassigned for 30 calendar days or more, the physician or mental health clinician shall specify an anticipated date the inmate may return to work. The classification committee shall review the inmate's medical or psychiatric unassigned status and change the inmate's work group status as follows:

(1) An inmate in the general population shall be re-assigned to Work Group A-2, involuntary unassigned, effective the thirtieth calendar day of un-assignment, unless the inmate is assigned to Work Group C or Work Group M in accordance with sections 3044(b)(4) or 3044(b)(8).

(2) An inmate who is assigned to Work Group A-1, Work Group B, Work Group F, or Work Group M and placed in segregated housing shall be re-assigned to Work Group D-1, effective the first day of placement into Administrative Segregation, unless the inmate is assigned to Work Group D-2, Work Group F, or Work Group M in accordance with sections 3044(b)(6), 3044(b)(7)(D), 3044(b)(7)(E), 3044(b)(8)(E), or 3044(b)(8)(F).

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

(d) Medical or mental health care status determination:

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

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

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

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

(e) Medical or psychiatric special assignments:

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

(A) A medical or mental health evaluation of the inmate shall be made to determine the extent of disability and to delineate capacity to perform work and training programs for either a full or partial workday. If the inmate is deemed capable of only a partial work program, full credit shall be awarded for participation in such a program.

(B) A classification committee shall review the evaluation and determine the inmate's assignment.

1. A committee concurring with an evaluation's light duty recommendation shall refer the matter to the facility's assignment office which shall attempt to provide an assignment within the inmate's capabilities. Inmates assigned to such light duty shall be scheduled for semi-annual review.

2. A committee disagreeing with an evaluation's light duty recommendation shall refer the matter back to the medical or mental health department, describing the difference of opinion or rationale for requesting a second evaluation. If the committee disagrees with the second evaluation it shall refer the matter to the institution classification committee for final determination.

(2) Short-term medical or psychiatric lay-in or unassignment. Inmates who are ill or otherwise require a medical or psychiatric lay-in, or unassignment for 29 calendar days or less, shall be processed in the following manner:

(A) Only designated medical or mental health staff are authorized to approve such lay-ins and unassignments. Reasons for the approval and the expected date of return to their regular assignment shall be documented by the medical or mental health staff making the decision.

(B) Inmates shall notify their work or training supervisor of their lay-in or unassignment status. The work or training supervisor shall record each day of the inmate's approved absence as an "E".

(C) Medical or mental health staff determining an inmate should continue on lay-in or unassigned status for more than 29 calendar days shall refer the case to a classification committee for review.

(D) The inmate shall continue to use ETO time while on short-term medical/psychiatric lay-in or unassigned status.

(f) On-the-job injuries. The chief medical officer shall document inmate injuries occurring on the job. With the exception of inmates assigned to Work Group F, such injured inmates shall retain their existing work group status until medically approved to return to their work assignment. Inmates assigned to Work Group F shall revert to Work Group A-1 in accordance with section 3044(b)(1) or Work Group M in accordance with section 3044(b)(8) effective on the date the chief medical officer determines the on-the-job injury excludes the inmate from conservation camp placement or from placement as a firefighter at a California Department of Corrections and Rehabilitation firehouse, providing the chief medical officer's exclusion determination is within 29 calendar days following the date of the inmate's removal from the conservation camp or firehouse firefighter assignment. If the chief medical officer's exclusion determination is not within 29 calendar days following the date of the inmate's removal from the conservation camp or firehouse firefighter assignment, the inmate shall revert to Work Group A-1 in accordance with section 3044(b)(1) or Work Group M in accordance with section 3044(b)(8) effective the 30th calendar day following the date of the inmate's removal from the conservation camp or firehouse firefighter assignment.

(g) Medical or psychiatric treatment categories "H", "I", and "N". An inmate assigned to category "H", "I", or "N" is not capable of performing a work or training assignment and shall,

except where otherwise prohibited by law, be assigned to Work Group A-1, unless the inmate is assigned Work Group M in accordance with section 3044(b)(8).

(h) Department of State Hospitals Placements. An inmate transferred to the Department of State Hospitals pursuant to sections 1364, 2684, or 2690 of the Penal Code shall be assigned to a work group as provided in section 3043.8(b).

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

### **Section 3043.8. Impact of Transfer on Credit Earning.**

(a) Non-adverse transfers.

(1) A non-adverse transfer is movement of an inmate to a less restrictive institution or program where the security level is the same or lower, movement to a secure perimeter from a non-secure camp or Level 1 (Minimum Support Facility) setting by order of the prison administration for non-adverse reasons or transfers from reception centers.

(2) With the exception of inmates assigned to Work Group F, an inmate transferred for non-adverse reasons shall retain their work and privilege group status. Inmates assigned to Work Group F shall revert to Work Group A-1 effective the date removed from camp or institution fire fighter assignment.

(3) With the exception of inmates assigned pursuant to subsections 3040.2(f)(2) and 3040.2(f)(4), an inmate in a work assignment at the sending institution shall be placed on an existing waiting list at the receiving institution. If eligible, inmates on waiting lists at sending institutions shall be merged into the receiving institution's waiting list based on credit earning status, release date, and the length of time they have spent on the sending institution's waiting list. Inmates who are day-for-day eligible per Penal Code section 2933 shall be given priority for assignment with the exception of Senate Bill (SB) 618 Participants who, as defined in section 3000, pursuant to the provisions of subsection 3077.3(b)(1), and subject to the provisions of 3077.3(f), shall be placed at the top of an institution's waiting list and given priority for assignment. Inmates shall be merged into the receiving institution's waiting list in the following manner:

(A) First, SB 618 Participants. Those SB 618 Participants having the earliest release date shall be given first priority.

