PROPOSITION 57:

"THE PUBLIC SAFETY AND REHABILITATION ACT OF 2016"

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County of Placer (Ret.)

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New to This Edition

The previously posted version of this memo was dated November 2016. This May 2017 version includes technical, non-substantive changes and the following updates:

Pages 4 – 5 – Effective date of Act; *People v. Superior Court (Lara)*, *People v. Cervantes*, and *People v. Mendoza*.
Page 8 – Application of act to violent offenders
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I. INTRODUCTION

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

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

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

II. EFFECTIVE DATE

Unless it specifies otherwise, an initiative becomes effective the day after it is enacted by the voters. The Act contains no specified effective date. Clearly the Act applies to all crimes committed on or after November 9, 2016, its effective date. The more difficult question, however, is whether and to what extent it applies to persons convicted of crimes committed prior to the effective date. Most likely the provisions related to parole eligibility and custody credits will apply to any person in state prison, regardless of whether the crime was committed before or after the effective date of the Act. At least as to the matter of credits, the California Supreme Court has previously ruled that eligibility for credits, in most cases, will be determined by the law in effect when the custody time is served, not by the law in effect at the time the crime is committed. (See *People v. Brown* (2012) 54 Cal.4th 314.)

It is unclear how the Act will apply to juvenile offenses committed prior to the effective date. While the Act does not actually reduce the penal consequences for a crime, it obviously makes it more difficult for prosecutors to transfer cases to adult court. *People v. Superior Court (Lara)*(2017) 9 Cal.App.5th 753 (*Lara*), holds the fitness hearing requirement is a rule concerning trial procedure. Accordingly, it is not a retroactive application of the new law to apply it to a direct-filed case, even though the crime was

committed prior to the effective date. The *Lara* court found *In re Estrada* (1965) 63 Cal.2d 740, does not apply.

People v. Cervantes (2017) 9 Cal.App.5th 569 (*Cervantes*) holds Proposition 57 does not apply retroactively to cases on appeal when the initiative was passed by the voters. The court found *Estrada* does not apply to this circumstance. However, if the case is reversed on appeal and is remanded to the trial court for a new trial or a resentencing, *Cervantes* indicates the defendant is entitled to a fitness hearing in juvenile court before the trial or sentencing can proceed.

Generally in accord with *Cervantes* is *People v. Mendoza* (2017) ___ Cal.App.5th ___ [H039705], which refused to apply the Act to a case not final on appeal. Prior to the passage of the Act, the defendant had been convicted after a jury trial of a series of crimes direct-filed in superior court. The court determined that Estrada does not apply to this situation. It further held there was no denial of equal protection or due process.

III. PAROLE AND CREDITS FOR STATE PRISON INMATES

The Act amends Article I of the California Constitution by adding Section 32, as follows:

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

A. Constitutional Amendment

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

B. Parole consideration

The Act provides that "any person convicted of a non-violent felony offense" is eligible for parole consideration "after completing the full term of his or her primary offense." (Cal. Const., art. 1, § 32(a)(1).)

(1) **Meaning of "non-violent felony offense."** The Act does not specifically define "non-violent felony offense." From the face of the Act, for example, it is not clear whether "non-violent felony" means crimes other than those listed in Penal Code section 667.5, subdivision (c),[1] or whether it means "crimes committed without any violence." Where the language of an initiative is ambiguous, "courts will look to ' "other indicia of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet." ' (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894*,* 900; *People v. Floyd* (2003) 31 Cal.4th 179, 187-188 [ballot pamphlet information is a valuable aid in construing the intent of voters].) Ultimately, the court's duty is to interpret and apply the language of the initiative 'so as to effectuate the electorate's intent.' (*Robert L*., at p. 900.)" (*People v. Lewis* (2016) 4 Cal.App.5th 1085.) A review of the material provided by the 2016 voter information pamphlet suggests that the enactors define "non-violent felony" as any crime not listed in section 667.5, subdivision (c).

The analysis prepared by the Legislative Analyst observes: "Although the measure and current law do not specify which felony crimes are defined as nonviolent, this analysis assumes a nonviolent felony offense would include any felony offense that is not specifically defined in statute as violent." ("Official Voter Information Guide," page 56.) In their argument in favor of Proposition 57, the proponents state: "And as the California Supreme Court clearly stated: parole eligibility in Prop. 57 applies '*only to prisoners convicted of non-violent felonies*.'" ("Official Voter Information Guide,"

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

page 58; emphasis in original.) Finally, in their rebuttal to the argument against Proposition 57, the proponents state: "Prop. 57 . . . [d]oes NOT authorize parole for violent offenders. The California Supreme Court clearly stated that parole eligibility under Prop. 57 applies '*only to prisoners convicted of non-violent felonies*.' (Brown v. Superior Court, June 6, 2016). Violent criminals as defined in Penal Code 667.5(c) are excluded from parole." ("Official Voter Information Guide," page 59; emphasis in original.)

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

In a footnote to the opinion, the court observed: "We emphasize two points we have made before when reviewing initiative measures. We pass no judgment on the wisdom, efficacy, or soundness of the proposal before us. (*Brosnahan v. Brown* (1982) 32 Cal.3d 236, 248, 186 Cal.Rptr. 30, 651 P.2d 274; *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 228–229, 149 Cal.Rptr. 239, 583 P.2d 1281.) And we give no consideration to 'possible interpretive or analytical problems' that might arise should the measure become law. (*Raven v. Deukmejian* (1990) 52 Cal.3d 336, 341, 276 Cal.Rptr. 326, 801 P.2d 1077.) Our review is limited to the points necessary to resolve the basic questions before us. (*Ibid.;* see *Brosnahan,* at p. 241, 186 Cal.Rptr. 30, 651 P.2d 274 ["we neither consider nor anticipate possible attacks, constitutional or otherwise, which in the future may be directed" at the measure].)" (*Brown*, at p. 352, fn. 11.)

Justice Chin, in his dissent to the majority opinion in *Brown*, also had concerns about the failure to specifically define "non-violent felony offense": "[T]he constitutional provision never defines the term 'non-violent felony offense.' Because the United States Supreme Court recently declared unconstitutional as impermissibly vague the term 'violent felony' in a federal statute (*Johnson v. U.S.* (2015) ––– U.S. ––––, 135 S.Ct. 2551, 192 L.Ed.2d 569), the absence of a definition is troublesome, to say the

least. The Penal Code contains various lists of crimes satisfying various definitions, including a list of 'violent' felonies. (Pen.Code § 667.5, subd. (c).) Does that statute apply to mean that any crime not listed in it would be a nonviolent felony, even though many such crimes are arguably violent? Can a statute define a constitutional term? What if the Legislature amends the list? What happens if the term 'non-violent felony offense' is also found to be void for vagueness? Would that mean all inmates would be eligible for parole? The amended measure could greatly benefit from a definition of the term." (*Brown*, 63 Cal.4th at p. 360, Justice Chin dissent.)

The Act likely will be applied on a count-by-count basis. Because the Act provides early parole to "any person convicted of a non-violent felony offense," there is no general disqualifier because the defendant is also convicted of a violent felony offense in the same proceeding. If the defendant is convicted of a mixture of violent and non-violent offenses, likely the defendant will be required to serve the full term for any violent offenses, then be eligible for early release on parole as to any time remaining on non-violent offenses. A similar count-by-count approach was taken by the California Supreme Court in a Proposition 36 case. (See *People v. Johnson* (2015) 61 Cal.4th 674.) If the Act is applied on a count-by-count basis, the following example demonstrates its application. If the defendant has been sentenced to prison on a rape (a violent felony) for 6 years, a residential burglary (a non-violent felony) for 16 months consecutive, and a commercial burglary (a non-violent felony) for 8 months consecutive, the defendant will be eligible for parole on the two burglaries after serving the six years for the rape.

