FINAL STATEMENT OF REASONS

The Initial Statement of Reasons is incorporated by reference.

UPDATES TO THE INITIAL STATEMENT OF REASONS

The Notice of Emergency Proposed Regulations for "Inmate Credit Earning and Parole Consideration" was published in the California Regulatory Notice Register on July 14, 2017 which began the 45-day public comment period. The Notice of Change to Regulations (NCR) #17-05 including the text of the regulations, and the Initial Statement of Reasons, was mailed the same day to persons who requested to be placed on the California Department of Corrections and Rehabilitation (CDCR) mailing list to receive notifications of rulemaking actions. The documents were also posted on the Department's Internet and Intranet websites, and posted in CDCR institutions. In addition they were posted on the CDCR internet and intranet websites, and copies posted in CDCR institutions.

The Department received comments from approximately 12,000 organizations and members of the public during the initial public comment period. The total number of individual comments responded to was approximately 41,000. A substantial amount of the comments received were not unique and were deemed repetitive per GC 11346.9(a)(3). The Department developed "Standard Responses" to the most frequently submitted comments that raised the same issue. These Standard Responses are numbered 1-30. When a comment could be addressed with a Standard Response, the department referred the reader to that response, for example "see Standard Response 1". In addition, many commenters utilized templated sets of comments. In this case, the templated comments were organized into tables, one table for each template. As a result, the attached tables identify the specific comments made and list out the comment numbers assigned to each commenter who utilized that template. Table A through Table W group the repetitive comments by *topic/theme/subject matter*. If a commenter utilized a template but also added additional comments, these are identified below the table and responded to individually. Responses to the comments received during the initial public comment period may be found under Exhibit "A".

A public hearing was held on September 1, 2017 with 108 speakers providing verbal and written comments. Responses to the comments received at the public hearing may be found under Exhibit "D".

On August 31, 2017, the department submitted a request to the Office of Administrative Law for an Emergency Readoption of these regulations, pursuant to Penal Code 5058.3. This request was approved on September 19, 2017.

On December 8, 2017, the department submitted a request to the Office of Administrative Law (OAL) for an Emergency Readoption of these regulations, pursuant to Government Code 11364.1(h). This request was approved on December 18, 2017.

On December 8, 2017 a Renotice, which included revisions to the revised text of the regulations, was distributed, to all persons whose comments were received during the public comment period and all persons who requested notification of the availability of such changes. These documents were also posted on the Department's Internet and Intranet websites. The changes and reasons for them are found in the rule making file under the tab #3, *Update to Informative Digest* that contains a description of the *Changes to Text as Originally Noticed to the Public.* During the renotice comment period, 269 commenters responded. Responses to the comments received during the public comment period may be found under Exhibit "E". The "Milestone Completion Credit Schedule" (REV. 11/17) was mailed along with the 15-day Notice and Modified text.

On January 26, 2018 a second Renotice, which included revisions to the revised text of the regulations, and an Addendum to the Initial Statement of Reasons was distributed to all persons whose comments were received during the public comment period and all persons who requested notification of the availability of such changes. These documents were also posted on the Department's Internet and Intranet websites. The changes and reasons for them are found in the rulemaking file with the title *Notice of Changes to the Text as Originally Proposed and Addendum to the Initial Statement of Reasons.* During the renotice comment period, 31 commenters responded. Responses to the comments received during the public comment period may be found under Exhibit "F".

The comments are coded according to when they were received. Comments received by standard mail during the initial comment period were given an "S" designation; e-mailed comments received during that period were designated "E;" verbal comments made at the public hearing were designated "H;" the comments received following the first re-notice period were designated "R", and the comments submitted following the second re-notice period coded "A."

PART I: INTRODUCTION

The Notice of Proposed Regulations for "Credit Earning and Parole Consideration" was published in the California Regulatory Notice Register on July 14, 2017 which began the initial public comment period. The proposed text was made available for public comment from July 14, 2017 through September 1, 2017.

On December 8, 2017, the department submitted a request to the Office of Administrative Law for an Emergency Re-adoption of these regulations, pursuant to Government Code section 11346.1, subdivision (h). This request was approved on December 18, 2017.

On December 8, 2017 modified text which documented substantial changes to the original text as proposed was published and made available to the public for comment. The modified text was made available for public comment from December 8, 2017 through December 26, 2017. The changes to the text are described below.

PART II: CHANGES TO TEXT AS ORIGINALLY PROPOSED

A. CREDIT EARNING

Subsection 3043(a) was amended to include the phrase, "Unless otherwise precluded by this article," in order to clarify that condemned inmates and inmates sentenced to life without the possibility of parole are not eligible to earn credits because they are excluded elsewhere in this article.

The inclusion of "administrative segregation housing units, security housing units, psychiatric services units, and other segregated housing placement units" was made necessary by the passage of Senate Bill 759, which was signed into law on August 25, 2016. That bill amended Penal Code section 2933.6 and required the department to adopt regulations expressly allowing inmates placed in segregated housing the opportunity to earn credit. This amendment, therefore, fulfills the mandate of Senate Bill 759 and Penal Code section 2933.6.

In addition, the phrase "him or her" was changed to "them" and the word "below" was changed to "of this article" in several instances for clarity.

Subsection 3043(b) was amended to delete the phrase "participate in credit earning programs and activities" and add the phrase "earn Good Conduct Credit, Milestone Completion Credit, Rehabilitative Achievement Credit, and Educational Merit Credit" to provide more specificity. Also, the phrase "nor shall credit be awarded" was added to the last sentence for clarity.

Subsection 3043(c) was amended to clarify that the release date restriction described in this section only applies to inmates serving a determinate sentence. Credit earned by an indeterminately sentenced inmate is applied to advance their Minimum Eligible Parole Date, meaning the date they are scheduled for parole hearings. The Minimum Eligible Parole Date is not a release date so the release date restriction is inapplicable to indeterminately sentenced inmates.

In addition, the phrase "entered into the department's information technology system" was added to the last sentence to clarify when the release restriction commences. This clarification was necessary to ensure department staff know the exact date to calculate the beginning of the release

restriction and because using the date of entry into the department's information technology system helps ensure that all of the necessary notifications and parole planning can occur prior to the inmate's release. Also, the phrase "except pursuant to a court order" was added to the last sentence to clarify that the release restriction is not applicable if it contravenes a court order.

Subsection 3043(d) was moved to subsection 3043(e) and new subsection 3043(d) was added to clarify that the rules described in this section for Good Conduct Credit, Milestone Completion Credit, Rehabilitative Achievement Credit, Educational Merit Credit, and Extraordinary Conduct Credit apply to juveniles sentenced as adults and housed in the Division of Juvenile Justice, but not to wards housed in the Division of Juvenile Justice. The lack of any reference to juveniles sentenced as adults might otherwise lead to the erroneous conclusion that Milestone Completion Credit is only applicable to inmates housed in the Division of Adult Institutions. Additionally, the text was amended to define the phrase "alternative custody setting" to make clear that inmates serving the remainder of their term in an alternative custody setting are eligible to receive credit in the same manner as inmates that remain confined in an institution.

Subsection 3043(e) (formerly subsection 3043(d)) was amended to add facilities administered by a county sheriff to the list of housing facilities outside the department's jurisdiction. This amendment was necessary because the department does not have control over the operations of local jails (that is the prerogative of county sheriffs) so the availability of rehabilitative programs such as Milestone Completion Credit programs and Rehabilitative Achievement Credit programs remain outside the control of the department, as do the daily activities of inmates housed in county jails. Additionally, it was clarified that inmates are "housed" in a facility administered by the California Department of State Hospitals. The word "only" was added to clarify that inmates housed outside the department's jurisdiction are only eligible to participate in Good Conduct Credit, Educational Merit Credit, and Extraordinary Conduct Credit because facilities in other jurisdictions cannot reasonably be expected to provide the staffing, program space, and resources necessary to implement Milestone Completion Credit and Rehabilitative Achievement Credit.

Subsection 3043.2(a) was amended to state that the department has "regulations" and prisons have "local rules." This change was made as a non-substantive change since the department has rulemaking authority to adopt regulations, while prisons may adopt local rules.

Subsection 3043.2(b) was amended so that the format used to reference a subdivision in the Penal Code is the same format used in the Penal Code itself. In addition, the word "below" was changed to "of this section" in several instances for clarity.

Subsection 3043.2(b)(2) was amended to state that the reference to "Article 2.5" is in Title "1," not Title "I," of the Penal Code. This was made as a non-substantive change because there is no Title "I" in the Penal Code, only a Title "1".

Subsections 3043.2(b)(4) and 3043.2(b)(5) were amended to clarify that the training necessary 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 includes physical fitness training as well as firefighting training. Physical fitness training is necessary to ensure that an inmate is physically capable of performing the strenuous activities that are an essential function of fighting fires and firefighting training is necessary to ensure that an inmate can safely and professionally perform all of the duties of a firefighter. Only those inmates who successfully complete both types of training shall be awarded the enhanced Good Conduct Credit available in these subsections.

These subsections were also amended to add a new subsection (C) in each. The new subsection (b)(4)(C) clarifies that inmates serving a determinate sentence who are serving a term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code section and who are "housed at a Department of Forestry and Fire Protection Fire Camp in a role other than firefighter" shall be awarded the enhanced Good Conduct Credit available in this subsection. The new subsection (b)(5)(C) clarifies that inmates serving a determinate sentence who are not serving a term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code and who are "housed at a Department of Forestry and Fire Protection fire camp in a role other than firefighter" shall also be awarded the enhanced Good Conduct Credit available in this subsection. Awarding enhanced Good Conduct Credit to these inmates is warranted because they perform critical support functions to sustain the fire camps and the firefighters housed there. These critical support functions include special training and skills in such areas as wastewater treatment and small engine repair, to name a few. Additionally, inmates earning credit pursuant to subsection (b)(5)(C) earn more credit than those earning credit pursuant to subsection (b)(4)(C) because, as stated in the Initial Statement of Reasons, the department elected to follow the Legislative model of providing differing rates of credit based on the gravity of each inmate's offense and simplify the number of credit categories to five, but also expand the number of inmates eligible for Good Conduct Credit and the amount of credit that may be awarded overall.

Also, in the Initial Statement of Reasons describing the purpose for these subsections the citation to subsections 3377.1(a)(8) and (a)(9) should instead be to subsections 3377.1(a)(6) and (a)(7).