(B) Second, those inmates who are day-for-day credit eligible, approved for the program and are not assigned, Work Group A-2. Inmates eligible to earn credits per Penal Code section 2933 shall be given second priority for placement on waiting lists and the inmate with the earliest release date shall be given priority.

(C) Third, inmates who are day-for-day credit eligible and are already designated Work Group A-1. Inmates eligible to earn credits per Penal Code section 2933 shall be given next priority for placement on waiting lists and the inmate with the earliest release date shall be given priority.

(D) Fourth, those inmates who are not Penal Code section 2933 day-for-day credit eligible and are already designated Work Group A-1. Inmates will be placed on waiting lists based upon the work group effective date.

(E) Fifth, those inmates who are not Penal Code section 2933 day-for-day credit eligible and are not assigned, Work Group A-2. Inmates will be placed on waiting lists based upon the work group effective date.

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

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

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

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

(c) Adverse transfers.

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

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

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

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

(d) Reception center or layover status.

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

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

(e) Special housing unit transfers.

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

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

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

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

#### **Section 3044. Inmate Work Groups and Privilege Groups.**

(a) Full-time and half-time defined.

(1) Full-time work or training assignments normally mean eight hours per day on a five day per week basis, exclusive of meals.

(2) Half-time work or training assignments normally mean four hours per day on a five day per week basis, exclusive of meals.

(b) Consistent with the provisions of section 3375, all assignments or re-assignments to a work group shall be approved by a classification committee.

(1) Work Group A-1 (Full-Time Assignment). An inmate willing and able to perform an assignment on a full-time basis shall be assigned to Work Group A-1, except when the inmate qualifies for the assignment of Work Group F or Work Group M pursuant to sections 3044(b)(7) or 3044(b)(8). The work day shall not be less than 6.5 hours of work participation and the work week no less than 32 hours of work participation, as designated by assignment. Those programs requiring an inmate to participate during other than the normal schedule of eight-hours-per-day, five-days-per-week (e.g., 10-hours-per-day, four-days-per-week) or programs that are scheduled for seven-days-per-week, requiring inmate attendance in shifts (e.g., three days of 10 hours and one day of five hours) shall be designated as "special assignments" and require departmental approval prior to implementation. "Special assignment" shall be entered on the inmate's timekeeping log by the staff supervisor.

(A) Any inmate assigned to a rehabilitative program, including but not limited to, substance abuse treatment, cognitive behavioral treatment, transitions, education, career technical education, or any combination thereof, shall be assigned to Work Group A-1, except when the inmate qualifies for the assignment of Work Group M pursuant to section 3044(b)(8). An inmate assigned to the Security Threat Group Step Down Program shall be assigned a work group in accordance with sections 3044(b)(5) and 3044(b)(6).

(B) Any inmate assigned to a combination of half-time work assignment and any rehabilitative program as described in section 3044(b)(1)(A), shall be assigned to Work Group A-1, except when the inmate qualifies for the assignment of Work Group M pursuant to section 3044(b)(8).

(C) A full-time college program may be combined with a half-time work or career technical education program equating to a full-time assignment. The college program shall consist of twelve units in credit courses only leading to an associate's degree in two years or a bachelor's degree in four years.

(D) Any inmate diagnosed by a physician or mental health clinician as totally disabled and therefore incapable of performing an assignment, shall remain assigned to Work Group A-1 throughout the duration of their total disability, unless the inmate is assigned to Work Group C, Work Group D-1, Work Group D-2, or Work Group M in accordance with sections 3044(b)(4), 3044(b)(5), 3044(b)(6), or 3044(b)(8).

(E) Any inmate diagnosed by a physician or mental health clinician as partially disabled shall be assigned to an assignment within the physical and mental capability of the inmate as determined by the physician or mental health clinician, unless changed by disciplinary action.

(2) Work Group A-2 (Involuntarily Unassigned). An inmate willing but unable to perform in an assignment shall be assigned to Work Group A-2, if the inmate does not qualify for assignment to Work Group M pursuant to section 3044(b)(8) and either of the following is true:

(A) The inmate is placed on a waiting list pending availability of an assignment.

(B) The unassigned inmate is awaiting adverse transfer to another institution.

(3) Work Group B (Half-Time Assignment). An inmate willing and able to perform an assignment on a half-time basis shall be assigned to Work Group B, except when the inmate qualifies for the assignment of Work Group M pursuant to section 3044(b)(8). Half-time programs shall normally consist of an assignment of four hours per workday, excluding meals, five-days-per-week, or full-time enrollment in college consisting of twelve units in credit courses leading to an associate's degree or bachelor's degree. The work day shall be no less than three hours and the work week no less than fifteen hours.

(4) Work Group C (Disciplinary Unassigned; Zero Credit).