On the other hand, it may be argued that given the proponents' ballot arguments stating that the initiative will not apply to "violent offenders," the exclusion should be applied to any offender who is convicted of a felony offense with violence. The following language suggests such an interpretation: "Prop. 57 . . . [d]oes NOT authorize parole for violent offenders. The California Supreme Court clearly stated that parole eligibility under Prop. 57 applies '*only to prisoners convicted of non-violent felonies*.' (Brown v. Superior Court, June 6, 2016). Violent criminals as defined in Penal Code 667.5(c) are excluded from parole." ("Official Voter Information Guide," page 59; emphasis in original.) While the reference to section 667.5(c) might indicate a narrow interpretation of "violent offenders," it is clear that the ballot argument was attempting to convince the voters that persons who commit crimes with violence would not benefit from the new parole provisions.

(2) Current crime. Eligibility for parole will be based solely on the crimes that result in the current prison commitment: "any person convicted of a non-violent felony offense and sentenced to state prison shall be eligible for parole consideration. . . ." The person's past criminal record is irrelevant to statutory eligibility for early release on parole. Accordingly, so long as the current offense is not a "violent felony," the

person will be eligible for early release on parole on that offense, even though he or she has previously been convicted of a violent felony.

Unlike Propositions 36 and 47, the Act does not exclude from its benefits any persons required to register as a sex offender, unless the commitment is for a sex crime designated as a violent felony.

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

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

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

(5) Meaning of "primary offense." The Act makes persons convicted of a non-violent felony eligible for parole after the completion of the full term imposed by the court for their "primary offense." (Cal. Const., art. 1, § 32(a)(1) The "full term of the primary offense" is defined as "the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or

alternative sentence." (Id., § 32(a)(1)(A).) In most respects the definition is straight forward. A person is eligible for parole after service of the base term in a single count commitment, the longest base term of crimes sentenced concurrently, or after service of the principal term in a multi-count commitment sentenced consecutively. The parole eligibility date will be set without reference to any conduct or status enhancements (unless the enhancement makes the crime a violent felony), or any subordinate, consecutive terms imposed for non-violent felonies. The practical effect of the change is to make a person eligible for parole on multiple qualified crimes, with enhancements, the same as if he had committed only one crime without any enhancements.

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

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

The Act excludes any "alternative sentence" in determining eligibility for parole. Although the phrase is not specifically defined in any statute, it presumably is meant to apply to alternative sentencing schemes such as the Three Strikes law. (See, *e.g.*, *People v. Superior Court (Romero)* 1996) 13 Cal. 4th 497, 527 ["The Three Strikes law . . . articulates an alternative sentencing scheme for the current offense rather than enhancement."].) For a second strike offender, who receives a term of twice the length of a non-strike sentence, it would mean the defendant would be eligible for parole after service of the term imposed by the court without the multiplier of the Three Strikes law. For example, a person who receives a mid-term second strike sentence of 12 years for rape of an unconscious person would be eligible for parole after service of 6 years.

It is not entirely clear how the law will be applied to persons sentenced as third strike offenders. Eligibility will be based, in part, on what sentencing option is selected by the trial court. The Three Strikes law gives the court three options in selecting the minimum term of the life sentence imposed on a third strike offender. If Option I is used (three times the term otherwise provided), parole eligibility will be based on the term of the triad selected by the trial court without being tripled. Similarly, if Option III is selected (the term imposed without use of the Three Strikes law), the term will be based on the term of the triad selected by the trial court, but without any

enhancements. In cases where Option I or Option III is used, parole eligibility will be based on the term of the triad selected by the court for the calculation of the base term. So, for example, if a defendant is sentenced as a third strike offender under Options I or III, defendant's parole eligibility would be two, four, or six years, depending on which term the court used to calculate the sentence.

In most cases, however, the court imposes a 25-years to life sentence under Option II without reference to the determinate term provided for a non-strike disposition. For example, a defendant who is sentenced as a third strike offender under Option II for a residential burglary would receive a sentence of 25-years to life. Prior to the enactment of Proposition 57, he was not eligible for parole until service of 25 years. Under the Act, however, the defendant likely is eligible for parole after service of no more than 6 years, which is the "upper term" which could be imposed by the court on the burglary without the effect of the Three Strikes law.

(6) The court's statement under section 1203.01

As is evident from the provisions of Proposition 57, determination of parole eligibility for any given inmate will be based on the person's background, the circumstances of the offense, and how the person has conducted himself while in prison. Given the very individualized determination of parole eligibility, it is very important that the California Department of Corrections and Rehabilitation (CDCR) be given all relevant information concerning the defendant. The statutory vehicle for conveying such information is section 1203.01(a), the relevant portions of which provide: "Immediately after judgment has been pronounced, the judge and the district attorney, respectively, may cause to be filed with the clerk of the court a brief statement of their views respecting the person convicted or sentenced and the crime committed, together with any reports the probation officer may have filed relative to the prisoner. The judge and district attorney shall cause those statements to be filed if no probation officer's report has been filed. The attorney for the defendant and the law enforcement agency that investigated the case may likewise file with the clerk of the court statements of their views respecting the defendant and the crime of which he or she was convicted."

California Rules of Court, Rule 4.480, facilitates the application of section 1203.01, subdivision (a), the relevant portions of which provide: "A sentencing judge's statement of his or her views under section 1203.01 respecting a person sentenced to the Department of Corrections and Rehabilitation, Division of Adult Operations is required only in the event that no probation report is filed. Even though it is not required, however, a statement should be submitted by the judge in any case in which he or she believes that the correctional handling and the determination of term and parole should be influenced by information not contained in other court records. ¶ The purpose of a section 1203.01 statement is to provide assistance to the Department of Corrections and Rehabilitation, Division of Adult Operations in its

programming and institutional assignment and to the Board of Parole Hearings with reference to term fixing and parole release of persons sentenced indeterminately, and parole waiver of persons sentenced determinately. It may amplify any reasons for the sentence that may bear on a possible suggestion by the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings that the sentence and commitment be recalled and the defendant be resentenced. To be of maximum assistance to these agencies, a judge's statements should contain individualized comments concerning the convicted offender, any special circumstances that led to a prison sentence rather than local incarceration, and any other significant information that might not readily be available in any of the accompanying official records and reports."

C. Conduct credits

The Act provides that the CDCR "shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements." The Act imposes no limitations on the amount of credit that may be awarded by CDCR.

Before passage of the Act, the matter of conduct credits earned in prison previously was strictly governed by statute. The credit for most inmates was two-for-one – for every day in custody with good conduct, an inmate received two days of credit against the sentence – if all conduct credits were earned, an inmate would only serve 50% of the sentence imposed by the court. (See § 2933.) CDCR also was allowed to award limited credit for participation in designated rehabilitation programs. (See § 2933.05.) Credits for certain crimes were restricted. Inmates sentenced for a violent felony received only 15% conduct credit, those serving a sentence imposed under the Three Strikes law received only 20% credit, and those committed for murder received no conduct credit. (See §§ 1170.12, subd. (a)(5), 2933.1, and 2933.2.)

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

Second, it is not clear whether the credits awarded by CDCR for good behavior are *in addition to* the credits currently authorized under sections 2933 and 2933.05, or whether CDCR has *exclusive jurisdiction* to determine all good conduct and rehabilitation credits earned by inmates. It is unlikely that it is the intent of the sponsors of the Act to simply

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

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

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

D. Regulations

The Act requires CDCR to adopt regulations "in the furtherance of" the Act's provisions. The Secretary of CDCR is to certify that the regulations "protect and enhance public safety." (See Cal. Const., art, 1, § 32(b), *supra*.) The text of the proposed regulations is found in Appendix I, *infra*.

IV. ELIMINATION OF DIRECT FILING IN JUVENILE CASES

The second major change brought by the Act is that it eliminates the ability of prosecutors to "direct file" in adult court certain crimes committed by juveniles. Prior to 1998 the decision whether to treat a minor in the juvenile or adult jurisdictions was a matter of judicial discretion, exercised after consideration of a series of factors related to the crime and history of the juvenile. Proposition 21, enacted by the voters in 1998, substantially altered this process. The proposition created three categories of crimes subject to referral to adult court: (1) ordinary felonies where the prosecutor petitions for transfer, but the court makes the determination of suitability for transfer; (2) more serious felonies where the prosecution is given the discretion to direct file in juvenile court without being required to seek court approval; and (3) very serious felonies where the prosecution is mandated to direct file in adult court, also without prior court approval. The Act generally returns the law to what it was prior to the adoption of Proposition 21.

