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### Your Responsibility When Using the Information Provided Below:

When putting this material together, we did our best to give you useful and accurate information because we know that people in prison often have trouble getting legal information and we cannot give specific advice to everyone who asks for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet, it is your responsibility to make sure that the law has not changed and still applies to your situation. Most of the materials you need should be available in your institution's law library.

### **INFORMATION ON PROPOSITION 57**

(Updated May 18, 2018)

### **PRISON CREDIT RULES and NONVIOLENT OFFENDER PAROLE CONSIDERATION**

This letter discusses recent changes to California Department of Corrections and Rehabilitation (CDCR) rules on prison credits (which apply to almost all people in prison), and rules about earlier parole consideration for nonviolent determinately-sentenced people. These rules came about as a result of Proposition 57, passed by the voters in November 2016. Proposition 57 created Article I, section 32 of the California Constitution, which requires CDCR to issue rules regarding credits and early parole.

The rules on credits and early parole consideration were issued by CDCR and went into effect on an "emergency" basis starting in spring 2017. The CDCR heard public comments on the rules, issued amended versions of the rules, and heard further public comments. On May 1, 2018, a final version of the rules was approved by the Office of Administrative Law. The CDCR also issued a final statement of reasons dated April 30, 2018, which describes why the CDCR decided to amend (or not amend) parts of the proposed rules.

The final rules, final statement of reasons, and other documents about the rules should be available in prison law libraries and made available to people housed in SHUs. The documents are also on the CDCR website at [www.cdcr.ca.gov](http://www.cdcr.ca.gov).

There are legal disputes about whether or not the CDCR rules violate Article I, section 32 to the California Constitution – particularly whether non-violent third-strikers and people with non-violent sex offenses can be excluded from early parole consideration. There may also be other disputes about what the rules mean and how they apply.

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Part I of this letter summarizes the rules on credits. Part II summarizes the rules on parole consideration for nonviolent offenders. Part III describes how people in prison can challenge the rules or how they are being applied.

## **I. PRISON TIME CREDITS FOR GOOD BEHAVIOR AND PROGRAMMING**

The CDCR rules regarding credits replace all previous California laws and CDCR rules regarding credits for good behavior and programming in prison, and include all credits required by a February 2014 federal court order to reduce crowding in the prisons. Under the rules, all people in CDCR custody are eligible to receive at least as much credit to reduce their prison terms as under the old laws and rules, and some people are eligible to receive more credits than before. Note that although these conduct and programming credits apply toward the Earliest Possible Release Date for determinate sentences and the Minimum Eligible Parole Date (MEPD) for indeterminate (life with the possibility of parole) sentences, they do *not* apply toward a Youth Offender Parole Eligibility Date (YPED) or Elderly Parole Eligibility Date (EPED).

**1. Effective May 1, 2017, many people in prison earn more Good Conduct Credits so long as they comply with prison rules and programming duties.** Good Conduct Credits are now available to all people in prison serving determinate (set-length) sentences and sentences of life with the possibility of parole, including those who are housed in Department of Juvenile Justice (DJJ) facilities or in alternative custody programs. The Good Conduct Credit rules apply also to people serving California prison sentences in out-of-state prisons, federal prisons, or state hospitals. There are different levels of credit eligibility depending on the person's offenses and sentence. (See chart on next page.)