Subsection 3043.2(c) was moved to subsection 3043.2(d) and new subsection 3043.2(c) was added to clarify that inmates placed in an alternative custody setting, including a pre-parole or re-entry program, shall be awarded the same Good Conduct Credit they were earning prior to that placement. This change ensures inmates are not adversely affected by placement in an alternative custody setting and incentivizes inmates to participate in these transitional programs.

Subsection 3043.2(d) (formerly subsection 3043.2(c)) was amended to correct various references to other sections of the regulations.

Subsection 3043.3(a) was amended to expressly state the following: "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." The inclusion of this language was necessary to clarify that the award of Milestone Completion Credit involves more than merely passing an exam; it requires an inmate's participation in all required classroom activities for the duration of the program to ensure inmates fully internalize the rehabilitative benefits available through classroom participation.

Subsection 3043.3(b) was amended to clarify that Milestone Completion Credit shall not be awarded to any inmate who completes an academic course related to a high school diploma if that inmate already possesses a high school diploma, high school equivalency, or college degree. The purpose of said amendment is to ensure that credit is only awarded to inmates for academic gains made while incarcerated, not for academic gains made prior to arrival in state prison. Additionally, for clarity the text defines "high school equivalency" as any equivalency approved by the California Department of Education. This is necessary to ensure the high school equivalency is recognized by the California Department of Education, which in turn ensures the school issuing the high school equivalency is accredited.

Also, the "Inmate Declaration of General Educational Development (GED) Eligibility" (CDCR Form 2233 (REV. 06/11)) and the "Time Credit Waiver (PC § 2934)" (CDCR Form 916 (REV. 09/09)) (which are incorporated by reference) were repealed in this rulemaking action and were made available to the public upon request.

Subsection 3043.3(c) was amended to clarify the meaning of the phrase "release from prison" as used in this section. To that end, the phrase was changed to "release to parole, release to community supervision, or discharge from parole." The new phrase "release to parole" was added to identify those inmates released from prison and commencing parole supervision under the department pursuant to Penal Code section 3000.08(a); the new phrase "release to community supervision" was added to identify those inmates released from prison and commencing community supervision under a local probation department pursuant to Penal Code section 3000.08(b); and the new phrase "discharge from parole" was added to identify those inmates released from prison and immediately discharged from parole, meaning they will not be under supervision by state or local officials. These new phrases clarify that inmates who leave state prison under one of these three situations are included in this section.

Subsection 3043.3(d) was amended to remove the regulatory requirement that the Director of the Division of Adult Institutions consult with the Director of the Division of Rehabilitative Programs and the Undersecretary of Health Care Services before promulgating revisions to the Milestone Completion Credit Schedule. This requirement was found unnecessary because the Director of the Division of Adult Institutions consults with the Director of the Division of Rehabilitative Programs and the Undersecretary of Health Care Services regularly. Furthermore, the regulatory requirement that the Director of the Division of Adult Institutions promulgate any revisions under the direction of the Secretary remains.

In addition, this subsection was amended to incorporate the Milestone Completion Credit Schedule revised in November, 2017 ("REV 11/17") instead of the schedule revised in March, 2017 ("REV 3/17") and the phrase "whether the program may be repeated for credit" was changed to "whether credit for repeating the program is authorized" for clarity.

Finally, the following sentence was added to the section to clarify when the director may authorize credit for repeating a program: "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." In this way, inmates will be discouraged from simply repeating the same programs and instead be encouraged to participate in a wide variety of rehabilitative programs, thus expanding the knowledge and skills they need to successfully reintegrate into society. Nevertheless, inmates will be permitted to repeat some programs for credit if the program has significant rehabilitative benefits regardless if the program has been taken previously.

Subsection 3043.3(e) was amended to distinguish the "standard performance criteria" found in this section with the "modified performance criteria" found in new subsection 3043.3(f). In addition, the phrase "standardized testing" was changed to "testing processes" because not every Milestone Completion Credit program ends with a standardized test, some end with a practicum, a project portfolio, or a test specially tailored by the instructor. Finally, this section was amended to clarify that within ten business days of completing each program an instructor shall verify the inmate's completion in the department's information technology system and within ten additional business days a designated system approver shall verify the inmate's eligibility for such credit. This two-step process helps ensure the accuracy, timeliness, and integrity of the program.

Subsection 3043.3(f) was deleted and the text was incorporated into subsection 3043.3(f)(1) and 3043.3(f)(2) instead. New subsection 3043.3(f)(1) was added to establish "modified performance criteria" for inmates in pre-approved prison housing units with structured, full-time rehabilitative programming or in pre-approved alternative custody settings. Unlike inmates eligible for credit based on standard performance criteria, these inmates are eligible for three weeks of credit (the equivalent of 21 calendar days) for successfully completing three months of

program plan activities, up to a maximum of twelve weeks of credit in a twelve-month period. In this way, inmates earning credit under the "modified performance criteria" are eligible to earn the same amount of credit per year (twelve weeks) as inmates earning credit under the standard performance criteria, but instead of earning those credits through certificates issued upon successfully completing each course they will earn them through certificates issued upon successfully completing three months of structured, full-time rehabilitative programming in their housing unit.

Inmates eligible for modified performance criteria have been accepted into specialized programs that provide round-the-clock services designed to promote self-improvement, family reunification, parenting skills, and essential life skills to successfully reintegrate into society. These programs are distinguished from standard housing units because they are delivered as part of a community-based model where all the participants spend 24 hours a day and 7 days a week in the same unit, living and learning together. One such pre-approved prison housing unit is the Delancey Street Program. Other pre-approved alternative custody settings include the Male Community Reentry Program, the Custody to Community Transitional Reentry Program, and the Community Prisoner Mother Program.

Finally, this section was amended to clarify that within ten business days of completing each three-month period of program plan activities a designated system approver shall verify and award the inmate such credit. However, as described in the Initial Statement of Reasons, in the case of an inmate participating in the Enhanced Outpatient Program, the Developmentally Disabled Program, or participating in an approved mental health inpatient program, excluding those in a mental health crisis bed, the Chief of Mental Health at the institution where the inmate is housed shall verify and award of credit instead. Ten business days was selected as the deadline for completing this task in order to provide staff with a reasonable period of time to process the numerous requests received for credit upon completion of a Milestone Completion Credit program, in both a timely and accurate fashion.

Subsection 3043.3(f)(2) was added to establish "modified performance criteria" for inmates in 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. Unlike inmates eligible for credit based on standard performance criteria, these inmates are eligible for one week of credit (the equivalent of seven calendar days) for successfully completing 60 hours of scheduled, structured therapeutic activities in accordance with their mental health treatment plan or, if applicable, their Developmentally Disabled Program, up to a maximum of six weeks of credit for 360 hours completed in a twelve-month period.

Finally, this section was amended to clarify that within ten business days of completing each 60 hour period of activities the Chief of Mental Health at each institution shall verify and award the inmate such credit. Ten business days was selected as the deadline for completing this task in order to provide staff with a reasonable period of time to process the numerous requests received for credit upon completion of a Milestone Completion Credit program, in both a timely and accurate fashion.

Subsection 3043.3(g) was moved to subsection 3043.3(h) and new subsection 3043.3(g) was added to allow inmates eligible for alternative custody settings to be placed in those programs earlier than they might otherwise be placed there based on the Milestone Completion Credit they may earn during their incarceration. In this way, inmates will receive the full benefit of the reentry programming available to them through alternative custody settings.

A portion of subsection 3043.4(b) was moved to subsection 3043.4(c) to distinguish the "standard award increments" found in this section with the "modified award increments" found in new subsection 3043.4(d). The standard award increments in this section apply to all inmates who are not 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.

The last portion of subsection 3043.4(b) was moved to subsection 3043.4(e). Additionally, the reference to "this limit" was amended as a non-substantive change to refer to the four-week limits identified in subsections 3043.4(c) and (e) since this provision was relocated to a different subsection and there is now a second, different limit pertaining to modified awards.

Subsection 3043.4(d) was moved to subsection 3043.4(g) and new subdivision 3043.4(d) was added to establish "modified award increments" for all juveniles sentenced as adults and housed in a facility administered by the department's Division of Juvenile Justice and for all inmates placed in an alternative custody setting prior to parole, including a pre-parole or re-entry program. Unlike inmates eligible for credit based on standard award increments, these inmates are eligible for one week of credit for every three months of program participation up to a maximum of four weeks of credit in a twelve-month period. In this way, inmates earning credit under the "modified award increments" are eligible to earn the same amount of credit per year (four weeks) as inmates earning credit under the standard award increments, but instead of earning those credits through certificates issued upon successfully completing each course they will earn them through certificates issued upon successfully completing three months of program participation in their housing unit.

These amendments were made to clarify that the Rehabilitative Achievement Credit rules described in this section apply to inmates housed in the Division of Juvenile Justice, but not to

wards housed in the Division of Juvenile Justice. The lack of any reference to juveniles sentenced as adults might otherwise lead to the erroneous conclusion that Rehabilitative Achievement Credit is only applicable to inmates housed in the Division of Adult Institutions. Additionally, the text was amended to clarify that these credit earning rules apply to inmates placed in alternative custody settings in the same manner as inmates that are housed in a facility administered by the department's Division of Juvenile Justice. This ensures that these two groups of inmates are not adversely impacted due to their placement in the Division of Juvenile Justice or in an alternative custody setting.

Subsection 3043.4(e) was moved to subsection 3043.4(i) and new subsection 3043.4(e) was added to clarify the meaning of the phrase "release from prison" as used in this section. To that end, the phrase was changed to "release to parole, release to community supervision, or discharge from parole." The new phrase "release to parole" was added to identify those inmates released from prison and commencing parole supervision under the department pursuant to Penal Code section 3000.08(a); the new phrase "release to community supervision" was added to identify those inmates released from prison and commencing community supervision under a local probation department pursuant to Penal Code section 3000.08(b); and the new phrase "discharge from parole" was added to identify those inmates released from prison and immediately discharged from parole, meaning they will not be under supervision by state or local officials. These new phrases clarify that inmates who leave state prison under one of these three situations are included in this section.

Subsection 3043.4(f) (formerly subsection 3043.4(c)) was amended to delete the phrase "once per calendar year" and add the phrase "once per year" for clarity. This change is necessary to make clear that the regulatory requirement in this section may occur anytime in a 12 month period and need not coincide with the calendar year. This subsection was also amended to add the phrase "of this section" to make clear that the reference to "subsection (a)" was a reference to "subsection (a) of this section."

Subsection 3043.4(g) (formerly subsection 3043.4(d)) was added here.

