



PRISON LAW OFFICE

General Delivery, San Quentin, CA 94964-0001
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Mae Ackerman-Brimberg
Rana Anabtawi
Steven Fama
Alison Hardy
Sia Henry
Corene Kendrick
Rita Lomio
Margot Mendelson
Millard Murphy
Lynn Wu

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 prisoners often have trouble getting legal information and we cannot give specific advice to all prisoners who ask 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 July 19, 2017)

NEW PRISON CREDIT RULES

and

NONVIOLENT OFFENDER PAROLE CONSIDERATION

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

The new rules on credits and early parole consideration were issued by CDCR on an "emergency" basis on March 24, 2017. A copy of the new rules should be available in your prison law library; the rules are also on the CDCR website: www.cdcr.ca.gov. As "emergency" rules, they are in effect on a temporary basis without a full formal rule making process. The CDCR started applying the new credit rules on May 1 (good conduct credit) and August 1 (various programming credits), and started the new early parole consideration processes on July 1. However, you and others will be able to comment on the rules before a final version of the rules is officially enacted; the comment period closes on September 1, 2017; see the Section III of this letter for information on how to submit comments.

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Part I of this letter summarizes the new rules on credits. Part II summarizes the new rules on early parole consideration for nonviolent offenders. Part III describes how prisoners and others can comment on the new rules.

There may be legal disputes about whether or not the new CDCR rules are in accord with new Article I, section 32 to the California Constitution and with court orders setting a population cap on overcrowding in the prisons. There may also be disputes about exactly what the new rules mean and how they apply.

I. PRISON TIME CREDITS FOR GOOD BEHAVIOR AND PROGRAMMING

The new CDCR rules regarding credits completely replace all previous California laws and CDCR rules regarding credits for good behavior and programming in prison, and appear to include all credits required by the February 2014 federal court order about reducing crowding in the prisons. Under the new rules described below, all CDCR prisoners will be eligible to receive at least as much credit to reduce their prison terms as under the old laws and rules, and some prisoners will be eligible to receive more credits than before.

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

Description of Current Offense and/or Sentence	Current CDCR Credit Rate	New CDCR Credit Rate ¹
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 -- 0 credits (a few other 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%

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

- “15%” credit means a prisoner 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 prisoner 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).
- CDCR's "33.3%" credit means a prisoner gets credit for 33.3% of the days actually served (one day credit for two days actually served) and ends up serving about 66.7% of the actual time imposed.
- BUT CDCR's "50%" credit does NOT mean a prisoner gets credit for 50% of days actually served. Rather, a prisoner gets credit for 100% of days served (day-for-day) and the prisoner ends up serving 50% of the actual time imposed (sometimes referred to as "half-time")
- Similarly, CDCR's "66.6%" credit does NOT mean a prisoner gets credit for 66.6% of days actually served. Rather, a prisoner gets credit for 200% of days served (two-for-one) and the prisoner ends up serving about 33.3% of the actual time imposed.

Prisoners 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 or validation as an STG-I member or associate (D-2 status).

Prisoners can still lose Good Conduct Credits if they violate prison rules.

2. Effective August 1, 2017, all CDCR prisoners 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 new and revised programming credits are:

- **Milestone Completion Credits:** These credits are awarded for achieving objectives in approved rehabilitative programs, including academic, vocational, and therapeutic programs. Milestone Credits are currently capped at a maximum of six weeks in a 12-month consecutive period. The new regulations expand Milestone Credits to 12 weeks in a 12-month period; excess credits will be rolled over to the following year. The new regulations get rid of restrictions that barred some types of prisoners from earning Milestone Credits. Milestone Completion Credits can be lost due to rules violations.
- **Rehabilitative Achievement Credits:** These credits are for participation in self-help and volunteer public service activities. Currently, there is no credit-earning attached to self-help activities. The new regulations will give prisoners 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. The CDCR is still evaluating which activities will qualify for the credits. Rehabilitative Achievement Credits can be lost due to rules violations.
- **Education Merit Credits:** These credits recognize the achievements of prisoners who earn high school diplomas, GEDs, or higher education degrees, or complete the offender mentor certification program available at several CDCR prisons. Prisoners must earn at least 50 percent or more of the degree or diploma during their current term to receive Education Merit Credits. Prisoners who earn GEDs or high school diplomas get 90 days of credit and prisoners who earn other degrees or an offender mentor certification get 180 days credit. These credits will take effect in August 2017, but will be applied retroactively. Education Merit Credits apply to prisoners serving California 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.