(A) Any inmate who twice refuses to accept assigned housing, who refuses to accept or perform in an assignment, or who is deemed a program failure as defined in section 3000 by a classification committee shall be assigned to Work Group C for a period not to exceed the number of disciplinary credits forfeited due to the serious disciplinary infraction(s) or 180 days, whichever is less, except when the inmate qualifies for assignment to Work Group D-2 in accordance with section 3044(b)(6)(C).

(B) An inmate assigned to this work group shall not be awarded Good Conduct Credit, as described in section 3043.2, for a period not to exceed the number of disciplinary credits forfeited or 180 days, whichever is less, and shall revert to his or her previous work group upon completion of the credit forfeiture, unless the inmate no longer qualifies for assignment to Work Group F or Work Group M due to the totality of their case factors. In such exceptional circumstances, the inmate shall be assigned to another work group in accordance with this section. The inmate shall also be referred to a classification committee for placement on an appropriate waiting list.

(5) Work Group D-1 (Lockup Status). An inmate assigned to a segregated housing program, shall be assigned to Work Group D-1, unless the inmate qualifies for continued assignment to Work Group F or Work Group M or initial assignment to Work Group M in accordance with sections 3044(b)(7)(D), 3044(b)(7)(E), 3044(b)(8)(E), or 3044(b)(8)(F). Inmates assigned to Steps 1 through 4 of the Security Threat Group Step Down Program and who are eligible to earn credit pursuant to section 2933 of the Penal Code, shall be awarded one day of credit for each day assigned to this work group. Inmates who are not eligible to earn credit pursuant to section 2933 of the Penal Code shall receive credits pursuant to their sentence. Segregated housing shall include, but not be limited to, the following:

(A) Administrative Segregation Unit (ASU);

(B) Security Housing Unit (SHU);

(C) Psychiatric Services Unit (PSU);

(D) Non-Disciplinary Segregation (NDS).

(6) Work Group D-2 (Lockup Status: Zero Credit).

(A) Unless the exceptional criteria specified in section 3044(b)(6)(B) are met, an inmate serving an imposed SHU term pursuant to section 3341.9(e) in segregated housing shall be assigned to

Work Group D-2, effective the date of the Rules Violation Report, for a period not to exceed the number of whole-day credits forfeited for the rule violation or 180 days, whichever is less, up to the Minimum Eligible Release Date or the date the Institution Classification Committee suspends the remainder of the SHU term. Following completion of the period of credit forfeiture, the inmate shall be re-evaluated by a classification committee for assignment to another work group.

(B) An inmate serving an imposed SHU term pursuant to section 3341.9(e) in segregated housing due to a guilty finding for a Division A-1 offense, as designated in section 3323(b), and which involved serious bodily injury on a non-prisoner, shall be assigned to Work Group D-2, effective the date of the Rules Violation Report, for a period not to exceed the number of whole-day credits forfeited for the rule violation or 360 days, whichever is less, up to the Minimum Eligible Release Date or the date the Institution Classification Committee suspends the remainder of the SHU term. Following completion of the period of credit forfeiture, the inmate shall be re-evaluated by a classification committee for assignment to another work group.

(C) An inmate in ASU, SHU, PSU, or other segregated housing, who is deemed a program failure as defined in section 3000, may be assigned Work Group D-2 for non-SHU assessable Rules Violation Report(s) by a classification committee for a period not to exceed the number of credits forfeited for the rules violation(s) or 180 days, whichever is less. An inmate assigned to Work Group C at the time of placement in ASU, SHU, PSU, or other segregated housing, or who refuses to accept or perform work assignments, shall be assigned Work Group D-2. An inmate released from ASU, SHU, PSU, or other segregated housing, may be assigned Work Group C by a classification committee, not to exceed the remaining number of disciplinary credits forfeited due to the serious disciplinary infraction(s) or 180 days, whichever is less.

(D) If the administrative finding of misconduct is overturned or if the inmate is criminally prosecuted for the misconduct and is found not guilty, Good Conduct Credit shall be restored.

(7) Work Group F (Minimum B Custody and Firefighting or Non-Firefighting Camp Placement). Assignment to Work Group F awards Good Conduct Credit pursuant to sections 3043.2(b)(4)(B), 3043.2(b)(5)(A), and 3043.2(b)(5)(B).

(A) An inmate assigned to Minimum B Custody who has successfully completed the requisite physical fitness training and firefighting training to be assigned as a firefighter to a Department of Forestry and Fire Protection fire camp or as a firefighter at a Department of Corrections and Rehabilitation firehouse shall be assigned to Work Group F.

(B) An inmate assigned to Minimum B Custody who is placed in a Department of Forestry and Fire Protection fire camp for assignment to a non-firefighter position shall be assigned to Work Group F.

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



(D) An inmate assigned to Work Group F who 1) is temporarily placed in an ASU or other segregated housing placement unit, 2) designated by the Institution Classification Committee as non-disciplinary segregation pursuant to section 3335(a), and 3) who otherwise remains eligible for continued assignment to Work Group F pursuant to sections 3044(b)(7)(A) or 3044(b)(7)(B), shall continue to be assigned Work Group F for the duration of his or her non-disciplinary segregation.