Subsection 3043.4(h) was added to allow inmates eligible for alternative custody settings to be placed in those programs earlier than they might otherwise be placed there based on the Rehabilitative Achievement Credit they may earn during their incarceration. In this way, inmates will receive the full benefit of the reentry programming available to them through alternative custody settings.

Subsection 3043.4(i) (formerly subsection 3043.4(e)) was added here.

Subsection 3043.5(a) was amended to add "high school equivalency recognized by the California Department of Education." This amendment to the text was deemed necessary to ensure that only those high school equivalencies which establish a student has the level of knowledge equivalent to a high school graduate. GED stands for General Education Development or General Education Diploma. The GED is just one of many recognized high school equivalency exams. This amendment ensures the high school equivalency is recognized by the California Department of Education, which in turn ensures the school issuing the high school equivalency is accredited.

Subsection 3043.5(b) is amended to delete a reference to the "GED" and replaced with "High School Equivalency approved by the California Department of Education." This change was necessary because a High School Equivalency Certificate demonstrates a student has a level of knowledge equivalent to a high school graduate. GED stands for General Education Development or General Education Diploma. The GED is just one of many recognized high school equivalency exams approved for use in California.

Subsection 3043.5(c) was amended to expressly state the following: "Educational Merit Credit for achieving a high school diploma or high school equivalency as recognized 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." The inclusion of this language was necessary to clarify that Educational Merit Credit shall not be awarded to any inmate for a high school diploma or high school equivalency if that inmate already possesses a high school diploma, high school equivalency, or college degree. The purpose of said amendment is to ensure that credit is only awarded to inmates for academic gains made while incarcerated, not for academic gains made prior to arrival in state prison. Additionally, for clarity the text defines "high school equivalency" as any equivalency recognized by the California Department of Education. This is necessary to ensure the high school equivalency is recognized by the California Department of Education, which in turn ensures the school issuing the high school equivalency is accredited.

In addition, the word "above" was changed to "of this section" for clarity and the phrase "effective on the date the credit is entered into the department's information technology system" was added to the last sentence to clarify when the Educational Merit Credit will be effective. This is necessary because this is the date that the Educational Merit Credit was verified, and document in the departments information system.

Subsection 3043.5(e) was amended to clarify the meaning of the phrase "release from prison" as used in this section. To that end, the phrase was changed to "release to parole, release to community supervision, or discharge from parole." The new phrase "release to parole" was

added to identify those inmates released from prison and commencing parole supervision under the department pursuant to Penal Code section 3000.08(a); the new phrase "release to community supervision" was added to identify those inmates released from prison and commencing community supervision under a local probation department pursuant to Penal Code section 3000.08(b); and the new phrase "discharge from parole" was added to identify those inmates released from prison and immediately discharged from parole, meaning they will not be under supervision by state or local officials. These new phrases clarify that inmates who leave state prison under one of these three situations are included in this section.

Subsection 3043.6(a) was amended to correct various references to other sections of the regulations.

Subsection 3043.6(c) was amended to clarify the meaning of the phrase "release from prison" as used in this section. To that end, the phrase was changed to "release to parole, release to community supervision, or discharge from parole." The new phrase "release to parole" was added to identify those inmates released from prison and commencing parole supervision under the department pursuant to Penal Code section 3000.08(a); the new phrase "release to community supervision" was added to identify those inmates released from prison and commencing community supervision under a local probation department pursuant to Penal Code section 3000.08(b); and the new phrase "discharge from parole" was added to identify those inmates released from prison and immediately discharged from parole, meaning they will not be under supervision by state or local officials. These new phrases clarify that inmates who leave state prison under one of these three situations are included in this section.

Subsections 3043.7(e)(2)(B) and 3043.7(g) were amended to change apostrophes to quotation marks because the latter is the appropriate punctuation. This is a non-substantive change.

Subsections 3044(b)(2) and (b)(4) were described in the Initial Statement of Reasons as renumbered and otherwise unchanged, however, in addition to renumbering these subsections other non-substantive changes were made.

B. MILESTONE COMPLETION CREDIT SCHEDULE

The Milestone Completion Credit Schedule identifies all of the available Milestone Completion Credit programs and the amount of credit that can be earned for successfully completing each. The department has revised the Milestone Completion Credit Schedule, which is incorporated by reference in subsection 3043.3(d), as follows:

Under "General Milestone Description and Codes"

Marley's Mutts Dog Program and New Life K-9 Program were added to provide inmates with additional rehabilitative programming opportunities as well as the companionship of a pet canine. Inmates who graduate from the program can obtain certification which can be used to secure employment upon release to the community.

The curriculum for the Last Mile program was changed resulting in an increase in the number of classroom hours and assignments necessary to successfully complete the program. Accordingly, the department revised the number of weeks of credit earned for the program from four weeks to seven weeks per year.

High School Equivalency testing was deleted because it was determined that it is redundant to award credit for General Education Development (GED) subtests as well as Adult Basic Education tests (using the CASAS Benchmarks) given that these tests measure the same or very similar educational learning gains.

Under "Academic Milestone Descriptions and Codes"

The curriculum for the Cognitive Behavioral Treatment Substance Use Disorder program (five months) was changed resulting in a decrease in the number of classroom hours and assignments necessary to successfully complete the program. Accordingly, the department revised the number of weeks of credit earned for the program from five weeks to four weeks per year.

The Long Term Offender Program was added to provide inmates sentenced to a term of life with the possibility of parole with additional rehabilitative programming opportunities.

Under "COCF Career Technical Education Milestone Descriptions and Codes"

Painting, drywall, and horticulture-landscaping programs were added to provide inmates housed in other states with additional rehabilitative programming opportunities.

C. THE NONVIOLENT PAROLE PROCESS

Section 3490 was amended to clarify the definitions of key terms that apply to the parole consideration process for determinately-sentenced nonviolent offenders.

Subsection 3490(a) was amended to clarify the definition of "nonviolent offender" for purposes of the parole consideration process for determinately-sentenced nonviolent offenders. The

introductory phrase was reworded to clarify that an inmate is a "nonviolent offender" if none of the listed statements is true. This subsection was also amended to separately list each circumstance that excludes an inmate from the definition of "nonviolent offender" so that it is clear each circumstance is an independent criterion for exclusion. Furthermore, this subsection was amended to modify the definition of "nonviolent offender" for two categories of offenders: (1) all inmates who are convicted of a sexual offense that requires registration as a sex offender under Penal Code section 290; and (2) all inmates who are serving an indeterminate term of life with the possibility of parole. These inmates remain ineligible for nonviolent offender parole consideration for public safety and other reasons under amended subsection 3491(b). However, they are no longer excluded from the definition of "nonviolent offender." This subsection was also amended to exclude from the definition of "nonviolent offender" inmates who are currently serving a term of incarceration for a nonviolent felony offense after having completed a concurrent determinate term for a violent felony. Other amendments were made for clarity.

Subsection 3490(a)(1) was amended to add the words "to death" after "condemned" to more accurately describe sentences imposed for condemned inmates.

Subsection 3490(a)(2) was amended to clarify that an inmate who is currently incarcerated for a term of life without the possibility of parole is excluded from the definition of nonviolent offender. The term "currently" was added in recognition that some terms of imprisonment may change, such as when an inmate is resentenced. As amended, this subsection clarifies that the department will look to the inmate's current sentence when determining whether he or she is incarcerated for a term of life without the possibility of parole.

Subsection 3490(a)(3) was amended to clarify that an inmate who is currently incarcerated for a term of life with the possibility of parole for a "violent felony" is excluded from the definition of nonviolent offender. A "violent felony" is defined in subsection 3490(c), as "a crime or enhancement as defined in subdivision (c) of section 667.5 of the Penal Code." Previously, this subsection excluded all inmates who are incarcerated for a term of life with the possibility of parole, including inmates whose life term was imposed as a result of an offense that is not a violent felony. Under the proposed amendment, a life term inmate whose life term was imposed as a result of an offense that is not a violent felony is no longer excluded from the definition of "nonviolent offender," but is instead ineligible for nonviolent parole consideration under subsection 3491(b). This amendment is necessary because some inmates receive a life-term for a crime that is not a violent felony under Penal Code section 667.5, subdivision (c) and therefore, are considered to be "nonviolent offenders" for other purposes, such as credit earning. However, as explained below in the changes for subsection 3491(b), life term inmates remain ineligible for parole consideration because the plain text of Proposition 57 makes clear that parole eligibility only applies to determinately sentenced inmates, and furthermore, public safety requires their exclusion. The term "currently" was added in recognition that some terms of imprisonment may

change, such as when an inmate is resentenced. In addition, inmates may be granted parole by the Board of Parole Hearings and thereby finish serving an indeterminate term of life with the possibility of parole. If they then begin serving a determinate term for an in-prison offense for a felony that is not violent, they will be deemed a "nonviolent offender" under subsection 3490(b).

Subsection 3490(a)(4) was adopted to clarify that inmates who are 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, are excluded from the definition of a nonviolent offender. This amendment is necessary to clarify that inmates who are required to serve a future prison term for a violent felony offense are excluded from the definition of "nonviolent offender**."** This amendment also helps to avoid confusion by expressly stating that inmates who have been sentenced to an indeterminate term for a violent felony or to a determinate term for an in-prison offense that is a violent felony, but who have yet to begin serving those terms, are ineligible for the nonviolent parole review process even though they may not yet be serving those terms.

Subsection 3490(a)(5) was renumbered and amended from subsection 3490(a)(2). This subsection excludes from the definition of "nonviolent offender" inmates who are "currently" serving a term of incarceration for a violent felony. The word "currently" was added in recognition that some inmates' terms of imprisonment change, such as when an inmate is resentenced. In addition, inmates may complete a term for a violent felony and begin serving a term for an in-prison offense that is not a violent felony, at which time they would be considered a "nonviolent offender" under subsection 3490(b).

Subsection 3490(a)(6) was amended to exclude inmates from the definition of "nonviolent offender" if they are currently serving a term of incarceration for a nonviolent felony offense after completing a concurrent determinate term for a violent felony. These inmates were sentenced to state prison for a term of imprisonment that included a conviction for a violent felony. As such, they are excluded from the definition of "nonviolent offender" and the citation to *In re Reeves* (2005) 35 Cal.4th 765 found in the "notes" of the section is no longer relevant so it was deleted.