Description of Current Offense and/or Sentence	Past CDCR Credit Rate (before 5/1/17)	Current CDCR Credit Rate (starting 5/1/17) <sup>1</sup>
Life without parole (LWOP) and condemned	0%	0%
Indeterminate term (lifers) not previously eligible for credits (murder, etc.)	0%	20%
Violent offense -- third striker lifers	0%	20%
Violent offense – determinate term – prior 0 credits (a few recidivists)	0%	20%
Violent offense -- determinate or indeterminate sentence	15%	20%
Non-violent offense – third striker lifers	0%	33.3%
Non-violent offense – second strikers with PC 290	20%	33.3%
Non-violent offense – second strikers	33.3%	33.3%
Lifers eligible for 1/3 credits (some crimes in 1980s & 1990s)	33.3%	33.3%
Non-violent offense – determinate sentence	50%	50%
Lifers – eligible for day-for-day (a few crimes)	50%	50%
Violent offense – determinate sentence -- firefighters or in fire camp	15%	50%
Non-violent offense -- second strikers --- firefighters or in fire camp	33.3%	66.6%
Non-violent offense – determinate sentence – firefighters or in fire camp	66.6%	66.6%
Non-violent offense –Minimum A or Minimum B custody	66.6%	66.6%

As the chart shows, there are big credit benefits for being in Minimum Custody, completing firefighter training, or being in a fire (conservation) camp. Generally, eligibility for these placements depends on the type of the commitment offense and length of the sentence, criminal history, whether the person has detainers (holds), and their behavior in custody. Some people who are ineligible when they arrive in CDCR may become eligible as their time left to serve becomes

<sup>1</sup> The CDCR's titles for the various credit categories are NOT internally consistent.

- “15%” credit means a person gets credit for 15 percent of the days actually served, and ends up serving about 85% of the actual time imposed.
- “20%” credit means a person gets credit for 20% of the days actually served (one day credit for four days served) and ends up serving about 80% of the actual time imposed).
- “33.3%” credit means a person gets credit for 33.3% of the days actually served (one day credit for two days actually served) and ends up serving about 66.6% of the actual time imposed.
- BUT “50%” credit does NOT mean a person gets credit for 50% of days actually served. Rather, a person gets credit for 100% of days served (day-for-day) and ends up serving 50% of the actual time imposed (sometimes referred to as "half-time")
- Similarly, “66.6%” credit does NOT mean a person gets credit for 66.6% of days actually served. Rather, a person gets credit for 200% of days served (two-for-one) and ends up serving about 33.3% of the actual time imposed.

shorter and they demonstrate good behavior and programming. The specific policies are complicated and may change over time, but here are some considerations:

- **Minimum Custody:** Minimum A and Minimum B are the lowest custody levels in CDCR prisons (the higher custody levels are Maximum, Close, Medium A, and Medium B). CDCR rules require that some people be in Close Custody due to a lengthy sentence, history of escape, detainer for an offense with a possible long sentence, some serious disciplinary offenses, and having special security concerns; many people can be considered for a custody level reduction after serving a period of time without any recent serious disciplinary violations.<sup>2</sup> The CDCR also has rules limiting which people can be placed in the lowest security levels.<sup>3</sup> Another set of rules requires or allows CDCR to put a person in a higher security level than they would otherwise qualify for by placing a “VIO” code on their classification due to a current or prior criminal conviction, juvenile adjudication, A-1 or A-2 prison rule violation, or parole or probation violation for a violent felony; the rules also allow CDCR staff discretion to remove some people’s VIO code after they serve some time with good behavior and programming.<sup>4</sup> Note that in an effort to expand access to programs, the CDCR recently adopted a policy requiring classification committees to actively consider granting “overrides” by placing people in higher or lower levels than otherwise indicated by their classification scores, based on positive or negative programming.<sup>5</sup>
- **Conservation Camp:** Only people who are minimum custody and behave well in prison can be assigned to camp. A person is not eligible if they are required to register as a sex offender, have an arson offense, or have history of escape with force or violence. They must also pass a physical evaluation. There are currently 43 camps housing 3,500 people; the camps are filled only to 75% capacity.<sup>67</sup>

People in prison can still be placed on Zero Credit earning status for twice refusing to accept assigned housing, refusing to perform an assignment, or being a program failure (Work Group C) or due to placement in a segregation unit for a serious disciplinary offense (D-2 status).

People in prison can still lose Good Conduct Credits (and Milestone Completion Credits and Rehabilitative Achievement Credits) if they violate prison rules; in some cases, they may be able to get lost credits restored if they then remain free of rule violations for some period of time.