(E) An inmate initially assigned to Work Group D-1 by the Institution Classification Committee due to placement in ASU, SHU, PSU, or other segregated housing unit pursuant to section 3044(b)(5) and who 1) was not designated for non-disciplinary segregation by the Institution Classification Committee, 2) otherwise eligible for the assignment to Work Group F pursuant to sections 3044(b)(7)(A) or 3044(b)(7)(B) during the period of segregated housing, and 3) was not found guilty of the serious rule violation which was the reason for ASU or other segregated housing placement, shall be made whole by retroactive assignment to Work Group F beginning with the effective date that Work Group D-1 was originally imposed and for the same number of days that he or she was assigned to Work Group D-1.

(F) An inmate assigned to Work Group F pursuant to section 3044(b)(7) for a cumulative period of twelve months or more on his or her current term of incarceration shall continue to earn Good Conduct Credit pursuant to sections 3043.2(b)(4)(B), 3043.2(b)(5)(A), or 3043.2(b)(5)(B), upon transfer to an alternative custody setting as defined in section 3043(d).

(G) An inmate may be assigned Minimum B Custody and Work Group F, if the inmate meets the criteria noted above and all of the following are true:

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

(8) Work Group M (Minimum Custody or otherwise eligible for Minimum Custody). Assignment to Work Group M awards Good Conduct Credit pursuant to section 3043.2(b)(5)(A). (A) Effective January 1, 2018, an inmate assigned to Minimum A Custody or Minimum B Custody who does not qualify for assignment to Work Group F pursuant to section 3044(b)(7) shall be assigned to Work Group M. Work Group M may be assigned retroactively to May 1, 2017. However, Good Conduct Credit awarded pursuant to section 3043.2(b)(5)(A) shall be limited in accordance with section 3043(c).

(B) Effective January 1, 2018, an inmate otherwise eligible for assignment to Minimum A Custody or Minimum B Custody whose eligibility for such assignment is limited solely due to their 1) placement in the Mental Health Services Delivery System at the Enhanced Outpatient level of care or higher level and/ or 2) medical or mental health status which requires additional clinical and custodial supervision as determined by the Institutional Classification Committee, shall be assigned to Work Group M. Work Group M may be assigned retroactively to May 1, 2017. However, Good Conduct Credit awarded consistent with section 3043.2(b)(5)(A) shall be limited in accordance with section 3043(c).

(C) Effective January 1, 2018, an inmate may be assigned Minimum A or Minimum B Custody and/ or Work Group M, which may be applied retroactively to May 1, 2017, if the inmate meets the criteria noted above and all of the following, are true:

1. The inmate is wanted for a felony by an out-of-state law enforcement agency (other than a Federal agency).
  2. The agency does not have a detainer placed with the department for the felony.
  3. The inmate's central file documents that the agency communicated to the department that they will not extradite the inmate for the purpose of prosecution of the felony.
  4. The totality of the inmate's remaining case factors does not preclude the assignment of Minimum A and Minimum B Custody or the inmate is otherwise eligible for assignment to Minimum A or Minimum B Custody as described in section 3044(b)(8)(B).
- (D) An inmate assigned to Work Group M who is 1) found guilty of a serious rule violation as defined in sections 3323(b), 3323(c), or 3323(d), 2) found guilty of a rule violation involving use or possession of any unauthorized communication device or of any narcotic, drug, drug paraphernalia, controlled substance, alcohol, or other intoxicant, as defined in sections 3323(e), 3323(f), 3323(g), or 3323(h), 3) placed in a zero-credit work group pursuant to sections 3044(b)(4) or 3044(b)(6), or 4) otherwise removed from this assignment due to safety or security considerations, shall be re-assigned to another work group consistent with the remaining provisions of this section and shall be ineligible to receive Good Conduct Credit pursuant to sections 3043.2(b)(4)(B), 3043.2(b)(5)(A), or 3043.2(b)(5)(B). An inmate who has been removed from this assignment under the circumstances described above may be assigned to Work Group M again, after an appropriate period of time, by a classification committee.
- (E) An inmate eligible for initial assignment to Work Group M or who is assigned to Work Group M who 1) is temporarily placed in an ASU or other segregated housing placement unit, 2) designated by the Institution Classification Committee as non-disciplinary segregation pursuant to section 3335(a), and 3) who otherwise remains eligible for initial or continued assignment to Work Group M pursuant to sections 3044(b)(8)(A) or 3044(b)(8)(B), shall be assigned Work Group M for the duration of his or her non-disciplinary segregation.
- (F) An inmate initially assigned to Work Group D-1 by the Institution Classification Committee due to placement in ASU, SHU, PSU, or other segregated housing unit pursuant to section 3044(b)(5) and who 1) was not designated for non-disciplinary segregation by the Institution Classification Committee, 2) was otherwise eligible for the assignment to Work Group M pursuant to sections 3044(b)(8)(A) or 3044(b)(8)(B) during the period of segregated housing, and 3) was not found guilty of the serious rule violation which was the reason for ASU or other segregated housing placement, shall be made whole by retroactive assignment to Work Group M beginning with the effective date that Work Group D-1 was originally imposed and for the same number of days he or she was assigned to Work Group D-1.
- (G) Except when otherwise precluded by this section, an inmate 1) who undergoes reception center processing with a permanent disability that impacts placement or who is receiving dialysis treatment, 2) who, as determined by a classification committee, experienced an extended stay in the reception center beyond 60 days solely due to the disability, and 3) qualifies for the assignment of Work Group M pursuant to this section, shall be assigned Work Group M effective the 61st day of the stay at the reception center. Work Group M may be assigned retroactively to May 1, 2017. However, Good Conduct Credit awarded consistent with section 3043.2(b)(5)(A) shall be limited in accordance with section 3043(c).
- (9) Work Group U (Unclassified). An inmate undergoing reception center processing shall be assigned to Work Group U from the date of their reception until classified at their assigned institution, except when the inmate is assigned Work Group M by a classification committee prior to the completion of reception center processing in accordance with section 3044(b)(8)(G).