Additionally, this subsection is amended to remove from the definition of "nonviolent offender" the exclusion of inmates who are "[c]onvicted of a sexual offense that requires registration as a sex offender under Penal Code section 290." These inmates are no longer excluded from the definition of "nonviolent offender." This amendment is necessary because some inmates who are required to register as a sex offender are serving a term for a crime that is not a violent felony under Penal Code section 667.5, subdivision (c) and are considered to be "nonviolent offenders" for other purposes, such as credit earning. However, as explained below in the changes for

subsection 3491(b), they remain ineligible for the parole consideration process to effectuate the intent of Proposition 57.

Subsection 3490(b) was amended to remove from the definition of "nonviolent offender" inmates who have completed a determinate term of incarceration for a violent felony and who are currently serving a concurrent term for a nonviolent felony offense. As explained above, these inmates are now specifically excluded from the definition of "nonviolent offender" under subsection 3490(a)(6). This subsection is also amended to remove the term "nonviolent in-prison offense" and replace it with "in-prison offense that is not a violent felony" for clarity.

The term "Notwithstanding (a)" was added to the beginning of this subsection to clarify that certain inmates who are ineligible for the nonviolent parole review process under subsection (a) may become eligible at a later point in time if they complete their term for a violent felony and must then serve a determinate term for an in-prison offense that is not a "violent felony." In other words, despite their initial ineligibility from the nonviolent offender parole review process under subsection (a) they can later become eligible for the nonviolent offender parole review process under subsection (b) if they must serve a determinate term for a nonviolent in-prison offense even though they originally came to prison with a violent felony conviction.

Subsection 3490(e) was amended to specify that "full term" means the actual number of days, months, and years imposed by the sentencing court for the inmate's primary offense. The terms "days" and "months" were added to clarify that partial years are intended to be included in the more general term of "years."

Subsection 3490(f) was amended to clarify the definition of "Nonviolent Parole Eligible Date." The definition is amended to remove reference to "an inmate who qualifies as a nonviolent offender" and replace it with "a nonviolent offender who is eligible for parole consideration under section 3491." The amendment is necessary to reflect amendments to section 3491, which clarify who is eligible for parole consideration. This subsection is also amended to remove the term "pre-sentence credits" so as to avoid confusion with the term "sentencing credits" referenced in the definition of "primary offense" and to clarify that only actual days served prior to sentencing (as ordered by the court under Penal Code section 2900.5) and actual days between the date of sentencing and the date the inmate is received by the department count toward an inmate serving the full term of his or her primary offense.

Section 3491 was amended to clarify the department's process for determining if a nonviolent offender is eligible for parole consideration. The title of the section is amended to reflect that it applies to all eligibility reviews, not just initial eligibility reviews. In addition, the phrase "eligibility determination" is replaced with "eligibility review" to more accurately reflect that inmates will be reviewed for eligibility under this section.

Subsection 3491(a) was amended to expressly state that nonviolent offenders as defined in subsections 3490(a) and 3490(b) are eligible for parole consideration by the Board of Parole Hearings. This subsection is also amended to remove language requiring the department to begin eligibility determinations under this subsection by June 1, 2017, as the department began eligibility determinations before June 1, 2017, as required, and the timing of eligibility determinations is now described in subsections (c) and (d).

Subsection 3491(b) was amended to specify that notwithstanding subsection 3491(a), inmates who are incarcerated for a term of life with the possibility of parole for an offense that is not a violent felony, or who are 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, are not eligible for the nonviolent parole consideration process.

Inmates who are incarcerated for a term of life with the possibility of parole are excluded from parole consideration under this subsection to comport with the plain language of the Public Safety and Rehabilitation Act of 2016 ("the Act") and the voters' intent. Under its plain language, the Act applies only to inmates serving determinate sentences. The Act establishes "parole consideration" for all inmates convicted of "a nonviolent felony offense" after they have completed the "full term" of their "primary offense . . . imposed by the court." (Cal. Const., art. I, § 32, subd. (a).) Parole review under the Act is thus triggered once an inmate serves the "full term" of his or her primary offense, defined as the "longest term of imprisonment imposed by the court." (Cal. Const., art. I, § 32, subd. (a).) While a determinate sentence has a fixed term, an indeterminate sentence does not. The Act's language—which determines when an inmate is eligible for parole review—demonstrates the voters' intent not to apply this new parole process to inmates sentenced to an indeterminate term and who are already eligible for parole consideration under a different statutory scheme. Because, as a matter of law, an indeterminately sentenced inmate is deemed to have served his full indeterminate term only when found suitable for parole, an indeterminately sentenced inmate cannot trigger parole review under the Act.

Additional language within the Act's text also shows that the Act only applies to inmates serving determinate sentences. The Act authorizes parole review "after completing . . . the longest term of imprisonment imposed by the court." (Cal. Const., art. I, § 32, subd. (a)(1)(A).) Although the court may sentence an inmate to an indeterminate life term, it does not fix the term or duration of imprisonment. Rather, the board is vested with the authority to fix the precise length of an indeterminate term through its parole suitability function. That the Act's text requires the inmate complete "the longest term of imprisonment imposed by the court" before the inmate is eligible for the nonviolent parole process shows the Act was not intended to provide parole consideration for inmates serving life sentences, whose terms are determined by the board. Nothing in the Act or the ballot materials gives the department the power to resentence indeterminately sentenced

inmates—it merely provides for parole review after a certain period of incarceration as determined by the inmate's sentence that was "imposed by the court." To that end, section 3491(b)(1), which precludes indeterminately sentenced inmates from parole review under the Act, codifies the Act's plain language.

Moreover, excluding indeterminately sentenced inmates is consistent with the voters' intent to grant broad discretion to the Secretary of the department to establish a regulatory framework that protects and enhances public safety. The department appropriately exercised its discretion to exclude indeterminately sentenced inmates so as not to disturb the voters' established public safety concerns regarding the current third-strike prison population. In 2012, the electorate passed Proposition 36, also known as the Three Strikes Reform Act. (*People v. Brown* (2014) 230 Cal.App.4th 1502, 1507.) The Three Strikes Reform Act enacted Penal Code section 1170.126, which permitted inmates sentenced under the existing Three Strikes Law to petition the superior court to be resentenced to a determinate term as a second striker. (*Id*., citing Pen. Code, § 1170.126, subd. (f).) The court could deny the petition if it determined that resentencing the inmate would pose an unreasonable risk of danger to public safety. (*People v. Valencia* (2017) 3 Cal.5th 347, 350.) Inmates serving an indeterminate life term for a third serious or violent felony offense were ineligible to petition for resentencing. (Pen. Code, § 1170.126, subd. (e).)

The Three Strikes Reform Act's stated purpose was to prevent the early release of dangerous criminals and relieve prison overcrowding by allowing low-risk, nonviolent inmates serving life sentences for petty crimes, such as shoplifting and simple drug possession, to be resentenced. Following these reforms, the third-strike prison population now consists of inmates who fall into one of three categories: (1) eligible for resentencing under Proposition 36 but deemed to pose an unreasonable risk of danger to public safety; (2) ineligible for resentencing under Proposition 36 due to a violent third-strike conviction; or (3) ineligible for resentencing under Proposition 36 due to a serious third-strike conviction. The voters have found that this population poses an unreasonable risk to public safety and requires a lengthier period of incarceration under the Three Strikes Law. Thus, the department's exclusion of this third-strike population from the Act's parole review is consistent with the voters' consistent intent to protect the public and enhance public safety.

Subsection 3491(b) was also amended to specify that notwithstanding subsection 3491(a), inmates who are within one year of eligibility for a youth offender parole consideration hearing under Penal Code section 3051 or an elderly offender parole consideration hearing under recently enacted Penal Code section 3055 are not eligible for the nonviolent parole consideration process.

Penal Code section 3051 provides for youth offender parole hearings to consider release of offenders who committed specified crimes prior to 26 years of age. When reviewing an offender's suitability for parole under Penal Code section 3051, the Board of Parole Hearings shall give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law. Inmates sentenced pursuant to the Three Strikes Law, sentenced to life in prison without the possibility of parole, condemned to death, or convicted of the first-degree murder of a peace officer or a person who had been a peace officer, are exempt from youth offender parole hearings.

Penal Code section 3055 was recently enacted pursuant to Assembly Bill 1448 in the 2017-2018 regular session of the legislature for the purpose of reviewing the parole suitability of inmates who are 60 years of age or older and who have served a minimum of 25 years of continuous incarceration on their sentence. When considering the release of an inmate who meets these criteria, the Board of Parole Hearings is required to consider whether age, time served, and diminished physical condition, if any, have reduced the elderly inmate's risk for future violence. Inmates sentenced pursuant to the Three Strikes Law, sentenced to life in prison without the possibility of parole, condemned to death, or convicted of the first-degree murder of a peace officer or a person who had been a peace officer, are exempt from the elderly offender parole program.

Inmates who are within one year of eligibility for a youth offender parole hearing or an elderly offender parole hearing are excluded from parole consideration under this subsection because they will soon have an opportunity to appear before the Board of Parole Hearings in person for a parole suitability hearing. In order to be eligible for both the nonviolent parole consideration process and a parole suitability hearing as a youth offender or under elderly parole, inmates must be sentenced to a lengthy determinate term for which they have been incarcerated for a minimum of 15 or 25 years, respectively. This means they have been convicted of more serious offenses and have served lengthier sentences. In addition, it is likely they will have already been denied release under the nonviolent parole consideration process after having served the full term of their primary offense. These inmates represent a very small fraction of offenders who are eligible for the nonviolent parole consideration process.

Inmates scheduled for a parole suitability hearing are given a copy of a written notice of their rights associated with the parole suitability hearing process six months in advance of their hearing and are appointed counsel four months in advance of their hearing. In addition, victims and prosecutors are notified 90 days in advance of the hearing. For these reasons, ensuring there is a one year "break" between an inmate's eligibility for parole review under the nonviolent parole consideration process and his or her eligibility for the parole suitability hearing process is reasonable and necessary to avoid confusion for inmates, their families, victims, and the public

that would result from inmates being eligible for two parole processes within a relatively short period of time.

This amendment also precludes inmates who have already had a parole suitability hearing from being eligible for the nonviolent parole consideration process, which is necessary to avoid duplication of effort and confusion for inmates, their families, victims, and the public that would result from inmates being eligible for two parole processes at the same time.