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

The decision to transfer is subject to consideration of the same general factors previously used to determine suitability for transfer. The Act eliminates the following presumptions contained in Proposition 21:

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

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

APPENDIX I: PROPOSED REGULATIONS FOR THE IMPLEMENTATION OF PROPOSITION 57

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs and Parole

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 3.5 Credits.
Section 3042. Penal Code 2933 Credits, is repealed.

Section 3043. Credit Earning.

(a) General. Inmates are expected to work or participate in rehabilitative programs and activities to prepare for their eventual return to society. Inmates who comply with the regulations and rules of the department and perform the duties assigned to him or her shall be eligible to earn Good Conduct Credit as set forth in section 3043.2 below. In addition, inmates who participate in approved rehabilitative programs and activities shall be eligible to earn Milestone Completion Credit, Rehabilitative Achievement Credit, and Educational Merit Credit as set forth in sections 3043.3, 3043.4 and 3043.5 below. The award of these credits, as well as Extraordinary Conduct Credit as set forth in section 3043.6 below, shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole. Inmates who do not comply with the regulations and rules of the department or who do not perform the duties assigned to him or her shall be subject to credit forfeiture as provided in this article.
(b) Inmate Participation in Credit Earning Programs and Activities. All eligible inmates shall have a reasonable opportunity to participate in credit earning programs and activities in a manner consistent with the availability of staff, space, and resources, as well as the unique safety and security considerations of each prison. No credit shall be awarded for incomplete, partial, or unsatisfactory participation in credit earning programs or activities described in this article or for diplomas, degrees, or certificates that cannot be verified after due diligence by department staff.
(c) Release Date Restriction. Under no circumstance shall an inmate be awarded credit or have credit restored by the department which advances the date of his or her release to a date less than 60 calendar days from the award or restoration of such credit.
(d) Participation by Inmates Housed In A Different Jurisdiction. Inmates serving criminal sentences under California law but housed in a different jurisdiction, including those participating in the Western Interstate Corrections Compact, the Interstate Corrections Compact Agreement, or in a facility administered by the California Department of State Hospitals or by the Federal Bureau of Prisons, are eligible to participate in Good Conduct Credit, Educational Merit Credit, or Extraordinary Conduct Credit as described in this article, subject to the criteria set forth in subsection (b) above.
Note: Authority cited: Cal. Const., art. 1, sec. 32(b); Sections 5058, 5054 Penal Code. Reference: Cal. Const., art. 1, sec. 32(a)(2) and 3041 Penal Code.

Section 3043.1. Waiver, is repealed.

Section 3043.1. Pre-Sentence Credit.

Credit applied prior to sentencing is awarded by the sentencing court pursuant to sections 2900.1, 2900.5, 2933.1, and 4019 of the Penal Code.
Note: Authority cited: Cal. Const., art. 1, sec. 32(b); Sections 5058, 5054 Penal Code. Reference: Cal. Const., art. 1, sec. 32(a)(2), Sections 2900.1, 2900.5, 2933.1 and 4019 Penal Code.

Section 3043.2. Loss of Participation Credit, is repealed.

Section 3043.2. Good Conduct Credit.

(a) The award of Good Conduct Credit requires that an inmate comply with the rules and regulations of a prison and perform the duties assigned on a regular and satisfactory basis.
(b) Notwithstanding any other authority to award or limit credit, effective May 1, 2017, the award of Good Conduct Credit shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole pursuant to the following schedule:
(1) No credit shall be awarded to an inmate sentenced to death or a term of life without the possibility of parole;
(2) One day of credit for every four days of incarceration (20%) shall be awarded to an inmate serving a determinate or indeterminate term for a violent offense as defined in Penal Code section 667.5, subdivision (c), unless the inmate qualifies under paragraph (4)(B) below or is statutorily eligible for greater credit pursuant to the provisions of Article 2.5 (commencing with section 2930) of Chapter 7 of Title I of Part 3 of the Penal Code;
(3) One day of credit for every two days of incarceration (33.3%) shall be awarded to an inmate sentenced under the Three Strikes Law, Penal Code section 1170.12, subdivision (c), or section 667, subdivisions (c) or (e), who is not serving a term for a violent offense as defined in Penal Code section 667.5, subdivision (c), unless the inmate is serving a determinate sentence and qualifies under paragraph (5)(B) below;
(4) One day of credit for every day of incarceration (50%) shall be awarded to:
(A) An inmate not otherwise identified in paragraphs (1)-(3) above; or
(B) An inmate serving a determinate term for a violent offense as defined in Penal Code section 667.5, subdivision (c), after the inmate has completed the requisite training to be assigned to a Department of Forestry and Fire Protection fire camp or as a firefighter at a Department of Corrections and Rehabilitation fire house; or
(5) Two days of credit for every day of incarceration (66.6%) shall be awarded to:
(A) An inmate eligible to earn day-for-day credit (50%) pursuant to paragraph (4)(A) above who is assigned to Minimum A Custody or Minimum B Custody pursuant to section 3377.1; or
(B) An inmate serving a determinate sentence who is not serving a term for a violent offense as defined in Penal Code section 667.5, subdivision (c), after the inmate has completed the requisite training to be assigned to a Department of Forestry and Fire Protection fire camp or as a firefighter at a Department of Corrections and Rehabilitation fire house.

(c) Credit Forfeiture and Restoration. Good Conduct Credit shall be forfeited in whole-day increments upon placement in a zero-credit work group pursuant to subsections (4) or (6) of section 3044 or a finding of guilt of a serious rule violation in accordance with section 3323. Forfeited credit under this section shall be restored if the disciplinary action is reversed pursuant to an administrative appeal or court of law. Forfeited credit may also be restored in accordance with Article 5.5.
Note: Authority cited: Cal. Const., art. 1, sec. 32(b); Sections 5058, 5054 Penal Code. Reference: Cal. Const., art. 1, sec. 32(a)(2) and sections, 3041, 2930, 1170.2, 667, 667.5 of Penal Code.

Section 3043.3. Loss of Behavior, PC 2933, or PC 2933.05 Credit, is repealed.

Section 3043.3. Milestone Completion Credit.

(a) The award of Milestone Completion Credit requires the achievement of a distinct objective of approved rehabilitative programs, including academic programs, substance abuse treatment programs, social life skills programs, Career Technical Education programs, Cognitive Behavioral Treatment programs, Enhanced Outpatient Program group module treatment programs, or other approved programs with similar demonstrated rehabilitative qualities.
(b) Milestone Completion Credit for General Education Development (GED), Test of Adult Basic Education (TABE), and Comprehensive Adult Student Assessment System (CASAS) achievements shall not be awarded to inmates already possessing a GED, high school diploma, high school equivalency, or college degree.
(c) Notwithstanding any other authority to award or limit credit, effective August 1, 2017, all inmates eligible for Good Conduct Credit pursuant to section 3043.2 shall be eligible for Milestone Completion Credit pursuant to this section. The award of Milestone Completion Credit shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole. Milestone Completion Credit shall be awarded in increments of not less than one week, but no more than twelve weeks in a twelve-month period. Milestone Completion Credit earned in excess of this limit shall be awarded to the inmate on his or her next credit anniversary, defined as one year after the inmate completes his or her first Milestone Completion Credit program, and each year thereafter. Upon release from prison, any excess credit under this section shall be deemed void. If instead an inmate completes one term and immediately begins serving a consecutive term, any excess credit awarded under this section shall be applied to that consecutive term. One week is equivalent to seven (7) calendar days.
(d) Under the direction of the Secretary and in conjunction with the Director of the Division of Rehabilitative Programs and the Undersecretary of Health Care Services, the Director of the Division of Adult Institutions shall identify the approved Milestone Completion Credit programs which comply with subsection (a), the corresponding credit reduction for successful completion of each program, and whether the program may be repeated for credit, on a Milestone Completion Credit Schedule (rev. March, 2017), which is hereby incorporated by reference.
(e) Performance criteria for the award of Milestone Completion Credit include the mastery or understanding of course curriculum by the inmate as demonstrated by completion of

assignments, instructor evaluation, and standardized testing. In lieu of the above 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 be awarded credit under this section by 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.