II. EARLY PAROLE CONSIDERATION FOR SOME DETERMINATELY SENTENCED NONVIOLENT OFFENDERS

Proposition 57 authorizes earlier parole consideration for prisoners convicted of nonviolent felony offenses.²

The new CDCR rules provide for early parole consideration for “determinately sentenced nonviolent offenders” who meet certain other criteria.³ **An eligible prisoner will be considered for parole suitability prior to his or her “Nonviolent Parole Eligible Date,” which is the date on which the prisoner has served the “full term” of his or her “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.⁴ The CDCR started determining which prisoners are eligible for parole consideration as of June 1, 2017 and started referring prisoners for parole reviews on July 1, 2017.

A prisoner must meet three criteria to get released early on nonviolent offender parole.

1. The prisoner must be a “Nonviolent Offender,” which is defined as a prisoner who is serving a sentence for a nonviolent felony offense. A nonviolent felony offense is any crime that is **not** listed in Penal Code § 667.5(c).

² 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.

³ The new regulations are 15 CCR §§ 2449.1-2449.5 and 15 CCR §§ 3490-3493.

⁴ 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).

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

- has a death sentence, a term of life without the possibility of parole (LWOP), or a term of life with the possibility of parole (such as three-strikers and other lifers), OR
- is serving a term for a violent felony crime or enhancement that is listed in Penal Code § 667.5(c), OR
- has any past or current conviction for an offense that requires sex offender registration under Penal Code § 290.⁵

Sometimes prisoners are serving concurrent or consecutive sentences for a mix of violent and nonviolent offenses. A prisoner who is sentenced to *concurrent* terms for a mix of violent and nonviolent offenses, who has finished serving the violent offense term, and who is currently serving only a term for a nonviolent offense, is eligible for parole consideration (this will be a rare situation because the violent offense term is usually the longest term). Also, a prisoner who has finished serving a term for a violent offense and is now serving a *fully separate consecutive term for a nonviolent in-prison offense* is eligible. The regulations do not specifically say whether a prisoner is eligible for parole consideration if the prisoner has *consecutive 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 portion of the term that is for the violent offense; there may be legal disputes about whether such prisoners are or should be eligible for parole consideration.

2. The prisoner must have good behavior in prison. Also, the prisoner's Nonviolent Parole Eligible Date must be at least 180 days before the prisoner's regular Earliest Possible Release Date (EPRD). The CDCR will screen a prisoner no later than 35 days before the Nonviolent Parole Eligible Date to decide whether the prisoner is eligible for referral to the Board of Parole Hearings (BPH) for parole consideration. The CDCR should tell the prisoner the result of the screening.

Some circumstances will make a prisoner **ineligible** for nonviolent offender parole:

- current Security Housing Unit (SHU) term or assessment of a SHU term for a Security Threat Group (STG) or disciplinary reason in the past 5 years;
- a Level A-1 or A-2 serious rule violation in the past 5 years;
- placement in Work Group C in the past year;
- 2 or more serious rule violations of any level within the past year;
- a drug-related rule violation or refusal to provide a urine sample in the past year; or
- a rule violation found to have a nexus to an STG group.

⁵ The exclusion of nonviolent sex offenders is being challenged in a lawsuit, *Alliance for Constitutional Sex Offense Laws v. CDCR*, Sacramento Superior Court No.80002581, as being contrary to Proposition 57. There may also be legal disputes over the exclusion of nonviolent third strikers.

A prisoner who is deemed ineligible based on any of these circumstances will be screened again for eligibility after serving 1 more year.

A prisoner who is screened out by the CDCR can challenge the screening decision by filing a CDCR Form 602 administrative appeal.

3. The Board of Parole Hearings (BPH) must decide that that prisoner does not pose an “unreasonable risk of violence to the community.”