Lastly, subsection 3491(b) was amended to specify that notwithstanding subsection 3491(a), inmates convicted of a sexual offense that currently requires, or will require, registration as a sex offender under the Sex Offender Registration Act are not eligible for the nonviolent parole consideration process. Public safety requires that sex offenders be excluded from nonviolent parole consideration. As explained in the Initial Statement of Reasons, the crimes listed in Penal Code section 290 reflect the determination of the People of the State of California (through initiatives and the Legislature) that "[s]ex offenders pose a potentially high risk of committing further sex offenses after release from incarceration or commitment, and that protection of the public from reoffending by these offenders is a paramount public interest." (See the Initial Statement of Reasons, p. 15, citing Pen. Code, § 290.03, subd. (a)(1).) The increased risk of sex offenders was also noted by the U.S. Supreme Court in *McKuny v. Lily*: "When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault." (*McKuny v. Lily* (2002) 536 U.S. 24, 33.) In addition, when Proposition 35 was approved in 2012, the people declared that "protecting every person in our state, particularly our children, from all forms of sexual exploitation is of paramount importance." (See Proposition 35, Text of Proposed Laws, Sec. 2, Findings and Declarations.)

Of the approximately 22,400 state prison inmates required to register for a sex offense based on a current or prior felony conviction, the vast majority (18,087) are currently convicted of a violent offense listed under Penal Code section 667.5, subdivision (c). An additional 1,076 inmates are currently convicted of a serious felony listed under Penal Code section 1192.7, subdivision (c), and include such crimes as rape of an unconscious person, and lewd and lascivious acts with a child under fourteen. An additional 3,256 inmates are currently convicted of sex offenses that are not listed as a violent or serious felony, but in which the offense involves some degree of physical force, coercion, or duress with the victim, often a minor. Examples include incest, pimping of a minor under sixteen, sexual battery, and lewd and lascivious acts with a fourteen or fifteen year old victim where the perpetrator is at least ten years older. The department has determined that these sex offenses demonstrate a sufficient degree of violence and represent an unreasonable risk to public safety to require that sex offenders be excluded from nonviolent parole consideration. Accordingly, the proposed regulations exclude inmates who are "convicted

of a sexual offense that requires registration as a sex offender under Penal Code section 290" from the nonviolent parole consideration process.

Subsection 3491(c) was amended to specify that the department shall determine an inmate's eligibility for nonviolent parole consideration within 60 calendar days of the inmate's admission to the department. This is the same time period allotted for the department to complete a variety of other administrative tasks associated with processing an inmate into the department and it provides a reasonable maximum time period for determining inmate eligibility. The amendment is necessary to provide clear timeframes for determining an inmate's eligibility for nonviolent parole consideration.

Subsection 3491(d) was amended to specify that the department shall conduct a new eligibility determination whenever (1) it receives an official document, such as an amended abstract of judgment, that affects the inmate's eligibility; (2) an inmate begins serving a term for an in-prison offense that is not a violent felony; or (3) an inmate is within a year of being eligible for a youth offender parole consideration hearing or an elderly parole consideration hearing. These amendments are necessary to clarify the circumstances that will trigger a new eligibility review.

These circumstances each represent a change in an inmate's status that may affect his or her eligibility for parole consideration. For example, the department may receive an amended abstract of judgment indicating an inmate has been resentenced such that he or she is no longer convicted of a violent felony, thus making him or her eligible for nonviolent parole consideration. In addition, under subsection 3490(b), an inmate who completes a term of imprisonment for a violent felony and begins serving a determinate term for an in-prison offense that is not a violent felony is not excluded from the definition of nonviolent offender, thus he or she may be eligible for nonviolent parole consideration. In contrast, under subsection 3491(b)(2), an inmate who was previously eligible for parole consideration may become ineligible because he or she is within a year of being eligible for a youth offender hearing or elderly parole hearing. The amendments to this subsection are necessary to ensure that a new eligibility review will be conducted when any of these triggering events occurs, thus allowing inmates to know whether they are eligible for parole consideration and if so, when they can expect to be screened for possible referral to the board.

Subsection 3491(e) was amended to specify the steps the department will take when conducting an eligibility review. First, the department will determine if the inmate is eligible for parole consideration as described in subsections (a) and (b). For inmates who are eligible, the department will identify the inmate's primary offense and establish the inmate's Nonviolent Parole Eligible Date. Under Penal Code section 1170.1, subdivision (c), a term consecutively imposed by the sentencing court for an in-prison offense is treated as separate from the prison term that gave rise to the prison commitment, meaning, sentences for in-prison offenses are not

merged with the sentence that first brought the inmate into prison. As a result, an inmate's primary offense will vary depending on the timing of his or her eligibility review. For inmates who are currently incarcerated for offenses committed before coming to prison, their primary offense will be based on the sentence imposed by the court for crimes committed prior to the inmate's admission to prison. For inmates who are currently incarcerated for crimes committed while in prison, their primary offense will be based on the sentence imposed by the court for the in-prison offenses. This subsection is necessary to clarify how the department will identify an inmate's primary offense depending on the type of term the inmate is serving. It is also necessary to more accurately detail the overall eligibility review process.

Subsection 3491(f) was adopted to require that a copy of all eligibility reviews be served on the inmate and placed in his or her central file within 15 business days of being completed. This amendment is necessary to ensure inmates timely receive notice of eligibility determinations and that they are appropriately documented in the inmate's central file. Fifteen business days provides a reasonable maximum time period for serving inmates with eligibility reviews and takes into account the time necessary to reach some inmates who may be in remote locations, such as fire camps.

Subsection 3491(g) was amended to reflect the amended title of this subsection.

Section 3492 was amended to clarify the process for screening eligible nonviolent offenders to determine if they will be referred to the Board of Parole Hearings for parole consideration. Specifically, this section is amended to provide greater clarity concerning the public safety screening criteria inmates must meet in order to be referred to the Board of Parole Hearings for parole consideration, as well as the applicable timeframes for conducting the screenings.

Subsection 3492(a) was amended for consistency and to reflect that eligibility reviews are now conducted under section 3491.

Subsection 3492(b) was amended to clarify that inmates will be screened under this subsection at least 35 calendar days prior to their Nonviolent Parole Eligible Date. This is necessary to clarify that the term "35 days" means calendar days rather than business days.

Subsection 3492(c) was amended to clarify the list of circumstances that must be true in order for a nonviolent offender to be eligible for referral to the Board of Parole Hearings. It is also amended to specify that the circumstances must be true as of the date of the screening. Because some of the criteria include circumstances that must have occurred within a specified period of time, such as "within the past year" or "in the past five years," it is necessary to clarify the date upon which the statements must be true.

This subsection is also amended to clarify that inmates are ineligible for referral to the Board of Parole Hearings if they have been assessed or served a Security Housing Unit term within the past five years, unless it was assessed solely for the inmate's safety. Previously, this subsection required that the Security Housing Unit term be for a Security Threat Group or disciplinary reason. The amended language more accurately reflects that some Security Housing Unit terms may be assessed solely for the inmate's safety and not due to a disciplinary infraction and, therefore, should not result in the inmate being ineligible for referral to the Board of Parole Hearings.

In addition, this subsection is amended to clarify that inmates are "assigned to Work Group C" rather than "placed in Work Group C" and that the correct reference to the regulation describing Work Group C is subsection 3044(b)(5). These amendments are necessary to ensure consistency with the regulations governing Work Group C.

Lastly, this subsection is amended to clarify that inmates must have at least 210 calendar days remaining to serve on their sentence or they will not be referred to the Board of Parole Hearings. This amendment is necessary because the entire parole consideration process from the date an inmate is screened under this subsection to the date an inmate is released can take up to 210 days, which includes specified time periods for notices to be sent, for written statements to be submitted by inmates, victims, and prosecutors, for the board to issue written decisions, as well as 30 days for inmates to request review of a decision, 5 days for the board to receive the inmate's request, and 60 days for parole planning and release. The 210-day timeframe ensures the department's and the board's resources are focused on reviewing inmates who, if approved for release, are certain to be processed for release on or before they would otherwise be released as a result of their Earliest Possible Release Date.

Subsection 3492(c)(4) was amended to replace "and" with "or" for clarity, since Division A-1 and Division A-2 offenses are listed individually in either 3323, subdivisions (b) or section 3323, subdivision (c). In addition, this subsection was amended by moving the provisions of 3292(b)(8) to subsection 3492(e).

Subsection 3492(d) was amended to clarify that inmates who are eligible for referral to the Board of Parole Hearings under this subsection shall be referred within five business days of being screened. This amendment is necessary to provide a clear timeframe by which the department will refer eligible inmates to the board under this subsection. Five business days is a reasonable maximum time period that takes into account weekends, holidays, and any temporary delays resulting from periodic unavailability of information technology systems for routine maintenance and upgrades.

Subsection 3492(e) was amended to clarify the circumstances under which an inmate will be screened again for possible referral to the Board of Parole Hearings for nonviolent parole consideration based on public safety criteria established under section 3492(c). This subsection now lists all the possible triggering events for an inmate to be re-screened and the timing of that re-screening. Unless an inmate is released or is no longer eligible for parole consideration under section 3491, he or she will be screened again one year from the date of their previous public safety screening if the inmate is (1) determined to be ineligible for referral under this section; (2) referred to the Board of Parole Hearings and a hearing officer determines the board did not have jurisdiction under section 2449.2 of division 2 to review the inmate; (3) referred to the Board of Parole Hearings and denied release under section 2449.4 of division 2; (4) referred to the Board of Hearings and denied release after a prior approval was vacated under section 2449.6 of division 2; or (5) referred to the Board of Parole Hearings and denied release after a previous decision was reviewed by the board under section 2449.7 of division 2. These amendments are necessary to expressly specify that inmates will be re-screened annually, absent specified circumstances, regardless of the outcome of their last screening. For clarity, subsection 3492(e) was amended to list the various possible outcomes of a prior screening, any one of which will trigger a re-screening so long as the inmate is still in custody and remains eligible for the nonviolent offender parole consideration process under sections 3490 and 3491

Subsection 3492(f) was amended to require that a copy of the results of screenings under this subsection shall be served on the inmate and placed within his or her 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 Parole Hearings. Fifteen business days provides a reasonable maximum time period for serving inmates with screening results and takes into account the time necessary to reach some inmates who may be in remote locations, such as fire camps. This amendment is necessary to ensure inmates timely receive notice of referral decisions, that inmates are provided with important information, and that they are appropriately documented in the inmate's central file.

Subsection 3492(g) was amended to clarify that this subsection governs public safety screenings and referral decisions, which are subject to review under the department's Inmate Appeals Process. The phrase "eligibility decision" was removed to avoid confusion with eligibility decisions rendered under section 3491.