(f) Within ten (10) business days of completion of an approved credit earning program under this section, the instructor shall verify completion of the program in the department's information technology system. Within ten (10) additional business days, a designated system approver shall verify the inmate's eligibility for such credit. The Chief of Mental Health at each institution shall be responsible for verifying and awarding credit to Enhanced Outpatient Program participants.

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

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

Section 3043.4. Non-Credit Earning, is repealed.

Section 3043.4. Rehabilitative Achievement Credit.

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

(b) Notwithstanding any other authority to award or limit credit, effective August 1, 2017, all inmates eligible for Good Conduct Credit pursuant to section 3043.2 shall be eligible for Rehabilitative Achievement Credit pursuant to this section. The award of Rehabilitative Achievement Credit shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole. Rehabilitative Achievement Credit shall be awarded in the following increments: one week of credit for every 52 hours of participation in approved rehabilitative activities up to a maximum of four weeks of credit for 208 hours of participation in a twelve-month period. Rehabilitative

Achievement Credit earned in excess of this limit during a single year (which shall commence after the inmate completes his or her first 52 hours of such activities and each year thereafter) shall be deemed void. Upon release from prison, any excess credit under this section shall also be deemed void. One week is equivalent to 7 calendar days.
(c) Under the direction of the Secretary and in conjunction with the Director of the Division of Adult Institutions, every Warden shall periodically (but no less than once per calendar year) issue a separate local rule in compliance with subdivision (c) of section 5058 of the Penal Code for each particular prison or other correctional facility identifying the Rehabilitative Achievement Credit activities which comply with subsection (a) and are approved at that location.
(d) Within ten (10) business days of completing 52 hours of approved activity under this section, staff designated by the Warden at each institution shall verify the inmate's completion of the hours necessary for this credit, confirm the inmate's eligibility to receive this credit, and ensure the credit is awarded to the inmate in the department's information technology system.
(e) Credit Forfeiture and Restoration. Rehabilitative Achievement Credit shall be forfeited in whole-day increments upon a finding of guilt of a serious rule violation in accordance with section 3323, only after all Good Conduct Credit is exhausted. Forfeited credit under this section shall be restored if the disciplinary action is reversed pursuant to an administrative appeal or court of law.
Note: Authority cited: Cal. Const., art. 1, sec. 32(b); Sections 5058, 5054 Penal Code. Reference: Cal. Const., art. 1, sec. 32(a)(2), Section 3041 Penal Code.

Section 3043.5. Special Assignments, is renumbered to 3043.7.

Section 3043.5. Educational Merit Credit.

(a) The award of Educational Merit Credit requires the achievement of a significant academic accomplishment which will provide inmates with life-long rehabilitative benefits. Specifically, the achievement of a high school diploma (or its equivalent), a collegiate degree (at the associate, bachelor, or post-graduate level), or a professional certificate as an Alcohol and Drug Counselor shall entitle an inmate to the benefits of this credit.
(b) Notwithstanding any other authority to award or limit credit, effective August 1, 2017, all inmates eligible for Good Conduct Credit pursuant to section 3043.2 shall be eligible for Educational Merit Credit pursuant to this section. The award of Educational Merit Credit shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole. Educational Merit Credit shall be awarded in the increments set forth in the schedule below upon demonstrated completion of the corresponding diploma, certificate, or degree:

Category	Description	Credit
1	High School Diploma, GED, or equivalent	90 days

2	Offender Mentor Certification Program (alcohol and other drug counselor certification recognized and approved by the California Department of Health Care Services)	180 days
3	Associate of Arts or Science Degree	180 days
4	Bachelor of Arts or Science Degree	180 Days
5	Post-Graduate Degree	180 days

(c) Credit for each category listed in subsection (b) above shall only be awarded once to an inmate upon proof the diploma, certificate, or degree was conferred during the inmate's current term of incarceration. Educational Merit Credit shall not be awarded for an Associate, Bachelor, or Post-Graduate degree unless the inmate earned at least 50 percent of the units necessary for that degree while serving his or her current term, the degree was conferred by a regionally accredited institution, and the inmate arranged for an official, sealed copy of their transcript to be sent by the educational institution directly to the Principal at the inmate's institution. Such degrees earned before August 1, 2017, but during an inmate's current term of incarceration shall be eligible for credit.
(d) Within 30 calendar days of receiving documentation from an inmate indicating completion of an Educational Merit Credit, during the inmate's current term of incarceration, department staff shall verify completion of the diploma, certificate, or degree in the department's information technology system.
(e) Upon release from prison, any excess credit under this section shall be deemed void. If instead an inmate completes one term and immediately begins serving a consecutive term, any excess credit shall be applied to that consecutive term.
(f) Credit Forfeiture. Educational Merit Credit shall not be forfeited due to disciplinary action.
Note: Authority cited: Cal. Const., art. 1, sec. 32(b); Sections 5058, 5054 Penal Code. Reference: Cal. Const., art. 1, sec. 32(a)(2), Section 3041 Penal Code.

Section 3043.6. Impact of Transfer on Credit Earning, is renumbered to Section 3043.8.

Section 3043.6. Extraordinary Conduct Credit.

(a) Notwithstanding any other authority to award or limit credit, effective August 1, 2017, the Director of the Division of Adult Institutions, under the direction of the Secretary, may award up to 12 months of Extraordinary Conduct Credit to any inmate who has performed a heroic act in a life-threatening situation or who has provided exceptional assistance in maintaining the safety and security of a prison, in accordance with subsection (d)(3)(C) of section 3376 or subsection (d)(6) of section 3376.1. No credit shall be awarded to an inmate sentenced to death or a term of life without the possibility of parole.
(b) The award of such credit shall advance the inmate's release date if sentenced to a determinate term or advance the inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole.

(c) Upon release from prison, any excess credit under this section shall be deemed void. If instead an inmate completes one term and immediately begins serving a consecutive term, any excess credit shall be applied to that consecutive term.
(d) Credit Forfeiture. Extraordinary Conduct Credit shall not be forfeited due to disciplinary action.
Note: Authority cited: Cal. Const., art. 1, sec. 32(b), Sections 5058, 5054 Penal Code. Reference: Cal. Const., art. 1, sec. 32(a)(2), Sections 3041, 2935 Penal Code.

Section 3043.7. Impact of 45-Day Notification on Credit Earnings, is repealed.

Section 3043.5. is renumbered to Section 3043.7, and is otherwise unchanged, but shown for reference:

3043.7 Special Assignments.

(a) Special assignments include:
(1) Inmate advisory council. The positions of chairperson and secretary of an institution's inmate advisory council may be full-time positions in Work Group A-1.
(2) Prerelease program. Assignment to an approved full time pre-release program shall qualify as full time assignment in Work Group A-1.
(3) Any Reentry Hub program assignment shall qualify as a full time assignment in Work Group A-1.
(b) Medical/psychiatric inpatient hospitalization (29 calendar days or less). Inmates determined by medical/psychiatric staff to need short-term inpatient care shall retain their existing credit earning category. Inmates requiring longer periods of inpatient care shall be referred by the attending physician/psychiatrist to a classification committee. The classification committee shall confirm the inmate's unassigned inpatient category and change the inmate's work/training group status as follows:
(1) General population inmates shall be placed in Work Group A-2, effective the thirtieth day of unassignment.
(2) Segregation inmates who are in Work Group A-1 or B shall be placed in Work Group D-1, effective the first day of placement into Administrative Segregation.
(3) Segregation inmates in Work Group D-1 or D-2 shall retain their Work Group status.
(c) Long term medical/psychiatric unassigned status. In cases where the health condition necessitates that the inmate becomes medically unassigned for 30 calendar days or more, the physician shall specify an anticipated date the inmate may return to work. The classification committee shall review the inmate's medical or psychiatric unassigned status and change the inmate's Work Group status as follows:
(1) An inmate in the general population shall be changed to Work Group A-2, involuntary unassigned, to be effective the thirtieth day of unassignment.
(2) An inmate in a lockup unit who is in Work Group A-1 or B shall be changed to Work Group D-1 to be effective the first day of placement into Administrative Segregation.
(3) An inmate in a lockup unit who is in Work group D-1 or D-2 shall be retained in their respective Work Group.