(c) Privileges. Privileges for each work group shall be those privileges earned by the inmate. Inmate privileges are administratively authorized activities and benefits required of the secretary, by statute, case law, governmental regulations, or executive orders. Inmate privileges shall be governed by an inmate's behavior, custody classification and assignment. A formal request or application for privileges is not required unless specified otherwise in this section. Institutions may provide additional incentives for each privilege group, subject to availability of resources and constraints imposed by security needs.

(1) To qualify for privileges generally granted by this section, an inmate shall comply with rules and procedures and participate in assigned activities.

(2) Privileges available to a work group may be denied, modified, or temporarily suspended by a hearing official at a disciplinary hearing upon a finding of an inmate's guilt for a disciplinary offense as described in sections 3314 and 3315 of these regulations or by a classification committee action changing the inmate's custody classification, work group, privilege group, or institution placement.

(3) Disciplinary action denying, modifying, or suspending a privilege for which an inmate would otherwise be eligible shall be for a specified period not to exceed 30 days for an administrative rule violation or 90 days for a serious rule violation.

(4) A permanent change of an inmate's privilege group shall be made only by classification committee action under provisions of section 3375. Disciplinary or classification committee action changing an inmate's privileges or privilege group shall not automatically affect the inmate's work group classification.

(5) No inmate or group of inmates shall be granted privileges not equally available to other inmates of the same custody classification and assignment who would otherwise be eligible for the same privileges.

(6) Changes in privilege group status due to the inmate's placement in lockup:

(A) An inmate housed in an ASU, SHU, or PSU shall be designated Privilege Group D with the exception of:

1. Inmates designated as NDS who shall retain their privilege group prior to ASU placement;

2. Inmates placed in the Security Threat Group (STG) Step Down Program (SDP) in accordance with section 3044(i);

3. Inmates who are assigned to the Debrief Processing Unit (DPU) in accordance with Section 3378.7;

4. Inmates who are on Administrative SHU status in accordance with section 3044(j).

(7) An inmate in a reentry program assignment shall be eligible for available privileges subject to participating in assignment programs and shall not require a privilege group designation.

(8) An inmate's privileges shall be conditioned upon each of the following:

(A) The inmate's compliance with procedures governing those privileges.

(B) The inmate's continued eligibility.

(C) The inmate's good conduct and satisfactory participation in an assignment.

(9) Inmates returned to custody from parole may be eligible to receive privileges based upon their satisfactory participation in an assignment.

(10) When assigned to a RCGP facility, the inmate's privileges shall be in accordance with section 3378.9.

(d) Privilege Group A:

(1) Criteria:

(A) Full-time assignment as defined in section 3044(a).

(B) An inmate diagnosed by a physician or mental health clinician as totally disabled shall remain in Privilege Group A, unless changed by disciplinary action.

(C) An inmate designated by a physician or mental health clinician as partially disabled pursuant to section 3044(b)(1)(E) shall remain in Privilege Group A, unless changed by disciplinary action.

(2) Privileges for Privilege Group A are as follows:

(A) Family visits limited only by the institution/facility resources, security policy, section 3177(b), or other law.

(B) Visits during non-work/training hours, limited only by availability of space within facility visiting hours, or during work hours when extraordinary circumstances exist as defined in section 3045.2(d)(2). NDS inmates in Privilege Group A are restricted to non-contact visits consistent with those afforded to other inmates in ASU.

(C) Maximum monthly canteen draw as authorized by the secretary.

(D) Telephone access during the inmate's non-work/training hours limited only by institution/facility telephone capabilities. Inmates identified as NDS are permitted one personal telephone access per week under normal operating conditions.

(E) Access to yard, recreation and entertainment activities during the inmate's non-working/training hours and limited only by security needs.

(F) Excused time off as described in section 3045.2.

(G) The receipt of four inmate packages, 30 pounds maximum weight each, per year. Inmates may also receive special purchases, as provided in subsections 3190(j) and (k).

(e) Privilege Group B:

(1) Criteria, any of the following:

(A) Half-time assignment as defined in section 3044(a) or involuntarily unassigned as defined in section 3044(b).

(B) A hearing official may temporarily place an inmate into the group as a disposition pursuant to section 3314 or 3315.

(2) Privileges for Privilege Group B are as follows:

(A) One family visit each six months, unless limited by section 3177(b) or other law.

(B) Visits during non-work/training hours, limited only by availability of space within facility visiting hours, or during work hours when extraordinary circumstances exist, as defined in section 3045.2(d)(2). NDS inmates in Privilege Group B are restricted to non-contact visits consistent with those afforded to other inmates in ASU.

(C) Seventy-five percent (75%) of the maximum monthly canteen draw as authorized by the secretary.

(D) One personal telephone access period per month under normal operating conditions.

(E) Access to yard, recreation, and entertainment activities during the inmate's non-working/training hours and limited only by institution/facility security needs.