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<sup>2</sup> 15 CCR § 3377.2.

<sup>3</sup> 15 CCR § 3375.2(a). These rules were amended in fall 2017 (NCR 17-01); the amendments are available on the CDCR website at [www.cdcr.ca.gov](http://www.cdcr.ca.gov).

<sup>4</sup> 15 CCR § 3375.2(b)(29). These rules were amended in fall 2017 (NCR 17-01); the amendments are available on the CDCR website at [www.cdcr.ca.gov](http://www.cdcr.ca.gov).

<sup>5</sup> CDCR, *Memorandum: Utilization of Administrative Determinants Based Upon Positive and Negative Inmate Behavior and Increased Access to Rehabilitative Programs* (Jul. 5, 2016).

<sup>6</sup> Penal Code § 2760; Penal Code § 2780.5; CDCR website [www.cdcr.ca.gov/conservation\\_camps/](http://www.cdcr.ca.gov/conservation_camps/).

**2. Effective August 1, 2017, all people in CDCR prisons serving determinate sentences or sentences of life with the possibility of parole are eligible to earn additional credits for successful participation in approved rehabilitative programs.**

The programming credits are:

- **Milestone Completion Credits:** These credits are awarded for achieving objectives in approved rehabilitative programs, including academic, vocational, and therapeutic programs. The regulations got rid of restrictions that used to bar some types of people from earning Milestone Credits; however, people serving CDCR terms who are housed in in other jurisdictions (not a CDCR prison or CDCR contract facility) cannot get Milestone Credits. A person must participate in a class, so Milestone Credits cannot be earned just for passing a test; also a person cannot get Milestone Credits for earning a high school diploma if they already have one. The programs eligible for credit include full-time rehabilitative programming, alternative custody programs, Enhanced Outpatient (EOP) mental health participation and Developmentally Disabled Program (DDP) participation. The regulations expand Milestone Credits to 12 weeks in a 12-month period; excess credits will be rolled over to the following year. Milestone Completion Credits can be lost due to rules violations.<sup>8</sup>
- **Rehabilitative Achievement Credits:** This type of credit is for participation in self-help and volunteer public service activities. People can get one week of credit for every 52 hours of participation, with a maximum of four weeks credit per year, for participating in eligible self-help programs. Rehabilitative Achievement Credits can be lost due to rules violations. People serving CDCR terms who are housed in in other jurisdictions (not a CDCR prison or CDCR contract facility) cannot get Rehabilitatve Achievement Credits.
- **Education Merit Credits:** These credits recognize the achievements of people who earn high school diplomas, high school equivalency, or higher education degrees, or complete the offender mentor certification program available at several CDCR prisons. A person must earn at least 50 percent or more of the degree or diploma during their current term to receive Education Merit Credits. A person who earns a high school diploma or equivalency gets 90 days of credit and a person who earns other degrees or an offender mentor certification gets 180 days credit. These credits took effect in August 2017, but will be applied retroactively for degrees earned prior to that date. Education Merit Credits apply to people serving California prison sentences who are housed out-of-state, in federal prison, or in state hospitals. Educational Merit Credits cannot be taken away due to rule violations.

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<sup>8</sup> During the period in which the emergency regulations were in effect, there were disputes about whether some people were improperly awarded Milestone Credits for education programs and whether the CDCR had wrongfully taken Milestone Credits away from some people. The CDCR took several actions in response to these concerns. First, the CDCR revised its proposed regulations to clarify its position on the requirements for earning Milestone Credits for education programs. Second, the CDCR did additional training for education staff on the Propostion 57 credit rules. Third, the CDCR did audits of credits that were previously awarded and is took away credits from some people. Fourth, the CDCR imposed a temporary “freeze” on Milestone Credits, but stated it would retroactively award Milestone Credits for any time period affected by the freeze.