Section 3493 was amended to clarify that inmates who are approved for release by the Board of Parole Hearings shall be released within 60 calendar days from the date of the decision, so long as the decision is not subsequently vacated or overturned by the Board of Parole Hearings. The word "overturned" was added to the text for consistency with the amended text of section 2449.7, which provides that decisions may be "overturned" during the board's decision-review

process, as distinguished from decisions that may be "vacated" under section 2449.6. This section is also amended to remove language specifying that inmates who are approved for release by the Board of Parole Hearings and who have an additional term to serve under Penal Code section 1170.1(c) for an in-prison offense will not begin serving that term until 60 days from the date of the Board of Parole Hearings' decision. The removal of this language ensures that inmates are eligible to earn credits toward their release date during the 60-day period following the board's decision. Additionally, this section is amended to remove the reference to the Division of Adult Parole Operations because only the Division of Adult Institutions is responsible for releasing inmates.

Section 2449.1 was amended to clarify the definitions of key terms that apply to the parole consideration process for determinately-sentenced nonviolent offenders. This subsection is amended to mirror the provisions of section 3490 of division 3. As such, please see section 3490 for an explanation of amendments to this section.

Section 2449.2 was renumbered from section 2449.3 to reflect that the Board of Parole Hearings will review its jurisdiction to consider an inmate for nonviolent parole *before* sending notices to registered victims and prosecuting agencies under what is now enumerated as section 2449.3. The public safety screening and referral process under section 3492 of division 3 is an automated process using electronic data stored in the department's main computer system. The purpose of the jurisdictional review under this section is to have a hearing officer review the inmate's electronic central file to confirm the inmate is eligible for parole consideration. The amendments to this section are necessary to avoid notifying victims and prosecutors of an inmate's referral for parole consideration without first confirming that the Board of Parole Hearings has jurisdiction to consider the inmate for release, thus eliminating significant and unnecessary workload for the board and prosecutors, and unnecessary stress and anxiety for victims.

Subsection 2449.2(a) was amended to clarify that the Board of Parole Hearings must conduct a jurisdictional review within 15 calendar days from the date the inmate is referred to the board by the department under section 3492 of division 3. Fifteen calendar days establishes a reasonable maximum time period for the board to review all cases for jurisdiction. The 15 business day time period is necessary to accommodate natural fluctuations in the number of inmates referred from one week to another and is sufficient for the board to assign a case, conduct the necessary review, and issue a written decision. This subsection is also amended to delete reference to the 30-day notification response period since notifications will now occur after jurisdiction has been determined. In addition, this subsection is amended to replace the term "nonviolent offender parole consideration" with the term "release" for clarity.

Subsection 2449.2(b) was amended to clarify that the Board of Parole Hearings has jurisdiction to review an inmate for release if all of the following apply: (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; 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. This subsection is amended to mirror the provisions of section 3492 of division 3. As such, please see section 3492 for an explanation of amendments to this section.

In addition, this subsection is amended to replace the term "nonviolent offender parole consideration" with the term "release" for clarity.

Subsection 2449.2(c) was amended to clarify that the board's written decision that it lacks jurisdiction to consider an inmate for parole consideration under this subsection will include a statement of reasons supporting the decision and that it will be served on the inmate and placed in his or her central file within 15 business days of being issued. Fifteen business days provides a reasonable maximum time period for serving inmates with screening results and takes into account the time necessary to reach some inmates who may be in remote locations, such as fire camps. This amendment is necessary to ensure inmates timely receive notice of decisions issued under this subsection and that they are appropriately documented in the inmate's central file. Additionally, this subsection is amended to clarify that when the board determines it does not have jurisdiction to consider the inmate for release under this subsection, the inmate will be screened again for possible referral to the board under the procedures and timelines described in subsection 3492(e) of division 3. In addition, the requirement that victims and prosecutors be notified of decisions under this subsection was amended and moved to subsection 2449.2(d).

Subsection 2449.2(d) was amended to clarify that the board will send notices to victims and prosecutors as described in section 2449.3 only for those cases in which the board has determined it has jurisdiction to review the inmate for release.

Subsection 2449.2(e) was amended to clarify that inmates may seek review of a decision under this subsection by submitting a request in writing to the board under section 2449.7 within 30 calendar days of being served the decision. The requirement that requests be submitted in writing within 30 days is an existing requirement from section 2449.7 (previously section 2449.5), repeated here for clarity.

Section 2449.3 was renumbered from section 2449.2 and amended to reflect that the Board of Parole Hearings will confirm it has jurisdiction to consider an inmate for release under what is

now enumerated as section 2449.2 before sending notices to registered victims and prosecuting agencies under this section.

Subsection 2449.3(a) was renumbered from subsection 2449.2(a) with non-substantive conforming amendments for consistency.

Subsection 2449.3(b) was renumbered from subsection 2449.2(a)(1) and modified to clarify that 30 days means 30 calendar days.

Subsection 2449.3(c) was renumbered from subsection 2449.2(b) and modified to clarify that inmates are referred to the board under section 3492 of division 3.

Subsection 2449.3(d) was renumbered from subsection 2449.2(c) without change.

Section 2449.4 was amended to clarify timeframes for conducting a review on the merits, the legal standard for determining whether an inmate should be released, the factors the board will consider when determining whether an inmate should be released, and the board's procedures for issuing a written decision. In addition, this section is amended for consistency with other sections.

Subsection 2449.4(a) was amended to clarify that a review on the merits will occur within 30 calendar days after the time period expires for registered victims and prosecutors to submit written statements under section 2449.3. Thirty calendar days provides a reasonable maximum time period for the matter to be assigned to staff, for the necessary information to be collected and analyzed, and for a decision to be rendered.

Subsection 2449.4(b) was amended to clarify that the board is required to consider the inmate's documented criminal history and RAP sheet. The word "current" is removed from "current RAP sheet" because it is unnecessary and vague.

Subsection 2449.4(c) was amended to change the legal standard for determining whether an inmate should be released. As amended, the board must determine if the inmate poses a current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity. The amended standard more accurately reflects the manner in which the board weighs immutable factors such as the circumstances of an inmate's criminal history with factors that are subject to change, such as an inmate's rehabilitative programming when determining the inmate's current risk. In addition, the amended standard is necessary to clarify that an inmate's risk of significant criminal activity may be such that he or she poses an unreasonable risk to public safety despite not personally having inflicted physical violence on others. This subsection is also amended to require the board to consider and apply the factors in section 2449.5 when determining if an

inmate poses a current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity.

Subsection 2449.4(d) was amended to clarify that decisions under this subsection are to be issued in writing and supported by a statement of reasons. In addition, this subsection is amended to expressly require copies of decisions to be served on the inmate and placed in the inmate's central file within 15 business days of being issued. Fifteen business days provides a standard maximum time for serving inmates with the board's decisions and takes into account the time necessary to reach some inmates who may be in remote locations, such as fire camps. This subsection was also amended to require that notice of the board's decisions are to be sent to victims and prosecutors who received notice under section 2449.3 within five business days of the decision being issued. Five business days provides a reasonable maximum time period for processing notices, given a variety of variables such as state holidays, staff availability, and fluctuations in workload. Paragraphs (1) and (2) are amended to reflect the change in the legal standard and to clarify that decisions resulting in an inmate being approved for release two or more years prior to his or her Earliest Possible Release Date shall not be issued until reviewed by an associate chief deputy commissioner or the Chief Hearing Officer, who will concur with the decision or issue a final decision. These amendments are necessary to provide transparency and clarity to the parole consideration process and to ensure inmates timely receive notice of board decisions and that they are appropriately documented in the inmate's central file.

Subsection 2449.4(d)(2) was amended to provide clarity concerning the additional review required to finalize a decision approving release, if the decision will result in the inmate being released more than two years prior to his or her Earliest Possible Release Date. Specifically, subsection 2449.4(d)(2) was amended to clarify that these decisions will be reviewed by an associate chief deputy commissioner or the Chief Hearing Officer before they are finalized and issued. Furthermore, subsection 2449.4(d)(2) was amended to expressly state the outcome of such a review. If the reviewing officer does not concur with the decision, he or she shall issue a new decision approving or denying release. In addition, provisions from former subsection 2449.4(d)(4) were moved to subsection 2449.4(d)(2) and combined with this new language to create one subsection to address the board's procedures for issuing decisions in which an inmate is approved for release.

Subsections 2449.4(e) and 2449.4(f) were amended to clarify that inmates approved for release will be processed for release by the department as provided in section 3493 of division 3 and that inmates denied release will be screened again for possible referral to the board as provided in subsection 3492(e) of division 3.

Subsection 2449.4(g) was amended to clarify that inmates may seek review of a decision under this subsection by submitting a request in writing to the board under section 2449.7 within 30

calendar days of being served the decision. Thirty calendar days is a reasonable time period for an inmate to submit a request for the board to review its decision. Providing a clear time period also serves to ensure the timeliness of submissions, thereby preserving the integrity of the board's decisions.

Section 2449.5 was adopted to clarify the board's decision-making process by listing the factors the board considers as aggravating and mitigating an inmate's current risk when determining whether an inmate poses a current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity. This section also provides guidance about how the board weighs the factors.

Subsection 2449.5(a) clarifies that the board's decisions are based on the totality of the circumstances and that an inmate shall be released if the factors aggravating an inmate's risk do not exist or if they are outweighed by factors mitigating the inmate's risk. The subsection requires the board to take into account the passage of time, the inmate's age, as well as the inmate's physical and cognitive limitations when weighing the factors. This important information is needed by the board to make a fully-informed decision on the inmate's case. This subsection also clarifies that the factors represent general guidelines and that the importance of any factor or combination of factors is left to the judgment of the hearing officer. This subsection provides broad discretion to the hearing officer, which is consistent with the law governing the board's parole consideration process for indeterminately sentenced inmates, youthful offenders, and inmates eligible for elderly parole. Broad discretion is necessary to protect public safety and to ensure the board is able to provide meaningful individualized parole consideration in a manner that addresses the unique facts of each case. In addition, these amendments are necessary to promote consistency in decision-making and to clarify the board's parole consideration process for inmates, victims, and the public.

Subsections 2449.5(b) through 2449.5(g) specify the factors the board is to consider as aggravating and mitigating an inmate's risk. These amendments are necessary to promote the Act's primary goals of encouraging and motivating nonviolent offenders to take responsibility for their own rehabilitation, promoting public safety by encouraging inmates to pursue educational, vocational, rehabilitative, and self-improvement programs, and reducing recidivism by increasing the likelihood that inmates will better prepare themselves for their eventual return to society.