(d) Medical/psychiatric health care status determination:
(1) When an inmate has a disability that limits his/her ability to participate in a work, academic, Career Technical Education program or other such program, medical/psychiatric staff shall document the nature, severity, and expected duration of the inmate's limitations on a CDC Form 128-C (Rev. 1/96), Chrono-Medical, Psychiatric, Dental. The medical/psychiatric staff shall not make program assignment recommendations or decisions on the form. The CDC Form 128-C shall then be forwarded to the inmate's assigned correctional counselor who will schedule the inmate for a classification committee review. The classification committee shall have the sole responsibility for making program assignment and work group status decisions. Based on the information of the CDC Form 128-C and working in conjunction with staff from the affected work area, academic/Career Technical Education program, and the Inmate Assignment Lieutenant, the classification committee shall evaluate the inmate's ability to participate in work, academic, Career Technical Education program, or other programs and make a determination of the inmate's program assignment and work group status.
(2) Only when the inmate's documented limitations are such that the inmate, even with reasonable accommodation, is unable to perform the essential functions of any work, academic, Career Technical Education or other such program, will the inmate be placed in one of the two following categories by a classification committee:
(A) Temporary medical/psychiatric unassignment. Except as provided in section 3043.5(e)(2)(A), when a disabled inmate is unable to participate in any work, academic, Career Technical Education program or other program, even with reasonable accommodation, because of a medically determinable physical or mental impairment that is expected to last for less than six months, the classification committee shall place the inmate on temporary medical/psychiatric unassignment. Inmates on temporary medical/psychiatric unassignment status shall be scheduled for classification review any time there is a change in his/her physical/mental impairment or no less than every six months for reevaluation. The credit earning status of an inmate on temporary medical/psychiatric unassignment for less than six months shall be in accordance with section 3044(b)(3), Work Group A-2. If the inmate's condition lasts six months and the classification committee still cannot assign the inmate due to his/her impairment, the credit earning status shall be changed to be in accordance with section 3044(b)(2), Work Group A-1 and appropriate privilege group retroactive to the first day of the temporary medical/psychiatric unassignment.
(B) Medically disabled. When an inmate is unable to participate in any assigned work, academic, Career Technical Education program, or other such program activity, even with reasonable accommodation, because of a medically determinable physical or mental impairment that is expected to result in death or last six months or more, the classification committee shall place the inmate on medically disabled status. The inmate credit earning status shall be in accordance with section 3044(b)(2), Work Group A-1 and Privilege Group A.
(e) Medical/psychiatric special assignments:
(1) Light duty: Inmates determined to have long-term medical or psychiatric work limitations shall be processed in the following manner:
(A) A medical or psychiatric evaluation of the inmate shall be made to determine the extent of disability and to delineate capacity to perform work and training programs for either a full or

partial workday. If the inmate is deemed capable of only a partial work program, full credit shall be awarded for participation in such a program.
(B) A classification committee shall review the evaluation and determine the inmate's assignment.
1. A committee concurring with an evaluation's light duty recommendation shall refer the matter to the facility's assignment office which shall attempt to provide an assignment within the inmate's capabilities. Inmates assigned to such light duty shall be scheduled for semi-annual review.
2. A committee disagreeing with an evaluation's light duty recommendation shall refer the matter back to the medical department, describing the difference of opinion or rationale for requesting a second medical evaluation. If the committee disagrees with the second medical evaluation it shall refer the matter to the institution classification committee for final determination.
(2) Short-term medical/psychiatric lay-in or unassignment. Inmates who are ill or otherwise require a medical/psychiatric lay-in or unassignment for 29 days or less shall be processed in the following manner:
(A) Only designated medical/psychiatric staff are authorized to approve such lay-ins and unassignments. Reasons for the approval and the expected date of return to their regular assignment shall be documented by the medical/psychiatric staff making the decision.
(B) Inmates shall notify their work or training supervisor of their lay-in or unassignment status. The work or training supervisor shall record each day of the inmate's approved absence as an “E”.
(C) Medical/psychiatric staff determining an inmate should continue on lay-in or unassigned status for more than 29 days shall refer the case to a classification committee.
(D) The inmate shall continue to use ETO time while on short-term medical/psychiatric lay-in or unassigned status.
(f) On-the-job injuries. The chief medical officer shall document inmate injuries occurring on the job. With the exception of inmates assigned to Work Group F, such injured inmates shall retain their existing work group status until medically approved to return to their work assignment. Inmates assigned to Work Group F shall revert to Work Group A-1 effective on the date the chief medical officer determines the on-the-job injury excludes the inmate from conservation camp placement providing the chief medical officer's exclusion determination is within 29 days following the date of the inmate's removal from the conservation camp assignment. If the chief medical officer's exclusion determination is not within 29 days following the date of the inmate's removal from the conservation camp assignment, the inmate shall revert to Work Group A-1 effective the 30th day following the date of the inmate's removal from the conservation camp assignment.
(g) Medical or psychiatric treatment categories “H”, “I”, and “N”. An inmate assigned to category “H”, “I”, or “N” is not capable of performing a work or training assignment and shall, except where otherwise prohibited by law, be placed in Work Group A-1.
(h) Department of Mental Health (DMH) Penal Code (PC) sections 1364, 2684 and 2690 placements. An inmate transferred to DMH pursuant to PC sections 1364, 2684 or 2690 shall be placed in a work group as provided in section 3043.6(b).

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

Section 3043.6 is renumbered to 3043.8, and is otherwise unchanged, but shown for reference:

3043.8. Impact of Transfer on Credit Earning.

(a) Non-adverse transfers.
(1) A non-adverse transfer is movement of an inmate to a less restrictive institution or program where the security level is the same or lower, movement to a secure perimeter from a non-secure camp or Level 1 (Minimum Support Facility) setting by order of the prison administration for non-adverse reasons or transfers from reception centers.
(2) With the exception of inmates assigned to Work Group F, an inmate transferred for non-adverse reasons shall retain their work and privilege group status. Inmates assigned to Work Group F shall revert to Work Group A-1 effective the date removed from camp or institution fire fighter assignment.
(3) With the exception of inmates assigned pursuant to subsections 3040.2(f)(2) and 3040.2(f)(4), an inmate in a work assignment at the sending institution shall be placed on an existing waiting list at the receiving institution. If eligible, inmates on waiting lists at sending institutions shall be merged into the receiving institution's waiting list based on credit earning status, release date, and the length of time they have spent on the sending institution's waiting list. Inmates who are day-for-day eligible per Penal Code section 2933 shall be given priority for assignment with the exception of Senate Bill (SB) 618 Participants who, as defined in section 3000, pursuant to the provisions of subsection 3077.3(b)(1), and subject to the provisions of 3077.3(f), shall be placed at the top of an institution's waiting list and given priority for assignment. Inmates shall be merged into the receiving institution's waiting list in the following manner:
(A) First, SB 618 Participants. Those SB 618 Participants having the earliest release date shall be given first priority.
(B) Second, those inmates who are day-for-day credit eligible, approved for the program and are not assigned, Work Group A-2. Inmates eligible to earn credits per Penal Code section 2933 shall be given second priority for placement on waiting lists and the inmate with the earliest release date shall be given priority.
(C) Third, inmates who are day-for-day credit eligible and are already designated Work Group A-1. Inmates eligible to earn credits per Penal Code section 2933 shall be given next priority for placement on waiting lists and the inmate with the earliest release date shall be given priority.
(D) Fourth, those inmates who are not Penal Code section 2933 day-for-day credit eligible and are already designated Work Group A-1. Inmates will be placed on waiting lists based upon the work group effective date.
(E) Fifth, those inmates who are not Penal Code section 2933 day-for-day credit eligible and are not assigned, Work Group A-2. Inmates will be placed on waiting lists based upon the work group effective date.
(4) An inmate in an OCE approved academic, Career Technical Education program, or substance abuse treatment, Cognitive Behavioral Treatment program or Transitions program at the sending institution shall be placed on the waiting list for the same or similar program, at the receiving

institution if available. If the receiving institution's program is unavailable, the inmate shall be placed on an existing waiting list at the receiving institution. The inmate's projected release date and the California Static Risk Assessment (CSRA) as described in Section 3768.1 shall be the primary determinants for priority placement. Inmates with a CSRA of moderate or high shall take priority over those with a low risk assessment. Inmates shall be merged into the receiving institution's waiting list based on their CSRA and in accordance with subsection (3) above.