A person in prison who is having problems with getting their good conduct or programming credits or with having their credits taken away should file a CDCR Form 602 administrative appeal and pursue it to the highest level necessary.

## II. EARLY PAROLE CONSIDERATION FOR SOME DETERMINATELY SENTENCED NONVIOLENT OFFENDERS

Proposition 57 authorizes earlier parole consideration for people in state prison who were convicted of nonviolent felony offenses.<sup>9</sup>

The CDCR rules provide for early parole consideration for “determinately sentenced nonviolent offenders” who meet certain other criteria.<sup>10</sup> **An eligible person will be considered for parole suitability prior to their “Nonviolent Parole Eligible Date,” which is the date on which the person has served the “full term” of their “primary offense,” minus pre-sentence credits awarded by the court and credits for time in custody between sentencing and arrival in the CDCR.** “Primary offense” means the crime for which the court imposed the longest prison term, without taking into account enhancements, alternative sentences, or consecutive sentences. “Full term” means the time imposed by the court for the primary offense without considering credits earned in prison.<sup>11</sup>

The process has several steps, and the person being considered for parole should be notified promptly within 15 business days about the decision made at each step:

- CDCR staff screen the person for eligibility within 60 days after they first arrive in the CDCR and again whenever there is a change to their sentence, they get a new sentence, or they come within one year of being considered for Youth Offender Parole or Elderly Parole. If the person is eligible, the CDCR determines their Nonviolent Parole Eligibility Date.

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<sup>9</sup> This part of California Constitution, Article I, section 32 states:

(a)(1) Parole Consideration: Any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.

(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.

....

(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.

<sup>10</sup> The regulations are 15 CCR §§ 2449.1-2449.7 and 15 CCR §§ 3490-3493.

<sup>11</sup> For example, this appears to mean that a person serving a doubled term under the two-strikes law (which is an alternative sentencing law) for a nonviolent offense is eligible for parole consideration after serving just the ordinary base term (without the doubling or any enhancements).

- At least 35 days before the Nonviolent Parole Eligibility Date, CDCR staff do a public safety screening to see if the person has behaved and programmed well in prison. If the person is still eligible, the CDCR refers to the case to the Board of Arole Hearings (BPH).
- Within 15 calendar days after a CDCR referral, BPH staff do a jurisdictional review to confirm the person is eligible for Nonviolent Parole consideration.
- Within 5 business days after the jurisdictional review confirms the person is eligible, the BPH notifies the crime victims and prosecuting agencies about the pending parole review and gives them 30 calendar days to submit written statements.
- Within 30 calendar days after the notification period ends, a BPH hearing officer reviews the case on the merits and decides whether to approve or deny release. If a decision to approve release will result in the person being released two or more years before their regular Earlist Possible Release Date (EPRD), the decision must be reviewed by a higher level BPH officer, who can either approve or deny the release.
- Higher level BPH staff can initiate a review of any of the BPH staff decisions based on an error of fact, an error of law, or if the BPH receives new information that would have affected the parole decision. The review must be completed within 30 calendar days after the request is received.
- Any time prior to release, a parole grant can be vacated if it is determined that the person is no longer eligible for parole.
- If person is granted Nonviolent Offender Parole, and the decision is not vacated or overturned by the BPH,<sup>12</sup> the CDCR shall release the person 60 calendar days after the BPH decision (unless the person has an additional term left to serve for an in-prison crime).

The four set of criteria that a person must meet to get released early on Nonviolent Offender Parole are discussed in the following subsections.

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<sup>12</sup> Unlike some other types of parole consideration proceedings, the Governor does not have authority to review Nonviolent Offender Parole grants.