(F) Excused time off as described in section 3045.2.

(G) The receipt of four inmate packages, 30 pounds maximum weight each, per year. Inmates may also receive special purchases, as provided in subsections 3190(j) and (k).

(f) Privilege Group C:

(1) Criteria, any of the following:

(A) The inmate who twice refuses to accept assigned housing, or who refuses to accept or perform in an assignment, or who is deemed a program failure as defined in section 3000.

(B) A hearing official may temporarily place an inmate into the group as a disposition pursuant to section 3314 or 3315.

(C) A classification committee action pursuant to section 3375 places the inmate into the group. An inmate placed into Privilege Group C by a classification committee action may apply to be removed from that privilege group no earlier than 30 days from the date of placement. Subsequent to the mandatory 30 days placement on Privilege Group C, if the inmate submits a written request for removal, a hearing shall be scheduled within 30 days of receipt of the written request to consider removal from Privilege Group C.

(2) Privileges and non-privileges for Privilege Group C are as follows:

(A) No family visits.

(B) One-fourth the maximum monthly canteen draw as authorized by the secretary.

(C) Telephone calls on an emergency basis only as determined by institution/facility staff.

(D) Yard access limited by local institution/facility security needs. No access to any other recreational or entertainment activities.

(E) No inmate packages. Inmates may receive special purchases, as provided in subsections 3190(j) and (k).

(g) Privilege Group D:

(1) Criteria: Any inmate, with the exception of validated STG affiliates participating in the SDP or designated NDS inmates, housed in a special segregation unit, voluntarily or under the provisions of sections 3335-3345 of these regulations who is not assigned to either a full-time or half-time assignment.

Inmates assigned to Steps 1 through 4 of the SDP while completing the Pre-Debrief Intake Panel (DIP) portion of Phase One of the debrief process, as described in section 3378.5, are entitled to privileges and non-privileges commensurate with the SDP step to which the offender is currently assigned, in accordance with sections 3044(i) and 3378.7.

(2) Any inmate removed from the general population due to disciplinary or administrative reasons, shall forfeit their privileges within their general population privilege group pending review by a classification committee.

(3) Privileges and non-privileges for Privilege Group D, other than those listed above, are as follows:

(A) No family visits.

(B) Twenty-five percent (25%) of the maximum monthly canteen draw as authorized by the secretary.

(C) Telephone calls on an emergency basis only as determined by institution/facility staff.

(D) Yard access limited by local institution/facility security needs. No access to any other recreational or entertainment activities.

(E) The receipt of one inmate package, 30 pounds maximum weight each, per year. Inmates shall be eligible to acquire an inmate package after completion of one year of Privilege Group D assignment. Inmates may also receive special purchases, as provided in subsections 3190(j) and (k).

(h) Privilege Group U:

(1) Criteria: Reception center inmates under processing.

(2) Privileges and non-privileges for Privilege Group U are:

(A) No family visits.

(B) Canteen Purchases. One-half of the maximum monthly canteen draw as authorized by the secretary.

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

2. Non-contact visiting during non-work/training hours, limited by available space within facility non-contact visiting room.
3. Forty-five percent (45%) of the maximum monthly canteen draw as authorized by the secretary.
4. Telephone calls on an emergency basis as determined by institution/facility staff.
5. One telephone call every 45 days if the inmate has met program expectations and has not been found guilty of serious disciplinary behavior in that time period.
6. Yard access in accordance with Section 3343(h) which shall be a minimum of 10 hours per week.
7. The receipt of one inmate packages, 30 pounds maximum weight, exclusive of special purchases as provided in Section 3190.
8. Three photographs if the inmate has met program expectations and has not been found guilty of serious disciplinary behavior in that time period, upon completion of Step 3.
9. Electrical appliances are allowed in accordance with the Authorized Personal Property Schedule for SHU/PSU inmates, as described in Section 3190(b)(4).
10. Small Group Programs at least two hours per week.
11. Access to appropriate educational programs.

(D) S4 for Step 4.

1. No Family Visits.

2. Non-contact visiting during non-work/training hours, limited by available space within facility non-contact visiting room.
3. Fifty percent (50%) of the maximum monthly canteen draw as authorized by the secretary.
4. Telephone calls on an emergency basis as determined by institution/facility staff.
5. One telephone call every 30 days if the inmate has met program expectations and has not been found guilty of serious disciplinary behavior in that time period.
6. Yard access in accordance with Section 3343(h) which shall be a minimum of 10 hours per week. Participation on small group yards as determined by the Institution Classification Committee (ICC).
7. The receipt of one inmate package, 30 pounds maximum weight each, exclusive of special purchases as provided in Section 3190. In addition, receipt of one inmate package, food only, 15 pounds maximum weight.
8. Four photographs every 90 days if the inmate has met program expectations and has not been found guilty of serious disciplinary behavior in that time period.
9. Electrical appliances are allowed in accordance with the Authorized Personal Property Schedule for SHU/PSU inmates, as described in Section 3190(b)(4).
10. Small group programs at least four hours per week.
11. Access to appropriate educational programs.

(j) Privilege Group AS:

(1) Criteria: Any offender in SHU serving an Administrative SHU term as described in section 3000.

(2) Upon a guilty finding in a disciplinary hearing, the disposition may or when mandated include assessment of one or more penalties in accordance with sections 3314 or 3315.