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

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

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

(c) Adverse transfers.

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

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

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

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

(d) Reception center or layover status.

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

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

(e) Special housing unit transfers.

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

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

(f) Community Correctional Center (CCC) transfers. Transfers of inmates approved for a CCC program are considered non-adverse. With the exception of inmates assigned to Work Group F,

inmates shall retain their current work group status while en route to a program. Inmates assigned to Work Group F shall revert to Work Group A-1 effective the date removed from the camp or institution fire fighter assignment.

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

Section 3044. Inmate Work Groups.

(a) Full-time and half-time defined.
(1) Full-time work/training assignments normally mean eight (8) hours per day on a five day per week basis, exclusive of meals.
(2) Half-time work/training assignments normally mean four (4) hours per day on a five day per week basis, exclusive of meals.
(b) Consistent with the provisions of section 3375, all assignments or reassignments of an inmate to a work group shall be by a classification committee action in accordance with this section.
(1) Work Group A-1 (Full-Time Assignment). An inmate willing and able to perform an assignment on a full-time basis shall be placed in Work Group A-1.The work day shall not be less than 6.5 hours of work participation and the work week no less than 32 hours of work participation, as designated by assignment. Those programs requiring an inmate to participate during other than the normal schedule of eight-hours-per-day, five-days-per-week (e.g., 10-hours-per-day, four-days-per-week) or programs that are scheduled for seven-days-per-week, requiring inmate attendance in shifts (e.g., three days of 10 hours and one day of five hours) shall be designated as “special assignments” and require departmental approval prior to implementation. “Special assignment” shall be entered on the inmate's timekeeping log by the staff supervisor.
(A) Any inmate assigned to a Rehabilitative Program, to include but not be limited to: Substance Abuse Treatment, Cognitive Behavioral Treatment, Transitions, Education, Career Technical Education or any combination thereof, shall be designated Work Group A-1.
(B) Any combination of half-time work assignment, and any rehabilitative program as described in subsection (A) above, shall be designated Work Group A-1.
(C) A full-time college program may be combined with a half-time work or Career Technical Education program equating to a full-time assignment. The college program shall consist of 12 units in credit courses only leading to an associate degree in two years or a bachelor's degree in four years.
(D) An inmate diagnosed by a physician or psychiatrist as totally disabled and therefore incapable of performing an assignment, shall remain in Work Group A-1 throughout the duration of their total disability.
(E) An inmate when diagnosed by a physician or psychiatrist as partially disabled shall be assigned to an assignment within the physical and mental capability of the inmate as determined by the physician or psychiatrist, unless changed by disciplinary action.
(2) Work Group A-2 (Involuntarily Unassigned). An inmate willing but unable to perform in an assignment shall be placed in Work Group A-2, if either of the following is true:
(A) The inmate is placed on a waiting list pending availability of an assignment.
(B) An unassigned inmate awaiting adverse transfer to another institution.

(3) Work Group B (Half-Time Assignment). An inmate willing and able to perform an assignment on a half-time basis shall be placed in Work Group B. Half-time programs shall normally consist of an assignment of four hours per workday, excluding meals, five-days-per-week, or full-time enrollment in college consisting of 12 units in credit courses leading to an associate or bachelor's degree. The work day shall be no less than three hours and the work week no less than 15 hours.
(4) Work Group C (Disciplinary Unassigned; Zero Credit).
(A) Any inmate who twice refuses to accept assigned housing, or who refuses to accept or perform in an assignment, or who is deemed a program failure as defined in section 3000, shall be placed in Work Group C for a period not to exceed the number of disciplinary credits forfeited due to the serious disciplinary infraction(s).
(B) An inmate in this work group shall not be awarded Good Conduct Credit, as described in section 3043.2, for a period not to exceed the number of disciplinary credits forfeited, and shall revert to his or her previous workgroup upon completion of the credit forfeiture. Inmates shall be returned to a classification committee for placement on an appropriate waiting list.
(5) Work Group D-1 (Lockup Status). An inmate assigned to a segregated housing program shall be placed in Work Group D-1. Segregated housing shall include, but not be limited to, the following:
(A) Administrative Segregation Unit (ASU);
(B) Security Housing Unit (SHU);
(C) Psychiatric Services Unit (PSU);
(D) Non-Disciplinary Segregation (NDS).
(6) Work Group D-2 (Lockup Status; Zero Credit). An inmate placed in SHU, PSU, or ASU for disciplinary related offenses, as described in Penal Code section 2933.6, or upon validation as a STG-I member or associate shall be placed in Work Group D-2 and shall not be awarded Good Conduct Credit, as described in section 3043.2, during their placement in SHU, PSU, or ASU. Inmates placed in SHU, PSU, or ASU following the commission of any other serious disciplinary infraction shall not be awarded Good Conduct Credit for a period not to exceed the number of disciplinary credits forfeited.
(A) An inmate assigned to a determinate SHU term which included a forfeiture of credits shall not receive Good Conduct Credit during the period of credit forfeiture or 180 days, whichever is less, starting from the date of change in custodial classification. An inmate confined in a secure housing unit for a division A-1 offense, as designated in section 3323(c) of these regulations, and which included great bodily injury on a non-prisoner shall not receive Good Conduct Credit for up to 360 days. Upon completion of the period of credit forfeiture, the inmate shall be re-evaluated by a classification committee.
(B) An inmate's status in Work Group D-2 may be extended, in up to six-month increments, by a classification committee in unusual cases where no other assignment can be made without causing a substantial risk of physical harm to staff or others. At the end of the designated period (six months or less), the determination shall be reviewed by an institution classification committee.
(C) An inmate in ASU, SHU, or PSU, serving an administrative or determinate SHU term, who is deemed a program failure as defined in section 3000, may be assigned Work Group D-2 by a classification committee. An inmate assigned to Work Group C at the time of placement in ASU, SHU, or PSU, or who refuses to accept or perform work assignments, shall be assigned Work

Group D-2. An inmate released from ASU, SHU, or PSU may be placed back into Work Group C by a classification committee not to exceed the remaining number of disciplinary credits forfeited due to the serious disciplinary infraction(s).
(D) If the administrative finding of misconduct is overturned or if the inmate is criminally prosecuted for the misconduct and is found not guilty, Good Conduct Credit shall be restored.
(7) Work Group F (Minimum Custody and Firefighting).
(A) An inmate assigned to Minimum A Custody or Minimum B Custody who is statutorily eligible for day-for-day credit shall be placed in Work Group F.
(B) An inmate who has completed the requisite training to be assigned to a Department of Forestry and Fire Protection fire camp or as a firefighter at a Department of Corrections and Rehabilitation fire house shall be placed in Work Group F.
(C) Inmates placed in Work Group F who are (1) found guilty of a serious rule violation as defined in subsections (b), (c), or (d) of section 3323, (2) placed in a zero-credit work group pursuant to subsections (4) or (6) of section 3044, or (3) otherwise removed from this assignment due to safety or security considerations, shall be assigned to another Work Group consistent with the remaining provisions of this section and shall be ineligible to receive Good Conduct Credit pursuant to subsections (b)(4)(B) or (b)(5) of section 3043.2. An inmate who has been removed from this assignment under the circumstances described above may be placed in Work Group F again, after an appropriate period of time, by classification committee action.
(8) Work Group U (Unclassified). An inmate undergoing reception center processing shall be placed in Work Group U from the date of their reception until classified at their assigned institution.

Subsections 3044(c) through 3044(c)(9) remain unchanged but shown for reference:

(c) Privileges. Privileges for each work group shall be those privileges earned by the inmate. Inmate privileges are administratively authorized activities and benefits required of the secretary, by statute, case law, governmental regulations, or executive orders. Inmate privileges shall be governed by an inmate's behavior, custody classification and assignment. A formal request or application for privileges is not required unless specified otherwise in this section. Institutions may provide additional incentives for each privilege group, subject to availability of resources and constraints imposed by security needs.
(1) To qualify for privileges generally granted by this section, an inmate shall comply with rules and procedures and participate in assigned activities.
(2) Privileges available to a work group may be denied, modified, or temporarily suspended by a hearing official at a disciplinary hearing upon a finding of an inmate's guilt for a disciplinary offense as described in sections 3314 and 3315 of these regulations or by a classification committee action changing the inmate's custody classification, work group, privilege group, or institution placement.
(3) Disciplinary action denying, modifying, or suspending a privilege for which an inmate would otherwise be eligible shall be for a specified period not to exceed 30 days for an administrative rule violation or 90 days for a serious rule violation.
(4) A permanent change of an inmate's privilege group shall be made only by classification committee action under provisions of section 3375. Disciplinary or classification committee

action changing an inmate's privileges or privilege group shall not automatically affect the inmate's work group classification.
(5) No inmate or group of inmates shall be granted privileges not equally available to other inmates of the same custody classification and assignment who would otherwise be eligible for the same privileges.
(6) Changes in privilege group status due to the inmate's placement in lockup:
(A) An inmate housed in an ASU, SHU, or PSU shall be designated Privilege Group D with the exception of inmate designated as NDS who shall retain their privilege group prior to ASU placement.
(7) An inmate in a Reentry Hub assignment shall be eligible for available privileges subject to participating in assignment programs and shall not require a privilege group designation.
(8) An inmate's privileges shall be conditioned upon each of the following:
(A) The inmate's compliance with procedures governing those privileges.
(B) The inmate's continued eligibility.
(C) The inmate's good conduct and satisfactory participation in an assignment.
(9) Inmates returned to custody from parole may be eligible to receive privileges based upon their satisfactory participation in an assignment.

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

Chapter 1. Rules and Regulation of Adult Operations and Programs

Subchapter 5.5. PAROLE CONSIDERATION.

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

Section 3490. Definitions.

For the purposes of this article, the following definitions shall apply:
(a) A “Nonviolent Offender” is an inmate who is not any of the following:
(1) Condemned, incarcerated for a term of life without the possibility of parole, or incarcerated for a term of life with the possibility of parole;
(2) Serving a term of incarceration for a “violent felony;” or
(3) Convicted of a sexual offense that requires registration as a sex offender under Penal Code section 290.
(b) A “Nonviolent Offender” includes the following:
(1) An inmate who has completed a determinate term of incarceration for a violent felony and is currently serving a concurrent term for a nonviolent felony offense;
(2) An inmate who has completed a determinate or indeterminate term of incarceration and is currently serving a determinate term for a nonviolent in-prison offense.
(c) “Violent Felony” is a crime or enhancement as defined in Penal Code section 667.5, subdivision (c).

(d) “Primary Offense” means the single crime for which any sentencing court imposed the longest term of imprisonment, excluding all enhancements, alternative sentences, and consecutive sentences.
(e) “Full Term” means the actual number of years imposed by the sentencing court for the inmate’s primary offense, not including any sentencing credits.
(f) A “Nonviolent Parole Eligible Date” is the date on which an inmate who qualifies as a nonviolent offender has served the full term of his or her primary offense, less pre-sentence credits applied by the sentencing court for time served under Penal Code section 2900.5 and any time spent in custody between sentencing and the date the inmate is received by the department.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Sections 5058 and 1170.1, subdivision (c), Penal Code. Reference: Cal. Const., art. 1, sec. 32(a); *In re Reeves* (2005) 35 Cal.4th 765; *In re Tate* (2006) 135 Cal.App.4th 756; *Thompson v. Dept. of Corr.* (2001) 25 Cal.4th 117.

Section 3491. Initial Eligibility Determination.

(a) By June 1, 2017, the department shall begin the initial eligibility determination for nonviolent offenders as defined in section 3490.
(b) Once the department completes the initial eligibility determination for inmates already under the custody of the department, it shall complete the initial eligibility determination upon an inmate’s admission to the department.
(c) Regardless of a prior initial eligibility determination, the department shall conduct a new eligibility determination whenever a sentencing court issues a new or amended abstract of judgment that changes the inmate’s conviction(s) or term(s) of imprisonment.
(d) The department shall conduct an initial eligibility determination review by completing all of the following steps:
(1) The department shall determine if the inmate meets the definition of a nonviolent offender in section 3490, subdivisions (a) and (b), of this article;
(2) The department shall identify the primary offense, as defined under section 3490, subdivision (d), of this article; and
(3) If the department finds the inmate qualifies as a nonviolent offender, it shall establish the inmate’s Nonviolent Parole Eligible Date, as defined under section 3490, subdivision (f), of this article.
(e) Any initial eligibility determination under this section is subject to the department’s Inmate Appeal Process in accordance with chapter 1, article 8, under this division.

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

Section 3492. Public Safety Screening and Referral.

(a) Effective July 1, 2017, if an inmate is determined to be an eligible nonviolent offender under section 3490, no later than 35 days prior to the inmate’s Nonviolent Parole Eligible Date, the

inmate shall be screened to determine whether the inmate is currently eligible for referral to the Board of Parole Hearings for Nonviolent Offender Parole Consideration.
(b) Public Safety Screening and Referral. An inmate is eligible for referral to the Board of Parole Hearings if all of the following are true:
(1) The inmate is not currently serving a Security Housing Unit term and the Institutional Classification Committee has not assessed the inmate a Security Housing Unit term for any Security Threat Group or disciplinary reason within the past five years;
(2) The inmate has not been found guilty of a serious Rules Violation Report for a Division A-1 or Division A-2 offense as specified in section 3323, subdivisions (b) and (c) within the past five years;
(3) The inmate has not been placed in Work Group C as specified in section 3044, subdivision (b), paragraph (5), in the past year;
(4) The inmate has not been found guilty of two or more serious Rules Violation Reports in the past year;
(5) The inmate has not been found guilty of a drug-related offense as specified in section 3016 or refused to provide a urine sample as specified in section 3290, subdivision (d), in the past year;
(6) The inmate has not been found guilty of any Rules Violation Report in which a Security Threat Group nexus was found in the past year;
(7) The inmate's Nonviolent Parole Eligible Date falls at least 180 days prior to the inmate's Earliest Possible Release Date and the inmate will not reach his or her Earliest Possible Release Date for at least 180 days; and
(8) The inmate has not subsequently been deemed no longer eligible for the nonviolent offender parole process under sections 3490 or 3491.
(c) Inmates who are eligible for referral under subdivision (b) shall be referred to the Board of Parole Hearings for parole consideration under the California Code of Regulations, title 15, division 2, chapter 3, article 15.
(d) If the inmate is not eligible for referral, the inmate shall be screened again one year from the date of his or her last public safety screening under this section until the inmate is released from custody or has been deemed no longer eligible for the nonviolent offender parole process under sections 3490 or 3491.
(e) Inmates shall be notified of the results of the public safety screening and referral eligibility process and, if deemed eligible for referral to the Board of Parole Hearings, provided information about the nonviolent offender parole process, including the opportunity to submit a written statement to the board.
(f) Any public safety screening or referral eligibility decision under this section is subject to the department's Inmate Appeal Process in accordance with chapter 1, article 8, under this division.

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

Section 3493. Processing for Release.

If an inmate is approved for nonviolent offender parole and the decision is not vacated by the Board of Parole Hearings, the Division of Adult Institutions and Division of Adult Parole

Operations shall release the inmate 60 days from the date of the Board of Parole Hearings' decision in accordance with Penal Code section 4755 and section 3075.2, of this title, and any other procedures required by law, including required notifications to victims and law enforcement agencies. Inmates who have an additional term to serve pursuant to Penal Code section 1170.1, subdivision (c) shall begin to serve that term 60 days from the date they are approved for nonviolent offender parole, if the Board of Parole Hearings' decision is not vacated.

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

The following revisions are for California Code of Regulations, Title 15, Division 2, Board of Parole Hearings

California Code of Regulations, Title 15, Division 2, Board of Parole Hearings

Chapter 3. Parole Release.

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

Section 2449.1. Definitions.

For the purposes of this article, the following definitions shall apply:
(a) A "Nonviolent Offender" is an inmate who is not any of the following:
(1) Condemned, incarcerated for a term of life without the possibility of parole, or incarcerated for a term of life with the possibility of parole;
(2) Serving a term of incarceration for a "violent felony;" or
(3) Convicted of a sexual offense that requires registration as a sex offender under Penal Code section 290.
(b) A "Nonviolent Offender" includes the following:
(1) An inmate who has completed a determinate term of incarceration for a violent felony and is currently serving a concurrent term for a nonviolent felony offense;
(2) An inmate who has completed a determinate or indeterminate term of incarceration and is currently serving a determinate term for a nonviolent in-prison offense.
(c) "Violent Felony" is a crime or enhancement as defined in Penal Code section 667.5, subdivision (c).
(d) "Primary Offense" means the single crime for which any sentencing court imposed the longest term of imprisonment, excluding all enhancements, alternative sentences, and consecutive sentences.
(e) "Full Term" means the actual number of years imposed by the sentencing court for the inmate's primary offense, not including any sentencing credits.
(f) A "Nonviolent Parole Eligible Date" is the date on which an inmate who qualifies as a nonviolent offender has served the full term of his or her primary offense, less pre-sentence credits applied by the sentencing court for time served under Penal Code section 2900.5 and any

time spent in custody between sentencing and the date the inmate is received by the department.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); Section 12838.4, Government Code; and Sections 3052, 1170.1, subdivision (c), 5058, and 5076.2, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a); *In re Reeves* (2005) 35 Cal.4th 765; *In re Tate* (2006) 135 Cal.App.4th 756*; Thompson v. Dept. of Corr.* (2001) 25 Cal.4th 117.

Section 2449.2. Notification Process.

(a)(1) Within five business days of referral from the department, the board shall notify registered victims and the prosecuting agency or agencies of the inmate's pending nonviolent offender parole consideration and provide an opportunity to submit a written statement.
(2) Responses to the board must be in writing and postmarked or electronically stamped no later than 30 days after the board issued the notification.
(b) A registered victim is any person who is registered as a victim with the Office of Victim and Survivor Rights and Services at the time of the referral to the board.
(c) The prosecuting agency or agencies include any California district attorney office responsible for prosecuting the inmate, or the State of California Office of the Attorney General if that office was responsible for prosecuting the inmate, for any crimes for which the inmate is currently incarcerated.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); Section 12838.4, Government Code; and Sections 3052, 5058, and 5076.2, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a).

Section 2449.3. Jurisdictional Review.

(a) Once the 30-day notification response period under section 2449.2 has expired, a hearing officer shall review the inmate's case to determine whether the board has jurisdiction to review the inmate for nonviolent offender parole consideration.
(b) Jurisdiction Defined. For the purposes of this article, the board has jurisdiction to consider an inmate for nonviolent offender parole when:
(1) The inmate's Earliest Possible Release Date is greater than or equal to the department's referral date plus 180 days; and
(2) The board has confirmed the inmate is eligible for nonviolent offender parole consideration under section 3491 Initial Eligibility Determination and section 3492 Public Safety Screening and Referral in division 3 of this title.
(c)(1) If the hearing officer determines the board does not have jurisdiction to consider the inmate for nonviolent offender parole, the hearing officer shall issue a written decision with a statement of reasons. The inmate, any victims registered at the time of the referral, and the prosecuting agency that received notice under section 2449.2 shall be notified of the decision.

(2) If the hearing officer determines the board has jurisdiction to consider the inmate for nonviolent offender parole, the hearing officer shall conduct a review on the merits under section 2449.4 of this article.
(d) Board Jurisdiction determinations under this section are not subject to the department's Inmate Appeal Process under division 3, chapter 1, article 8 of this title, but are eligible for review under section 2449.5 of this article.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); Section 12838.4, Government Code; and Sections 3052, 5058, and 5076.2, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a).

Section 2449.4. Review on the Merits.

(a) Upon determination that the board has jurisdiction, a hearing officer shall complete a nonviolent offender parole consideration review on the merits.
(b) Information considered. The hearing officer shall review and consider all relevant and reliable information about the inmate including, but not limited to:
(1) Information contained in the inmate's central file and documented criminal history, including current RAP sheets and any return to prison with a new conviction after being released as a result of this section; and
(2) Written statements submitted by the inmate, any victims registered at the time of the referral, and the prosecuting agency that received notice under section 2449.2.
(c) Standard of Review. After reviewing the relevant and reliable information, the hearing officer shall determine whether the inmate poses an unreasonable risk of violence to the community. In reaching this determination, the hearing officer shall consider the totality of the circumstances, including the following four factors:
(1) The circumstances surrounding the current conviction;
(2) The inmate's prior criminal record;
(3) The inmate's institutional behavior including both rehabilitative programming and institutional misconduct; and
(4) Any input from the inmate, any victims registered at the time of the referral, and the prosecuting agency that received notice under section 2449.2.
(d) Nonviolent Offender Parole Determinations.
(1) If the hearing officer finds the inmate poses an unreasonable risk of violence, the hearing officer shall deny parole.
(2) If the hearing officer finds the inmate does not pose an unreasonable risk of violence, the hearing officer shall approve parole.
(3) The hearing officer shall document his or her decision in writing with a statement of reasons. The inmate, any victims registered at the time of the referral, and the prosecuting agency that received notice under section 2449.2 shall be notified.
(4) If the decision will result in the inmate being released two or more years prior to his or her Earliest Possible Release Date, the decision shall require a second signature from an Associate Chief Deputy Commissioner or the board's Chief Hearing Officer.

(e) Nonviolent offender parole determinations under this section are not subject to the Inmate Appeal Process under division 3, chapter 1, article 8 of this title; however, an inmate may request review of the decision under section 2449.5 of this article.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); Section 12838.4, Government Code; and Sections 3052, 5058, and 5076.2, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a).

Section 2449.5. Decision Review.

(a) Within 30 days of the date of a final decision concerning jurisdiction or a review on the merits, the inmate may request review of the decision.
(b) Timing: A hearing officer, associate chief deputy commissioner, or the board's chief hearing officer, who was not involved in the original decision shall complete review of the decision within 30 calendar days of receipt of the request.
(c)(1) The reviewing hearing officer shall review and consider relevant and reliable information about the inmate and shall document his or her decision in writing, either concurring with the original decision or vacating the original decision and issuing a new written decision with a statement of reasons.
(2) The inmate, any victims registered at the time of the referral, and the prosecuting agency that received notice under section 2449.2 shall be notified.
(d)(1) If, following parole approval, the inmate becomes ineligible under section 3491 Initial Eligibility Determination or section 3492 Public Safety Screening and Referral in division 3 of this title, the board shall vacate the decision approving parole in writing with a statement of reasons.
(2) The inmate, any victims registered at the time of the referral, and the prosecuting agency that received notice under section 2449.2 shall be notified.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); Section 12838.4, Government Code; and Sections 3052, 5058, and 5076.2, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a).