**1. The person must be a “Nonviolent Offender,” and must not be serving a three strikes sentence (even if the third strike offense was not violent), and must not be required to register as a sex offender (even if the sex offense was not violent).**

The parole consideration process does **not** apply to any person who:

- is serving a sentence of death or life without the possibility of parole (LWOP); OR
- is currently serving an indeterminate sentence of life with the possibility of parole for a violent felony (these are listed in Penal Code § 667.5(c)) or a non-violent felony. This policy means that three-strikers are not eligible even if their current crime is for a nonviolent offense. The exclusion of nonviolent third strikers is being challenged as violating Proposition 57 in several cases, including *In re Davis*, Santa Clara Superior Court No. CC800408 and *In re Irby*, Cal. Supreme Ct. No. S246798. No decision has been issued yet; OR
- is currently serving a determinate sentence for a violent felony; OR
- is currently serving a determinate term for either a violent or nonviolent felony prior to beginning a term of life with the possibility of parole for either a violent or nonviolent violent felony; OR
- is currently serving a determinate term for a nonviolent felony prior to beginning a term for an in-prison offense that is a violent felony, OR
- is currently serving a term for a non-violent felony after completing a concurrent determinate term for a violent felony. (Note that the regulations do not say whether a person is ineligible for parole consideration when a person has *consecutive determinate sentences for a mix of violent and nonviolent crimes* -- with the nonviolent terms calculated at 1/3 of the normal base term -- and has finished serving the part of the term that is for the violent offense; there may be legal disputes about whether such people are eligible for parole consideration.); OR
- has a past or current conviction for an offense that requires sex offender registration under Penal Code § 290. The exclusion of people with nonviolent sex offenses is being challenged in *Alliance for Constitutional Sex Offense Laws v. CDCR*, Sacramento Superior Court No. 80002581. On March 5, 2018, the court issued an order stating that the CDCR’s regulations violate Proposition 57 because the voters did not intend for all sex crimes to be labeled as violent or for all people with sex offenses to be ineligible for parole consideration. The court ordered the CDCR to revise its regulations, but stated that the CDCR has broad authority define which sex offenses are violent. The court’s order is not yet final; the state announced that it intends to appeal the order and it may ask for the order to be stayed (not in effect) during the appeal.

A person who is screened out by the CDCR as ineligible for nonviolent offender parole based on these criteria can challenge the screening decision by filing a CDCR Form 602 administrative appeal and pursuing it to the highest level necessary.



**2. The person must not be otherwise have a release date or be eligible for parole consideration in the near future.** The person's Nonviolent Parole Eligibility Date must be at least 180 days before their regular Earliest Possible Release Date (EPRD) and the person's EPRD must be at least 210 days in the future. Also, the person must not be eligible for a Youth Offender Parole or Elder Parole consideration hearing within a year of the nonviolent parole eligibility review or have an initial Youth Offender Parole or Elder Parole hearing already scheduled.

A person who is screened out by the CDCR as ineligible for nonviolent offender parole based on these criteria can challenge the screening decision by filing a CDCR Form 602 administrative appeal and pursuing it to the highest level necessary.

**3. The person must have good behavior in prison.**

Some circumstances will make a person **ineligible** for referral to the BPH for nonviolent offender parole consideration:

- current Security Housing Unit (SHU) term or assessment or service of a SHU term in the past 5 years (unless for the person's own safety);
- a Level A-1 or A-2 serious rule violation in the past 5 years;
- assignment to Work Group C in the past year;
- 2 or more serious rule violations of any level in the past year;
- a drug-related rule violation or refusal to provide a urine sample in the past year; or
- a rule violation with a nexus to an STG group (gang) in the past year.

A person who is deemed ineligible based on any of these circumstances will be screened again for eligibility after serving 1 more year, and will be reviewed every year thereafter.

A person who is screened out by the CDCR as ineligible for nonviolent offender parole based on these criteria can challenge the screening decision by filing a CDCR Form 602 administrative appeal and pursuing it to the highest level necessary.

**4. The BPH must decide that the person does not pose a “current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity.”**

When a person is referred to BPH for Nonviolent Offender Parole consideration, the person should be notified that he or she can submit a written statement to BPH. PEOPLE SHOULD SUBMIT A STATEMENT ABOUT WHY THEY SHOULD BE PAROLED EARLY, FOCUSING ON WHY THEY WILL NOT POSE A RISK OF VIOLENCE OR CRIMINALITY. IF POSSIBLE, PEOPLE SHOULD HAVE FAMILY, FRIENDS, POTENTIAL EMPLOYERS OR OTHERS WITH HELPFUL INFORMATION SUBMIT STATEMENTS TO BPH.

A BPH staff member will review documents including the person’s central file and criminal history records and written statements by the person, the person’s supporters, the crime victims, and/or the prosecutor. The BPH staff member is called a “hearing officer”, even though -- unlike other types of parole suitability proceedings -- there is no actual hearing at which the person being considered for parole or anyone else can appear.

The hearing officer decides whether or not the person a “current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity.” The hearing officer shall consider all the circumstances, including the nature of the person’s current conviction, prior criminal record, in-prison behavior and programming, and any input from the person being considered for parole, the crime victims, and the prosecutor. The regulations list specific aggravating and mitigating factors to be considered. The hearing officer must issue a written decision with reasons stating why parole is being granted or denied.

**If release is granted:**

If a parole grant will result in the person being released two or more years prior to the regular EPRD, a high level BPH hearing officer must review the parole grant, and can issue a new decision approving or denying the release. The person should be notified in writing of the decision. Also, higher level BPH staff can initiate a review of any BPH staff decisions based on an error of fact, an error of law, or if they receive new information that would have affected the parole decision. The review must be completed within 30 calendar days after the request is received. In addition, any time prior to release, a parole grant can be vacated if it is determined that the person is no longer eligible for parole consideration.

At any time prior to release, a grant of Nonviolent Offender Parole can be vacated for new crimes, new prison rule violations, or other behavior that makes the person become ineligible for Nonviolent Offender Parole.

If the grant of parole is not overturned or vacated by the BPH, the person should be released 60 days after the date of the BPH decision, following any required notifications to crime victims and law enforcement agencies. If the person has an additional term to serve for an in-prison offense, the additional term shall start 60 days after the BPH decision. The person will presumably serve the normal parole or PRCS period that would apply to their crimes.

**If release is denied:**

Release will be denied if the hearing officer finds the person poses an unreasonable risk of violence to the community. If release is denied or vacated, the person will be re-screened every year and, if eligible, will be re-referred to the BPH for Nonviolent Offender Parole consideration.

A person who is denied Nonviolent Offender Parole by the BPH (either at the jurisdictional review, in a decision on the merits, or in a decision vacating a previous grant of parole) can request a review. This is done through a special review procedure (NOT the CDCR 602 process). The person requests review by submitting a written request to the BPH within 30 calendar days after the denial. A BPH officer who was not involved in the original decision will conduct a review within 30 calendar days after the person's request is received. The officer will either uphold the parole denial or vacate the parole denial and issue a new decision. The person should be notified in writing within 15 business days after the decision.

**III. HOW CAN A PERSON IN PRISON CHALLENGE THE RULES OR HOW THEY ARE BEING APPLIED?**

A person who is denied prison conduct or programming credits or who is denied Nonviolent Offender Parole should file the appropriate type of administrative appeal as described in Sections I and II, above.

A person who pursues an administrative appeal to the highest level of review and is not satisfied with the responses, can send the appeal and responses to the Prison Law Office for review. The Prison Law Office is interested in making sure the CDCR applies its credit and parole rules fairly.

A person who pursues their administrative appeal to the highest level of review and is not satisfied with the responses, can file a state court habeas petition arguing that the CDCR is interpreting or applying its regulations in an unreasonable manner and/or is violating federal or state law.

Free manuals on How to File a CDCR Administrative Appeal and on State Court Petitions for Writ of Habeas Corpus are available by writing to the Prison Law Office or on the Resources page at [www.prisonlaw.com](http://www.prisonlaw.com).