(3) Privileges and non-privileges for Privilege Group AS are:

(A) No Family Visits.

(B) Non-contact visiting during non-work/training hours, limited by available space within facility non-contact visiting room.

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

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



## **Title 15. Crime Prevention and Corrections**

### **Division 3. Adult Institutions, Programs and Parole**

#### **Chapter 1. Rules and Regulations of Adult Operations and Programs**

##### **Subchapter 5.5. Parole Consideration**

###### **Article 1. Parole Consideration for Determinately-Sentenced Nonviolent Offenders**

###### **Section 3490. Definitions.**

For the purposes of this article, the following definitions shall apply:

(a) An inmate is a “nonviolent offender” if none of the following are true:

(1) The inmate is condemned to death;

(2) The inmate is currently incarcerated for a term of life without the possibility of parole;

(3) The inmate is currently incarcerated for a term of life with the possibility of parole for a “violent felony;”

(4) The inmate is currently serving a determinate term prior to beginning a term of life with the possibility of parole for a “violent felony” or prior to beginning a term for an in-prison offense that is a “violent felony;”

(5) The inmate is currently serving a term of incarceration for a “violent felony;” or

(6) The inmate is currently serving a term of incarceration for a nonviolent felony offense after completing a concurrent determinate term for a “violent felony.”

(b) Notwithstanding subsection (a), a “nonviolent offender” includes an inmate who has completed a determinate or indeterminate term of incarceration and is currently serving a determinate term for an in-prison offense that is not a “violent felony.”

(c) “Violent felony” is a crime or enhancement as defined in subdivision (c) of section 667.5 of the Penal Code.

(d) “Primary offense” means the single crime for which any sentencing court imposed the longest term of imprisonment, excluding all enhancements, alternative sentences, and consecutive sentences.

(e) “Full term” means the actual number of days, months, and years imposed by the sentencing court for the inmate’s primary offense, not including any sentencing credits.

(f) A “nonviolent parole eligible date” is the date on which a nonviolent offender who is eligible for parole consideration under section 3491 has served the full term of his or her primary offense, less any actual days served prior to sentencing as ordered by the court under section 2900.5 of the Penal Code and any actual days served in custody between sentencing and the date the inmate is received by the department.

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

### **Section 3491. Eligibility Review.**

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

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

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

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

(3) The inmate is convicted of a sexual offense that currently requires or will require registration as a sex offender under the Sex Offender Registration Act, codified in sections 290 through 290.024 of the Penal Code.

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

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

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

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

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

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

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

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

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

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

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

**Section 3492. Public Safety Screening and Referral.**

(a) Effective July 1, 2017, if an inmate is determined to be eligible for parole consideration under section 3491, he or she shall be screened under this section for possible referral to the Board of Parole Hearings.

(b) Inmates shall be screened under this section at least 35 calendar days prior to their nonviolent parole eligible date.

(c) An inmate is eligible for referral to the Board of Parole Hearings if, on the date of the screening, all of the following are true:

(1) The inmate is not currently serving a Security Housing Unit term;

(2) The Institutional Classification Committee has not assessed the inmate a Security Housing Unit term within the past five years, unless the department assessed the Security Housing Unit term solely for the inmate's safety;

(3) The inmate has not served a Security Housing Unit term in the past five years, unless the department assessed the Security Housing Unit term solely for the inmate's safety;

(4) The inmate has not been found guilty of a serious rule violation for a Division A-1 or Division A-2 offense as specified in subsection 3323(b) or 3323(c) within the past five years;

(5) The inmate has not been assigned to Work Group C as specified in subsection 3044(b)(4) in the past year;

(6) The inmate has not been found guilty of two or more serious Rules Violation Reports in the past year;

(7) The inmate has not been found guilty of a drug-related offense as specified in section 3016 or refused to provide a urine sample as specified in subsection 3290(d) in the past year;

(8) The inmate has not been found guilty of any Rules Violation Reports in which a Security Threat Group nexus was found in the past year; and

(9) The inmate's nonviolent parole eligible date falls at least 180 calendar days prior to his or her earliest possible release date and the inmate will not reach his or her earliest possible release date for at least 210 calendar days.

(d) Within five business days of being screened, inmates who are eligible for referral under this section shall be referred to the Board of Parole Hearings for parole consideration under article 15 of chapter 3 of division 2 of this title.

(e) Inmates shall be screened again under this section one year from the date of their previous public safety screening until they are released from custody or are no longer eligible for parole consideration under section 3491, if any of the following apply:

(1) The inmate was determined to be ineligible for referral under this section;

(2) The inmate was referred to the Board of Parole Hearings and a hearing officer determined the Board of Parole Hearings did not have jurisdiction to review the inmate for release under section 2449.2 of division 2 of this title;

(3) The inmate was referred to the Board of Parole Hearings and was denied release after a review on the merits under section 2449.4 of division 2 of this title;

(4) The inmate was referred to the Board of Parole Hearings and was denied release after a previous decision approving the inmate's release was vacated by the Board of Parole Hearings under section 2449.6 of division 2 of this title; or

(5) The inmate was referred to the Board of Parole Hearings and was denied release after a previous decision was reviewed by the Board of Parole Hearings under section 2449.7 of division 2 of this title.

(f) Public safety screening and referral results shall be served on the inmate and placed in the inmate's central file within 15 business days of being completed and, if the inmate is deemed eligible for referral to the Board of Parole Hearings, he or she shall be provided information about the nonviolent offender parole process, including the opportunity to submit a written statement to the Board of Parole Hearings.

(g) Public safety screenings and referrals under this section are subject to the department's inmate appeal process in accordance with article 8 of chapter 1 of this division.

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

### **Section 3493. Processing for Release.**

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

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

## **Title 15. Crime Prevention and Corrections**

### **Division 2. Board of Parole Hearings**

#### **Chapter 3. Parole Release**

#### **Article 15. Parole Consideration for Determinately-Sentenced Nonviolent Offenders**

##### **Section 2449.1. Definitions.**

For the purposes of this article, the following definitions shall apply:

(a) An inmate is a “nonviolent offender” if none of the following are true:

(1) The inmate is condemned to death;

(2) The inmate is currently incarcerated for a term of life without the possibility of parole;

(3) The inmate is currently incarcerated for a term of life with the possibility of parole for a “violent felony;”

(4) The inmate is currently serving a determinate term prior to beginning a term of life with the possibility of parole for a “violent felony” or prior to beginning a term for an in-prison offense that is a “violent felony;”

(5) The inmate is currently serving a term of incarceration for a “violent felony;” or

(6) The inmate is currently serving a term of incarceration for a nonviolent felony offense after completing a concurrent determinate term for a “violent felony.”

(b) Notwithstanding subsection (a), a “nonviolent offender” includes an inmate who has completed a determinate or indeterminate term of incarceration and is currently serving a determinate term for an in-prison offense that is not a “violent felony.”

(c) “Violent felony” is a crime or enhancement as defined in subdivision (c) of section 667.5 of the Penal Code.

(d) “Primary offense” means the single crime for which any sentencing court imposed the longest term of imprisonment, excluding all enhancements, alternative sentences, and consecutive sentences.

(e) “Full term” means the actual number of days, months, and years imposed by the sentencing court for the inmate's primary offense, not including any sentencing credits.

(f) A “nonviolent parole eligible date” is the date on which a nonviolent offender who is eligible for parole consideration under section 3491 has served the full term of his or her primary offense, less any actual days served prior to sentencing as ordered by the court under section 2900.5 of the Penal Code and any actual days served in custody between sentencing and the date the inmate is received by the department.

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

##### **Section 2449.2. Jurisdictional Review.**

(a) Within 15 calendar days of a referral from the department under section 3492 of division 3 of this title, a hearing officer shall review the inmate's case and determine whether the board has jurisdiction to review the inmate for release.

(b) The board has jurisdiction to review an inmate for release if all of the following are true:

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

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

### **Section 2449.3. Notification Process.**

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

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

### **Section 2449.4. Review on the Merits.**

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

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

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

#### **Section 2449.5. Factors to Consider During a Review on the Merits.**

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

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

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

(1) The inmate personally used a deadly weapon.

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

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

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

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

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

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

(3) There was only one conviction.

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

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

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

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

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

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

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

(1) The inmate has no prior criminal convictions.

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

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

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

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

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

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

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



(4) The inmate has limited or no participation in available rehabilitative or self-help programming to address the circumstances that contributed to his or her criminal behavior, such as substance abuse, domestic violence, or gang involvement.

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

(1) The inmate has not been found guilty of institutional Rules Violation Reports resulting in physical injury or threat of physical injury since his or her last admission to prison.

(2) There is no reliable information in the confidential section of the inmate's central file indicating the inmate has engaged in criminal activity since his or her last admission to prison.

(3) The inmate has successfully participated in vocational, educational, or work assignments for a sustained period of time.

(4) The inmate has successfully participated in rehabilitative or self-help programming to address the circumstances that contributed to his or her criminal behavior, such as substance abuse, domestic violence, or gang involvement, if any, for a sustained period of time.

(h) Written statements submitted by the inmate, written statements concerning the inmate's commitment offense and criminal history from the prosecuting agency or agencies that received notice under section 2449.3, and written statements from any victims who received notice under section 2449.3 shall be considered.

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

#### **Section 2449.6. Vacating a Decision.**

(a) If at any time prior to release an inmate previously approved for release under section 2449.4 is subsequently determined to no longer be eligible for parole consideration under section 3491 of division 3 of this title or to no longer meet the criteria for referral to the board under subsection 3492(c) of division 3 of this title, the Chief Hearing Officer or an associate chief deputy commissioner shall issue a written decision vacating the previous decision that includes a statement of reasons supporting the new decision.

(b) Within 15 business days of issuing a decision under subsection (a), a copy of the decision shall be served on the inmate and placed in the inmate's central file. The board shall, within five business days of issuing a decision under subsection (a), send notice of the decision to any victim who was registered at the time of the referral and any prosecuting agency or agencies that received notice under section 2449.3.

(c) If a decision is vacated under this section, the inmate shall be screened again for possible referral to the board as provided in subsection 3492(e) of division 3 of this title.

(d) Inmates may request review of a decision issued under this section by writing the board as provided in section 2449.7 within 30 calendar days of being served the decision. Decisions under this section are not subject to the department's inmate appeal process under article 8 of chapter 1 of division 3 of this title.

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

### **Section 2449.7. Decision Review.**

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

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

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

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

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

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

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

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

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