Subsection 2449.5(b) lists four factors concerning the inmate's current conviction or convictions that, if present, shall be considered as aggravating the inmate's risk. The factors are: (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; and (4) The inmate played a significant role in the crime(s) as compared

to other offenders, if any. Using a deadly weapon or causing physical injury or threatening physical injury to a victim demonstrates the inmate's propensity to engage in violent behavior, thus aggravating his or her risk for future violence. Having multiple convictions involving large-scale criminal activity demonstrates the inmate's propensity to engage in significant criminal activity, thus aggravating his or her risk for engaging in significant criminal activity in the future. Lastly, an inmate who played a significant role in the crime or crimes as compared to other offenders, if any, demonstrates the inmate's more significant role in the criminal activity, thus aggravating his or her future risk.

Subsection 2339.5(c) lists four factors concerning the inmate's current conviction or convictions that, if present, shall be considered as mitigating the inmate's risk. The factors are: (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. Committing a crime without personally using a deadly weapon and without causing a victim to suffer physical injury or threat of physical injury demonstrates the inmate's lack of propensity to engage in violent behavior, thus mitigating his or her risk of future violence. Having only one conviction demonstrates the inmate's lack of propensity to engage in widespread criminal activity, thus mitigating his or her risk of engaging in significant criminal activity in the future. And inmates who played an insignificant role in the crime or crimes as compared to other offenders, if any, demonstrates the inmate's less significant role in the criminal activity, thus mitigating his or her future risk.

Subsection 2449.5(d) lists four factors concerning the inmate's prior criminal conviction(s) that, if present, shall be considered as aggravating the inmate's risk. The four factors are: (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. Having a violent felony conviction in the past 15 years demonstrates the inmate's propensity to engage in violence and repeated criminal activity despite prior incarceration and supervised release. Most violent felonies result in several years of incarceration, followed by several years of supervised release. Furthermore, these inmates must have subsequently committed the crime or crimes resulting in their current term of incarceration, for which they must have also served the full term of their primary offense before they are eligible for parole consideration. As such, the 15 year time limit is appropriate because it means there was a relatively short break between the inmate's past incarceration and his or her most recent criminal activity, thus aggravating his or her future risk. Having a criminal history that is increasing in severity demonstrates the inmate's risk of future

criminality is increasing, thus aggravating his or her future risk. Inmates whose prior criminal includes incarceration for a misdemeanor conviction involving physical injury to a victim or a felony conviction within five years of his or her current conviction(s) demonstrates that the inmate's criminality is increasing despite prior criminal justice interventions. In addition, convictions so close in time may indicate the inmate was on supervised release at the time he or she committed the crimes associated with his or her current conviction, which aggravates his or her future risk. Lastly, if the inmate was previously approved for release by the board as a nonviolent offender and returned to state prison with a new conviction, it demonstrates he or she continued to engage in criminal activity despite his or her prior rehabilitative efforts and incarceration, thus increasing his or her future risk.

Subsection 2449.5(e) lists four factors concerning the inmate's prior criminal behavior that, if present, shall be considered as mitigating the inmate's risk. The four factors are: (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, and; (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). Not having a prior criminal conviction demonstrates a lack of criminal history and, therefore, mitigates the inmate's future risk. Inmates who do not have a violent felony conviction in the past 15 years demonstrate a lack of recent propensity to commit violence and are less likely to have committed their most recent crimes while on supervised release for a violent offense, thus mitigating their future risk of violence. Similarly, inmates whose overall criminal behavior is decreasing in severity demonstrate a decreasing propensity to engage in significant criminality, thus mitigating their future risk. Inmates who were free from incarceration for a misdemeanor conviction involving physical injury to a victim or a felony for five years or more prior to their current convictions have demonstrated an ability to refrain from criminal activity and are more likely to have successfully completed a term of supervised release, thus mitigating their future risk.

Subsection 2449.5(f) lists four factors concerning the inmate's institutional behavior, work history, and rehabilitative programming (as documented in the inmate's central file) that, if present, shall be considered as aggravating the inmate's risk. The four factors are: (1) The inmate has been found guilty of institutional Rules Violations 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, and; (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. Inmates who engage in violent behavior or other criminality while in prison demonstrate a propensity for violence and criminal behavior, thus aggravating their future risk. Inmates who have participated in little or no available vocational, educational, or work assignments have not advanced themselves academically, vocationally, or through work assignments, thus aggravating their future risk. Inmates who have participated in little or no available rehabilitative or self-help programming to address the circumstances that contributed to their criminal behavior, such as substance abuse, etc., are at greater risk for engaging in future criminal behavior. The board, therefore, will consider these inmates' future risk to be aggravated.

Subsection 2449.5(g) lists four factors concerning the inmate's institutional behavior, work history, and rehabilitative programming (as documented in the inmate's central file) that, if present, shall be considered as mitigating the inmate's risk. The four factors are: (1) The inmate has not been found guilty of institutional Rules Violations 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, and; (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. Inmates who avoid engaging in violent or other criminal behavior while incarcerated demonstrate a lack of propensity for violence and criminal behavior, thus mitigating their future risk. Inmates who successfully participate in vocational, educational, or work assignments for a sustained period of time have advanced themselves academically, vocationally, or through work assignments, thus mitigating their future risk. Similarly, inmates who successfully participate in rehabilitative or self-help programming to address the circumstances that contributed to their criminal behavior, such as substance abuse are less likely to engage in future criminal behavior, thus mitigating their future risk.

Subsection 2449.5(h) requires the board to consider written statements from the inmate, written statements from the prosecutor concerning the inmate's commitment offense and criminal history, and written statements from victims who received notice under section 2449.3. These amendments are necessary to ensure the board takes into consideration input from inmates, victims, and prosecutors when determining whether to release a nonviolent offender. Narrowing the focus of statements to be considered from prosecutors is intended to allow prosecutors to focus on information readily available at the local level, such as the inmate's criminal history and the circumstances surrounding his or her commitment offense.

Section 2449.6 requires the board to vacate a decision previously approving an inmate for release if at any time prior to release the inmate subsequently becomes ineligible for parole consideration or ineligible for referral to the board. This section was originally part of the regulatory text governing decision review. However, it was moved to a stand-alone section to avoid confusion, since decisions issued under this section are also subject to review upon request of the inmate or by the board on its own motion under section 2449.7.

Subsections 2449.6(a) and 2449.6(b) require decisions under this subsection to be in writing and supported by a statement of reasons. In addition, copies of the decision are required to be served on the inmate and filed in the inmate's central file within 15 business days of being issued. Fifteen business days provides a standard maximum time for serving inmates with the board's decisions and takes into account the time necessary to reach some inmates who may be in remote locations, such as fire camps. These subsections also require the board, within five business days, to send notice of the decision to victims and prosecutors who received notice under section 2449.3. Five business days provides a reasonable maximum time period for processing notices, given a variety of variable such as state holidays, staff availability, and fluctuations in workload.

These amendments are also necessary to provide transparency and clarity to the parole consideration process and to ensure inmates, victims, and prosecutors timely receive notice of board decisions and that notice to the inmate is appropriately documented in the inmate's central file.

Subsections 2449.6(c) and 2449.6(d) were adopted to clarify that inmates denied release under this subsection will be screened again for possible referral to the board as provided in subsection 3492(e) of division 3 and that inmates may seek review of a decision under this section by submitting a request in writing to the board under section 2449.7 within 30 calendar days of being served the decision. Thirty calendar days is a reasonable maximum time period for an inmate to submit a request for the board to review its decision. Providing a clear time period also serves to ensure the timeliness of submissions, thereby preserving the integrity of the board's decisions.

Section 2449.7 was amended to clarify in detail each decision that is subject to review under this section and to clarify the procedures the board will use when reviewing a decision.

Subsection 2449.7(a) was amended to list the decisions subject to review under this subsection. In addition, it is amended to clarify that an inmate may request review of a decision in writing 30 calendar days from the date he or she is served with the decision. Also, the decision must include a description of why the inmate believes the previous decision is not correct and the inmate may include additional information not available at the time of the previous decision. This important

information is needed by the board to make a fully-informed decision on the inmate's request. Thirty calendar days is a reasonable maximum time period for an inmate to submit a request for the board to review its decision. Providing a clear time period also serves to ensure the timeliness of submissions, thereby preserving the integrity of the board's decisions.

Subsection 2449.7(b) was amended to clarify that the board may initiate review of a previous decision at any time prior to the inmate's release if there was an error of law, an error of fact, or if the board receives new information that would have materially impacted the decision had it been known at the time the decision was made. This amendment is necessary to clarify that the board has authority on its own motion to review its decisions and to ensure its decisions are error-free and are based on all relevant information.

Subsection 2449.7(c) was amended for consistency in formatting and grammar.

Subsection 2449.7(d) was amended to clarify that the decision may be rendered by a deputy commissioner, associate chief deputy commissioner, or the Chief Hearing Officer and that he or she shall issue a decision in writing, either concurring with the previous decision or overturning it, with a supporting statement of reasons. This amendment is necessary to provide transparency and clarity to the parole consideration process.

Subsections 2449.7(e) through 2449.7(g) were adopted to clarify that copies of decisions issued under this section are to be served on the inmate and placed in his or her central file within 15 business days of being issued. Fifteen business days provides a reasonable maximum time period for serving inmates with the board's decisions and takes into account the time necessary to reach some inmates who may be in remote locations, such as fire camps. These subsections also provide clarity concerning the board's process following the issuance of a decision under this subsection, depending on the type of decision reviewed and the outcome of the review. For example, inmates denied release under this subsection will be screened again for possible referral to the board as provided under subsection 3492(e) of division 3, the board shall within 5 business days, send notices to victims and prosecutors who received notice under section 2449.3 concerning a release decision issued under this subsection, and inmates approved for a review on the merits as a result of this subsection shall receive a review on the merits within 60 calendar days.

Five business days for sending notices to victims and prosecutors is a reasonable maximum time period for processing notices, given a variety of variables such as state holidays, staff availability, and fluctuations in workload. Sixty calendar days is a reasonable maximum time period for the board to conduct a review on the merits because the process requires the board to notify victims and prosecutors, allow them 30 calendar days to submit written input, assign the case to a hearing officer, and issue a written decision.