When a prisoner is referred to BPH for nonviolent offender parole consideration, the prisoner should be notified that he or she can submit a written statement to BPH. BPH will also notify the prosecutor and victim(s) that they have 30 days to submit written statements. WE ADVISE PRISONERS TO SUBMIT A STATEMENT ABOUT WHY THEY SHOULD BE PAROLED EARLY, FOCUSING ON WHY THEY WILL NOT POSE A RISK OF VIOLENCE TO THE COMMUNITY IF RELEASED. IF POSSIBLE, PRISONERS SHOULD HAVE FAMILY, FRIENDS, POTENTIAL EMPLOYERS OR OTHERS WITH HELPFUL INFORMATION SUBMIT STATEMENTS TO BPH.

A BPH staff member (who is called a “hearing officer”, even though there is no actual hearing at which the prisoner or anyone else can appear) will double-check to make sure the prisoner is eligible for nonviolent offender parole consideration. If the hearing officer confirms the prisoner is eligible, the hearing officer will review documents including the prisoner’s central file and criminal history records and written statements by the prisoner, the prisoner’s supporters, the crime victims, and/or the prosecutor. Unlike lifer parole suitability hearings, there is no in-person hearing.

The hearing officer decides whether or not the prisoner “poses an unreasonable risk of violence to the community.” The hearing officer shall consider all the circumstances, including the nature of the prisoner’s current conviction, prior criminal record, in-prison behavior and programming, and any input from the prisoner, victims and prosecutor. Parole will be denied if the hearing officer finds the prisoner poses an unreasonable risk of violence to the community. Parole will be granted if the hearing officer finds the prisoner does not pose an unreasonable risk of violence to the community. If a parole grant will result in the prisoner being released two or more years prior to the regular Earliest Possible Release Date (EPRD), a second BPH hearing officer must also approve the parole grant. The prisoner should be notified in writing of the decision.

A prisoner who is granted nonviolent offender parole should be released 60 days after the date of the BPH decision. If the prisoner has an additional term to serve for an in-prison offense, the additional term shall start 60 days after the BPH decision. The prisoner will presumably serve the normal parole period that would apply to his or her crimes.⁶ Nonviolent offender parole can be vacated for subsequent crimes or prison rule violations.

⁶ It is not clear whether prisoners released on nonviolent offender parole can be placed on post-release community supervision (PRCS) rather than CDCR parole.

A prisoner who is denied nonviolent offender parole can request a review of the decision. This is done through a special review procedure (NOT the CDCR 602 process). The prisoner must request review within 30 days after the denial. A BPH hearing officer who was not involved in the original decision will conduct a review within 30 calendar days after the prisoner's request is received. The hearing officer will either uphold the parole denial or vacate the parole denial and issue a new decision. The prisoner should be notified in writing of the review decision.

III. CAN YOU CHALLENGE THE NEW REGULATIONS?

California's Administrative Procedures Act (APA) requires the CDCR to adopt its regulations in a formal manner that includes notice to the public, opportunity for public comments, and approval by the Office of Administrative Law (OAL), the agency that oversees compliance with the APA.

The CDCR issued the new Proposition 57 regulations pursuant to its power to adopt emergency regulations when necessary to operate the prison or parole system. The Proposition 57 emergency regulations were filed with the Secretary of State and went into effect on April 13, 2017.

To permanently adopt the Proposition 57 regulations, the CDCR must go through a formal rulemaking process by September 20, 2017; otherwise the emergency regulations will lapse and no longer be in effect. However, the CDCR may ask to extend the deadline for an additional 90 days.

The formal rule-making process involves giving notice to the public of the proposed changes and a statement of reasons for the changes. The CDCR "Notice of Change to Regulations" (#17-05) was issued on July 14, 2017 and should be distributed to prison law libraries, advisory councils and interested outside people, and made available to prisoners housed in SHUs. The notice is also on the CDCR website Regulations page at www.cdcr.ca.gov.

The public (including prisoners) may submit written comments on the proposed changes; the comment period closes on September 1, 2017. The address for comments is CDCR Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001. The CDCR will also hold a public hearing to receive comments on the proposed changes on September 1, 2017, at 9 a.m, at the Department of Water Resources Building Auditorium, 1416 Ninth Street, Sacramento, CA, 95814.

Once the comment period is over, the proposed regulations must be reviewed by the OAL. The OAL determines whether the APA requirements have been met, and whether the regulation is necessary, based on proper authority, clear, consistent, properly referenced, and not duplicative. If the OAL approves the regulations, they will be filed with the Secretary of State.