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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 resources to make changes to this material every time the law changes. If you use this pamphlet, it is your responsibility to make sure 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.

TIME CREDITS FOR PEOPLE IN CDCR

(revised March 2022)

This letter discusses the California Department of Corrections and Rehabilitation (CDCR) rules on time credits for good conduct and programming. CDCR can make its own credit rules under Article I, section 32 of the California Constitution (Proposition 57). The rules are in Title 15 of the California Code of Regulations (CCR), sections 3043-3044. The rules, including emergency regulations, should be in prison law libraries, available to people housed in restricted housing, and on the CDCR website at www.cdcr.ca.gov. Note that these rules apply only to time you serve in CDCR facilities or alternative custody settings; different laws govern the credits you get before you were sentenced and/or before you were transferred to CDCR custody.

The most recent changes to the credit rules are in effect as emergency regulations starting January 1, 2022. The main changes are:

(1) Returning to the system of awarding higher rates of Good Conduct Credits (GCC) to most people who are firefighters or in fire camp (Work Group F) or assigned to Min A or Min B custody (Work Group M), instead of providing "Minimum Security Credits" to these groups. CDCR says this will help people better predict their release dates. People will keep any Minimum Security Credits they earned from May 1, 2021 through December 1, 2021. More details are on pages 3-4 of this letter.

!! The new rules are being disputed. As a result of a lawsuit by a group of District Attorneys, the Sacramento Superior Court in December 2021 and January 2022 issued orders temporarily forbidding CDCR from granting 66.6% credits to non-violent second-strikers in Work Group M. (District Attorney of Sacramento County v. CDCR, Sac. Superior Ct. No. 2021-00312867.) However, on February 1, 2022, the Third District Court of Appeal denied the DA's request to stay the regulations while the case is being appealed. (Schubert et al. v. Department of Corrections and Rehabilitation et al., No. C095588.) Thus, CDCR's January 1, 2022 credit rules currently are fully in effect.

(2) Returning to the old rule (from prior to May 1, 2021) that placement in Work Group C or Work Group D-2 means Zero Credit earning. More details are on pages 4-5 of this letter.

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The following sections of this letter contain information about CDCR's rule changes, details about CDCR Good Conduct Credits, details about CDCR Program Credits, and ways to challenge CDCR's credit rules or how the rules are being applied to you.

BACKGROUND REGARDING CDCR TIME CREDIT RULES AND RELEASE DATES

If you have a determinate sentence (set length, such as 15 years), CDCR calculates your EPRD (earliest possible release date)—a best estimate of the date on which you will have served all of your sentence through a combination of actual time, good conduct credits, and program credits. If you have an indeterminate sentence (life with possibility of parole, such as 15 years to life), or a mix of determinate and indeterminate terms, CDCR calculates your MEPD (minimum eligible parole date); this is when the Board of Parole Hearings will consider whether you are suitable for parole.¹ When CDCR calculates your EPRD or MEPD, it factors in good conduct and program credits you have already earned, and good conduct credits you are likely to earn in the future; however, CDCR does not factor in program credits you might earn in the future. Your EPRD or MEPD will change over time if your sentence changes, if you get a new criminal conviction, if your Good Conduct Credit-earning status changes, if you earn more program credits, if you lose credits due to a rule violation, or if you get lost credits restored for good behavior.

The credit rules that are in effect when you serve your time govern the amount of good conduct and program credits you earn. CDCR credit rules have changed several times in recent years and could change again in the future. This means that the credits you earned for time you have already served might be different than what you are earning today and will earn in the future.

Effective May 1, 2017, CDCR used its authority under Proposition 57 to enact regulations increasing the amounts of good conduct and program credits that many people could earn. These rules replaced all previous California laws and rules regarding prison credits, and include credits required by a February 2014 federal court order to reduce prison overcrowding.

Effective May 1, 2021, CDCR changed some of its credit regulations. CDCR also changed its release date "calculation methodology" in ways that were not discussed in the regulations. Some of these changes were favorable to people serving time, but some of the changes were unfavorable. In addition, there were glitches when CDCR tried to recalculate release dates in accord with the new rules and methodology. Some people's release dates were changed several times and some people had their releases post-poned with little or no notice. Our office and other advocates communicated with CDCR about these issues. CDCR then rescinded the changes to its "calculation methodology" and corrected some people's release dates.

Effective January 1, 2022, CDCR again changed its credit regulations, as described on pages 3-4 of this letter. CDCR is expected to recalculate EPRDs and MEPDs in accord with the new regulations. The people who will be affected are (1) those who are firefighters, placed in fire

¹ You may also have some other type of parole consideration date, like a Youth Parole Eligibility Date (YEPD), Elderly Parole Eligibility Date (EPED), or a Nonviolent Parole Eligibility Date (NVPED). These dates are governed by other laws and are not affected by good conduct and program credits. The exception is that, effective January 1, 2022, Educational Merit Credits awarded on or after August 1, 2017 shall be applied to advance a YPED (except in LWOP cases).

camps, or assigned to Min A or Min B custody and (2) people who are in Work Groups C or D-2, who no longer earn any Good Conduct Credits (“zero credit earning”).

GOOD CONDUCT CREDITS (Note: this chart does not discuss credit rules prior to 1/25/2010.)

Current Offense and Sentence (and Work Group, where relevant)	Credit Rate before 5/1/17	Credit Rate 5/1/17 to 4/30/21	Credit Rate 5/1/21 to 12/31/21	Credit Rate starting 1/1/2022
Life without parole (LWOP) or condemned	0%	0%	0%	0%
current murder offense	0%	20%	33.3%	33.3%
violent current offense - three strikes sentence	0%	20%	33.3%	33.3%
violent current offense - any other type of sentence	15%	20%	33.3%	33.3%
<u>no</u> violent current offense - three strikes sentence	0%	33.3%	50%	50%
<u>no</u> violent current offense - two strikes sentence	33.3% (eff. 2/10/14, prior 20%)	33.3%	50%	50%
<u>no</u> violent current offense - any other type of sentence	50%	50%	50%	50%
firefighter or in fire camp (“Work Group F”) - violent current offense - determinate sentence	15%	50%	WG F earned GCCs at normal rate for offense and sentence PLUS Minimum Security Credits of 30 days for 30 days served	50%
firefighter or fire camp (“Work Group F”) - <u>no</u> violent current offense - two strikes sentence	33.3% (eff. 2/10/14, prior 20%)	66.6%		66.6%
firefighter or in fire camp (“Work Group F”) - <u>no</u> violent current offense - any other determinate sentence	66.6%	66.6%		66.6%
Minimum A or Minimum B (“Work Group M”) - violent current offense - any type of sentence	15%	20%		33.3%
Minimum A or Minimum B (“Work Group M”) - <u>no</u> violent current offense - any type of sentence	66.6% (eff. 1/1/15, prior no special rate) Except: people with two-strikes terms earned only their normal GCC rate	66.6% Except: people with two-strikes terms earned only their normal GCC rate	WG M earned GCCs at normal rate for offense and sentence PLUS Minimum Security Credits of 30 days for 30 days served	66.6%

Good Conduct Credits (GCC) are available to all people in prison who are serving determinate (set-length) sentences and indeterminate (life with the possibility of parole) sentences, including those who are in alternative custody settings and those who are serving California prison sentences in state hospitals, federal prisons, or other states' prisons. People can lose GCC if they violate prison rules. In some cases, they can get lost credits restored if they then get no further rule violations for a period of time.²

The rates people in different categories can earn are set forth in 15 CCR § 3043.2. Credits for the GCC rates listed in the chart on page 3 are calculated as:

- 20% - serve 4 actual days, get 1 day GCC = 5 days total
- 33.3% - serve 2 actual days, get 1 day GCC = 3 days total
- 50% - serve 1 actual day, get 1 day GCC = 2 days total
- 66.6% - serve 1 actual day, get 2 days GCC = 3 days total

The rules in effect as of January 1, 2022 do not change credits for most people. But the rules do appear to provide more credits for some people and less credits for others, compared to the rules that were in effect from May 1, 2021 through December 31, 2021.

- ◆ The new rules provide more credits to people who have no violent current offense and are firefighters/in fire camp or are designated Min A or Min B. These people will earn slightly more credits overall because under the January 1, 2022 rules 66.6% GCC applies to their whole sentence, whereas under the May 1, 2021 rules Minimum Security Credits (MSC) could not be applied to the final portion of a term. This is because MSC were granted after the time was served, were awarded only in 30 day chunks, and could not be applied if they would bring a person's release date too close. Under the new rules, these people also will better be able to predict their release dates and will be eligible for alternative custody placements sooner.
- ◆ The new rules provide fewer credits to people who have a violent current offense and are firefighters/in fire camp (Work Group F). Under the May 1, 2021 rules, they earned 33.3% GCC plus 30 days Minimum Security Credits for each 30 days served, amounting to 1.5 credits for each day actually served. Under the January 1, 2022 rules, they will earn 50% GCC (and no MSC), amounting to 1 day credit for each day actually served.
- ◆ The new rules provide fewer credits to people who have a violent current offense and are assigned Min A or Min B, but are not firefighters or in fire camp (Work Group M). Under the May 1, 2021 rules, they earned 33.3% GCC plus 30 days Minimum Security Credits for each 30 days served, amounting to 1.5 days of credits for each day actually served. Under the January 1, 2022, they will earn 33.3% GCC (and no MSC), amounting to just 0.5 days of credit for each day actually served.

² The rules on credit forfeiture and restoration are at 15 CCR §§ 3323, 3327-3329.5.

- ◆ The new rules provide no credits to people who are classified as Work Group C (for twice refusing to accept assigned housing, refusing to perform an assignment, or being a program failure) or Work Group D-2 (due to placement in a segregation unit for a serious rule violation). From May 1, 2021 to December 31, 2021, placements in Work Groups C and D-2 did not affect GCC earning. Effective January 1, 2022, people in those Work Groups will once again earn Zero GCC.³

Here is more information about who is eligible to be classified as Minimum A or Minimum B Custody, to become a firefighter, or to be placed in fire camp:

- ◆ Minimum A and Minimum B Custody Eligibility: 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). Generally, eligibility for Minimum Custody depends on the type of the commitment offense and length of the sentence, criminal history, whether the person has detainers (holds), their behavior in custody, and how much time they have left to serve. CDCR rules require that some people be 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.⁴ The CDCR also has rules limiting some people from ever being placed in the lowest facility security levels.⁵ 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 violent current or prior felony criminal conviction or juvenile adjudication, violent A-1 or A-2 prison rule violation, or violent parole or probation violation; these rules also give CDCR staff discretion to remove some people’s VIO codes after they serve some time with good behavior and programming.⁶ Note that in an effort to expand access to programs, the CDCR has 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 good or poor programming.⁷
- ◆ Firefighter or Conservation (Fire) Camp Assignment: Only people who are Minimum B Custody and behave well in prison can be assigned to a fire station or fire camp. A person is not eligible for camp 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.⁸
- ◆ People Whose Assignments are Limited by Medical, Mental Health, or Disability Needs: People are eligible for the same credits they would earn in Minimum A or B custody (Work Group M) even if they cannot be assigned to a minimum custody program because they

³ 15 CCR § 3044(b)(4) and (b)(6).

⁴ 15 CCR § 3377.2.

⁵ 15 CCR § 3375.2(a).

⁶ 15 CCR § 3375.2(b)(29).

⁷ CDCR, *Memorandum: Utilization of Administrative Determinants Based Upon Positive and Negative Inmate Behavior and Increased Access to Rehabilitative Programs* (Jul. 5, 2016).

⁸ CDCR website, www.cdcr.ca.gov/conservation_camps.

are getting mental health services at the EOP level or higher or because their medical or mental health status requires additional clinical and custodial supervision.⁹

- ◆ **Reception Centers:** People in Reception Centers cannot be in Minimum Custody. However, Work Group M credits should be granted to people who qualify for assignment to Minimum A or B custody but are delayed in a Reception Center past 60 days solely due to a permanent disability that impacts placement or need for dialysis; these people start earning Work Group M credits starting the 61st day of their Reception Center stay.¹⁰

PROGRAM CREDITS FOR MILESTONE COMPLETION, REHABILITATIVE ACHIEVEMENT, EDUCATION MERIT, OR EXTRAORDINARY CONDUCT

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 programs. These credits also apply to people who are in DJJ (if sentenced as adults) and in alternative custody, pre-parole and re-reentry programs. These credits do not apply to people sentenced to death or to LWOP terms.

NOTE: From May 1, 2021 through December 31, 2021, CDCR awarded 30 days of “Minimum Security Credits” for every 30 days served by people who were firefighters, in fire camps, or assigned to Minimum A or Minimum B custody. CDCR will not take away Minimum Security Credits earned during this period. However, for time served on or after January 1, 2022, CDCR no longer awards Minimum Security Credits. The effect of this change is discussed on page 4, above.

- **Milestone Completion Credits:** These credits are awarded for achieving objectives in approved rehabilitative programs, including academic, vocational, and therapeutic programs. Milestone Credits have existed since January 2010, but rules that took effect on August 1, 2017 increased the credits that could be earned and made more people eligible to earn such credits. A person can earn 12 weeks of Milestone Credits in a 12-month period (or 6 weeks in a 12-month period for participation in EOP, DDP, or mental health inpatient programs). If a person earns excess credits, the excess credits will be rolled over and can be applied in the following year. A person must participate in a class to get Milestones; they 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 programs, alternative custody programs, Enhanced Outpatient (EOP) mental health participation and Developmentally Disabled Program (DDP) participation. Milestone Completion Credits can be lost due to rule violations and restored for subsequent good behavior under the general rules that apply to credit loss and restoration.¹¹
- **Rehabilitative Achievement Credits:** This type of credit is for participation in eligible self-help and volunteer public service activities. Starting August 1, 2017, people could earn

⁹ 15 CCR § 3044(b)(8)(B).

¹⁰ 15 CCR § 3044(b)(8)(G). People with disabilities impacting placement have a CDCR code DPW, DPO, DPM, DLT, DPV, DPH, or DPS.

¹¹ 15 CCR § 3043.3.

1 week (7 days) of credit for every 52 hours of participation, up to a maximum of 4 weeks (28 days) of credit in a 12-month period. As of May 1, 2019 (under new emergency regulations), people can earn 10 days of credit for every 52 hours of participation, up to a maximum of 40 days credit in a 12-month period. People who are housed in DJJ or alternative custody facilities, including pre-parole or re-entry programs, can earn Rehabilitative Achievement Credits, but in different amounts (starting August 1, 2017, the rate was 1 week of credit for 3 months of participation, up to a maximum of 4 weeks credit in a 12-month period; starting May 1, 2019, the rate is 10 days of credit for every 3 months of participation, up to a maximum of 40 days credit in a 12-month period). Starting May 1, 2019, if a person earns excess credits, the excess credits will be rolled over and can be applied during following years. Rehabilitative Achievement Credits can be lost due to rule violations and restored for subsequent good behavior under the general rules that apply to credit loss and restoration.¹²

- **Education Merit Credits:** These credits recognize the achievements of people who earn high school diplomas, high school equivalency, or higher education degrees, or who complete an offender mentor certification program. A person must earn at least 50 percent or more of the degree or diploma during their current term to receive Education Merit Credits. Starting on August 1, 2017, a person who earned a high school diploma or equivalent got 90 days of credit; these credits apply retroactively to degrees earned prior to that date. Starting on May 1, 2019, a person who earns a high school diploma or equivalent earns 180 days of credit; people who previously got only 90 days of credit under the older rule are to be granted an additional 90 days of credit. Starting August 1, 2017, a person who earns a higher education degree or an offender mentor certification gets 180 days credit. Education Merit Credits apply to people serving California prison sentences who are housed in federal prison, other states' prisons, or in state hospitals. Prior to May 1, 2021, Educational Merit Credits could not be taken away due to rule violations. Effective May 1, 2021, Educational Merit Credits can be lost due to rule violations and restored for subsequent good behavior under the general rules that apply to credit loss and restoration.¹³
- **Extraordinary Conduct Credit:** CDCR has long had discretion to award up to 12 months additional credits to a person who has performed a heroic act in a life-threatening situation or provided exceptional assistance in maintaining prison safety and security. That provision continues to exist under the newer rules that took effect August 1, 2017. Prior to May 1, 2021, Extraordinary Conduct Credits could not be taken away due to rule violations. Effective May 1, 2021, Extraordinary Conduct Credits can be lost due to rule violations and restored for subsequent good behavior under the general rules that apply to credit loss and restoration.¹⁴

¹² 15 CCR § 3043.4.

¹³ 15 CCR § 3043.5.

¹⁴ 15 CCR § 3043.6; see also Penal Code § 2935.

CHALLENGING THE RULES OR HOW THE RULES ARE BEING APPLIED

The emergency credit rules in effect as of January 1, 2022 have not yet been permanently adopted. These rules may be amended as CDCR goes through the formal rule-making process. Public comments may be submitted to California Department of Corrections and Rehabilitation (CDCR), Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, or by e-mail to RPMB@cdcr.ca.gov. The public comment deadline is April 13, 2022.

Proposition 57 gives CDCR broad authority to determine how to award credits for good conduct and programming and in what amounts: “The Department of Corrections and Rehabilitation shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements.” (Cal. Const., art. I, 32, § (a)(2).) We currently do not know of legal grounds for a broad challenge to the recent credit rule changes that reduce credits for some people, especially since CDCR also has discretion over who can be assigned as a firefighter, placed in fire camp, or classified as Minimum A or B. It is possible that a person could challenge the application of the January 1, 2022 rules if they relied on the May 1, 2021 rules when they pled guilty or no contest and now will be earning fewer credits than were promised; if you think you are in such a situation, you should contact your criminal case attorney for advice or assistance.

If you believe that CDCR staff are not accurately applying the prison conduct or program credit rules in your case, you should file an administrative appeal and pursue it to the highest level necessary. For most credit issues, use a CDCR Form CDCR 602-1 Grievance form, followed by a CDCR 602-2 Appeal of Grievance form if needed. If you are being denied credit opportunities due to a disability, file a CDCR 1824 Reasonable Accommodation Request.

If you pursue an administrative appeal to the highest level of review, and are not satisfied with the responses, you can send copies of the appeal and responses to the Prison Law Office for review: Prison Law Office, General Delivery, San Quentin, CA 94964. The Prison Law Office is interested in making sure the CDCR applies its credit rules fairly.

If you pursue an administrative appeal to the highest level of review and are not satisfied with the responses, you can file a state court habeas petition arguing that the CDCR is interpreting or applying its rules 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, General Delivery, San Quentin, CA 94964 or on the Resources page at www.prisonlaw.com.