These amendments are also necessary to provide transparency and clarity to the parole consideration process and to ensure inmates timely receive notice of board decisions and that they are appropriately documented in the inmate's central file.

Subsection 2449.7(h) was adopted to clarify that decisions made by the Board of Parole Hearings under this subsection are not subject to the department's Inmate Appeal Process but are instead subject to the decision review processed established by the Board of Parole Hearings in section 2449.7.

PART III: CHANGES TO TEXT AS TEXT AS ORIGINALLY PROPOSED AND ADDENDUM TO THE INITIAL STATEMENT OF REASONS

On January 26, 2018 a second notice that included revisions to the text as originally proposed, a description of the text revisions, and an Addendum to the Initial Statement of Reasons was published and made available for public comment. Despite these changes, no businesses are expected to be eliminated as a result of this rulemaking action. The modified text and Addendum to the Initial Statement of Reasons was made available for public comment from January 26, 2018 through February 12, 2018. The text changes and reasons for the changes are found below. The reasons for the changes to the Addendum to the Initial Statement of Reasons are found in the rule making file with the title "Notice of Changes to the Text as Originally Proposed and Addendum to the Initial Statement of Reasons."

Subsection 3043.3(f)(1):

The department amends subsection 3043.3(f)(1) in order to clarify that an inmate participating in approved prison housing units with structured, full-time rehabilitative programming or in approved alternative custody settings shall (not may) be awarded Milestone Completion Credit for completion of every three months of program plan activities. This amendment is made to clarify that if an inmate successfully completes the program plan activities required under this subsection for a period of three months then the department is required to award the credit to the inmate. Accordingly, subsection 3043.3(f)(1) of the regulations is amended to state:

> (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 ~~may~~**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.

Subsection 3043.3(f)(2):

The department amends subsection 3043.3(f)(2) in order to clarify that an inmate participating in the Enhanced Outpatient Program, Developmentally Disabled Program, or approved mental health inpatient program, excluding those in a mental health crises bed, shall (not may) be awarded Milestone Completion Credit upon successfully completing scheduled, structured therapeutic activities. This amendment is made to clarify that if an inmate successfully completes the program plan activities required under this subsection for a period of three months then the department is required to award the credit to the inmate.

The department also amends subsection 3043.3(f)(2) in order to substitute the word "by" with "upon" for clarity purposes and to delete the words "group assignment" after "Developmentally Disabled Program" because not every inmate participating in a developmentally disabled program will be given a group assignment. Accordingly, subsection 3043.3(f)(2) of the regulations is amended to state:

(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, **~~may~~shall** be awarded credit under this section **~~by~~upon** successfully completing scheduled, structured therapeutic activities in accordance with their mental health treatment plan or, if applicable, their Developmentally Disabled Program ~~group assignment~~, 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.

Relevant Legislative Changes:

Penal Code Section 3041 was amended in Assembly Bill 1448 (2017-2018 regulation session) to add the phrase "Or elderly parole eligible date" following "youth offender parole eligibility date".

ADDITIONAL INFORMATION:

Subsequently, sections 3043.7 and 3044 were amended through a different rule making action (OAL matter number 2017-12-12-02-EON). The text shown in this rulemaking file for those sections incorporates the emergency text approved that went into effect on January 1, 2018.

The "Milestone Completion Schedule" (REV 11/17) was mailed along with the first 15-day notice and modified text to those persons specified 1 CCR Section 44(a)(1) through (4).

Section 3403.3(f): In the Initial Statement of Reasons the Department stated that the Chief of Mental Health at an institution is required to verify the inmate's eligibility for awarded credit for participation in the Enhanced Outpatient Program. This verification also applies to Developmentally Disabled Program participants and participants in an approved mental health in-patient program.

Section 3043.6: This Section restates the authority of Penal Code 2935 and requires an explanation per 1 CCR Section 12(b)(1) . The duplication of the statue is necessary so that all credit earnings are codified in a central location for both inmates and staff who do not have ready access to the Penal Code.

DETERMINATIONS, ASSESSMENTS, MANDATES, AND FISCAL IMPACT:

The Department has determined that no alternative considered or that has otherwise been identified and brought to the Department's attention would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law, than the action proposed. The proposed regulations have been determined to be the most efficient and effective means for inmate credit earning and parole consideration.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the department's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 of the Government Code.

The Department has determined this action imposes no mandates on local agencies or school districts; no fiscal impact on local government or Federal funding to the State, or private persons. The Department has determined the following fiscal impact on the State agency:

Savings: Fiscal Year 2017-18 = $3,006,124
Savings: Fiscal Year 2018-19 = $43,274,133
Savings: Fiscal Year 2019-20 = $45, 093,133

The Department has determined that this action will have an effect on businesses, small businesses, jobs and individuals. The Department estimates this economic impact to range between $35-$50 million dollars annually.

These regulations do not create mandates, reporting requirements, or incentives for California businesses to comply with their provisions.

The regulations promote inmate education, rehabilitation, and good conduct through incentives in the form of credits toward advancing an inmate's the earliest possible parole date. The proposition's primary purposes are to "stop the revolving door of crime by emphasizing rehabilitation", and to "prevent federal courts from indiscriminately releasing prisoners" which enhances public safety.

The implementation of the regulations for Proposition 57 will stabilize and then reduce the state inmate population to a level that can be sustained under a population cap ordered by the federal court. The reduction will be the product of incentives to earn credits that advance an inmate's parole and opportunities for nonviolent offenders to be considered for parole by the Board of Parole Hearings. Inmates who are incentivized by enhanced credit earning opportunities now available under Proposition 57 can pursue an education or gain vocational skills through completing courses and training that are now more readily available. The department offers vocational training that includes auto mechanics, machine shop, building trades, office services and computer literacy. Academic education is offered by the department up through the high school diploma and high school equivalency. Through community partners inmates have the opportunity and new incentives to pursue college degrees at the associate and bachelor level as well as postgraduate education opportunities. Upon parole, these offenders will re-enter the labor force better equipped to secure employment or further their education. Businesses in need of such skills will benefit from a better prepared offender population. A primary goal of these regulations is to produce a more rehabilitated, skilled, educated and employable inmate population that can gain employment and become contributing members of the community.

The inmate population is expected to decrease to a level that can be sustained long term under the federal court ordered cap. This will allow the Department to decrease its reliance on contracted services with private sector prison facilities outside of California. As the inmate population permits, the Department will repatriate its inmates saving contract costs. Correctional positions in the institutions are established based on a fixed ratio of officers to inmates. As the inmate population changes, positions are adjusted based on the ratio. The department anticipates a reduction in the inmate population once the impacts of the Proposition 57 regulations are fully realized resulting in a reduction of institution corrections staff. However, the department also anticipates an increased need for parole agents to supervise a larger parolee population and staff for the Board of Parole Hearings to consider more cases that qualify for consideration under the new nonviolent parole process.

This action has no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561. The Department has made an initial determination the proposed action will have no significant effect on housing costs. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

The Department, in proposing the adoption of these regulations, identified and relied upon the following documents:

1. Official Voter Information Guide, Proposition 57, November 8, 2016 Election http://voterguide.sos.ca.gov/en/propositions/57/arguments-rebuttals.htm
2. Three-Judge Court Order Granting in Part and Denying in Part the State's Request for an Extension of the Population Reduction Deadline. http://www.cdcr.ca.gov/News/docs/3jp-Feb-2014/Three-Judge-Court-order-2-20-2014.pdf
3. Report Filed with Three-Judge Panel Regarding Nonviolent Second Striker Process. http://www.cdcr.ca.gov/News/docs/3JP-Dec-2014/State%27s-report-on-new-parole-process-for-nonviolent-second-strike-inmates.pdf
4. Cutting Corrections Costs: Earned Time Policies for State Prisoners; National Conference of State Legislatures; July 2009. http://www.ncsl.org/documents/cj/earned_time_report.pdf
5. James Bonta and Donald A. Andrews, Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation (Ottawa: Public Safety Canada, 2007), http://www.pbpp.pa.gov/Information/Documents/Research/EBP7.pdf.
6. The Council of State Governments Justice Center. In Brief: Using a Cognitive-Behavioral Approach in Programs to Reduce Recidivism. https://csgjusticecenter.org/jr/in-brief-using-a-cognitive-behavioral-approach-in-programs-to-reduce-recidivism/
7. Davis, Lois M., Robert Bozick, Jennifer L. Steele, Jessica Saunders and Jeremy N. V. Miles. Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of

Programs That Provide Education to Incarcerated Adults. Santa Monica, CA: RAND Corporation, 2013. https://www.rand.org/pubs/research_reports/RR266.html.

8. Steve Aos, Marna Miller and Elizabeth Drake. "Evidence-Based Adult Corrections Programs: What Works and What Does Not." Olympia: Washington State Institute for Public Policy, 2006.
9. CDCR, 2015 Outcome Evaluation Report: http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/2015_Outcome_Evaluation_Report_8-25-2016.pdf.
10. An Update to the Future of California Corrections, January 2016: http://www.cdcr.ca.gov/Blueprint-Update-2016/An-Update-to-the-Future-of-California-Corrections-January-2016.pdf, at p. 25.
11. CDCR, 2013 Outcome Evaluation Report: http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/ARB_FY_0809_Recidivism_Report_02.10.14.pdf.
12. CDCR; Credit Earning '101' (attached below).
13. Governor's Budget Summary for Fiscal Year 2017-2018, Public Safety: http://www.ebudget.ca.gov/2017-18/pdf/BudgetSummary/PublicSafety.pdf.

Additionally, the addendum to the Initial Statement of Reasons was made available to the public for comment in compliance with Government Code Section 11347.1.

The Department has relied upon the results of the Economic Impact Assessment, which can be found in the Notice of Proposed Regulations and is available for review as part of the rulemaking file.

INCORPORATED BY REFERENCE (1 CCR 20)

The Milestone Completion Credit Schedules (REV 03/17 and REV 11/17) were made available to the public throughout the rulemaking process and will continue to be made available upon request. Additionally, "Inmate Declaration of General Education Development (GED) eligibility" (CDCR 2233)(06/11)) and "Time Credit Waiver" (PC § 2934)" (CDCR 916 (REV. 09/09)), which are both being repealed in this rulemaking, were made available to the public upon throughout the rulemaking process and will continue to be made available upon request.

COMMENT SUMMARIES AND RESPONSES

The portion of the Final Statement of Reasons containing comment summaries and responses is over 1000 pages. Due to the length, the document was broken into separate "Exhibits" as described below: