

## **FINAL STATEMENT OF REASONS:**

The Initial Statement of Reasons (ISOR) is incorporated by reference.

### **Updates to the ISOR**

On July 1, 2011, the Notice of Proposed Regulations was published which began the public comment period. The Department's Notice of Change to Regulations #11-07 was also mailed the same day in addition to being posted on the California Department of Corrections and Rehabilitation (CDCR) Internet and Intranet websites. The Department received two written comments which are included below under Summaries and Responses to the Written Public Comments. A public hearing was held on August 23, 2011 with no one providing verbal comments.

There were three non-substantive changes to the originally proposed text. In subsection 3504.1(a)(2) the wording "or above" which was after the wording "a CSRA score of 5" was removed from the initial text as it was determined to be an error. There are no scores above 5 on the CSRA. In subsection 3504.2(a) the language was revised to conform to the statute of Penal Code (PC) 3060.7. The wording "the first working day after release or within 48 hours, whichever is sooner" was replaced with "within two days (48 hours) from time of release." Also in section 3504.2, in the Note/Reference citation section the reference to PC 3003 was removed as it was determined to be an error and does not pertain to this section.

### **Specific Purpose of Each Section Being Adopted**

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed is as follows:

#### **New Section 3504.1 is adopted.**

##### **3504.1. Determination of Highest Control or Risk Classification.**

**New Subsections 3504.1 (a) through (b) are adopted** to provide the criteria by which any person being released on parole is defined as being within the highest control or risk classification. The Department defines the highest control or risk classification as any person required to register as a sex offender pursuant to the provisions of PC Section 290 through 290.023, inclusive, and any person with a California Static Risk Assessment (CSRA) score of 5. Sex offenders are considered high risk due the nature of their crimes and the potential safety threat they pose to the public. The CSRA score of 5 is considered high risk based on the factors utilized for the CSRA, as explained in Section 3768.1. This section also provides for any person who does not have a CSRA score available at the time of release to default to a score of 5; this is necessary to ensure public safety. After release on parole, a CSRA risk number value shall be provided within five business days. This will ensure that every person released from prison will have established criteria which can then be reviewed by institution and parole authorities to determine if they do or do not qualify for release pursuant to PC 3060.7. The wording "or above" which was after the wording "a CSRA score of 5" was removed from the initial text as it was determined to be an error. There are no scores above 5 on the CSRA.

##### **3504.2. Highest Control or Risk Classification Parole Reporting Requirements.**

**New Subsection 3504.2 (a) is adopted** to outline the timeframe for reporting for parole supervision for all persons meeting the criteria established in California Code of Regulations (CCR) Section 3504.1. Specifically, persons meeting the criteria must report within two days (48 hours) from time of release. In circumstances where an offender is released on a day that would not allow the person to report within 48 hours, the department has established release date adjustment criteria in subsection 3504.2 (a)(1)-(a)(2). In the original text the wording “the first working day after release or within 48 hours, whichever is sooner” was replaced with “within two days (48 hours) from time of release,” in order to conform to the statute.

**New Subsections 3504.2 (a)(1)-(a)(2) are adopted** to establish the prohibition of releasing an inmate from a State facility on a Friday or the day before a legal holiday if he or she meets the criteria established in CCR Section 3504.1. Section 3504.2(a)(2) requires that any such scheduled release will require a release date adjustment; this will ensure compliance with PC 3060.7.

**New Subsections 3504.2 (b) and subordinate subsections (1) through (11) are adopted** to identify the legal holidays recognized by the Department for the purposes of implementing CCR subsection 3504.2(a)(1). This is necessary to ensure only those holidays recognized by the Department are utilized for the purposes of a release date adjustment. This language is also necessary to provide clarification and directive to staff as to the appropriate days a person released on parole is to report to his or her parole unit.

**New Subsection 3504.2 (c) is adopted** to ensure compliance with statute by directing parole staff to work on a weekend or holiday if, after a date adjustment, an inmate is unable to be seen within 48 hours of release. For example, if an eligible inmate were scheduled for release on the Wednesday before Thanksgiving, the release date would be adjusted to Thursday, Thanksgiving Day. Since Thanksgiving Day and the Friday immediately after Thanksgiving are holidays as defined in CCR Section 3504.2(b), the inmate would have to be seen no later than Saturday, a typical scheduled day off for parole agents. This section ensures staff is made aware of the responsibility to work on the weekend or a holiday to comply with statute.

#### **DETERMINATION:**

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected persons.

#### **ASSESSMENTS, MANDATES, AND FISCAL IMPACT:**

This action will neither create or eliminate jobs in the State of California, nor result in the elimination of existing businesses, or create or expand businesses in the State of California.

The Department, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government, or Federal funding to the State, or private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states because they are not directly affected by the internal management

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

**PUBLIC HEARING COMMENTS:**

**Public hearing was held on August 23, 2011, at 9:00 am.**

No one commented at the public hearing.

**SUMMARIES AND RESPONSES TO THE WRITTEN PUBLIC COMMENTS:**

**Commenter #1:**

**Comment 1A:** Commenter objects to the Department's proposed regulations governing the classification of parolees for risk. Commenter states that proposed Section 3504.1, et seq., categorizes any and all parolees with a California Static Risk Assessment (CSRA) of 5 or above as the "highest risk control or risk classification," and imposes significant requirements and restrictions in their freedom on that basis.

**Accommodation:** none

**Response 1A:** The CSRA is a validated risk assessment tool and, as such, a CSRA score of "5" identifies those individuals with a greater likelihood of committing a violent felony, thus requiring a higher level of supervision.

**Comment 1B:** Commenter states that the classification by the CSRA is entirely arbitrary and unjustified, and therefore the proposal does not meet the reference, necessity, authority, or clarity requirements of the APA and should therefore be rejected.

**Accommodation:** none

**Response 1B:** The CSRA is a validated risk assessment tool that uses a set of risk factors which are most predictive of recidivism. The CSRA was developed by the University of California-Irvine, Center for Evidence-Based Corrections, in collaboration with some of the country's leading experts on risk assessment. To develop the CSRA instrument, the experts identified which factors are most predictive of recidivism by analyzing actual outcome data from over 100,000 releases to parole in California from 2003-2004. The experts then validated the instrument to ensure its predictive value.

**Comment 1C:** Commenter states the CSRA is a hasty contrivance concocted by a CDCR research psychologist to solve the Department's problem of having to replace the inapplicable actuarial assessment tools it currently uses.

**Accommodation:** none

**Response 1C:** The CSRA was based on a tool developed by the Washington State Institute of Public Policy and is utilized by the Washington Department of Corrections. It took the

University of California at Irvine over a year to develop a California specific tool and validate the instrument on the California population.

**Comment 1D:** Commenter states the CSRA has never undergone controlled testing for recidivism of California life prisoners or parolees. Commenter reiterates the CSRA is an arbitrary concoction that focuses mainly on the commitment offense and other static, immutable factors, rather than on the more accurate predictors of future recidivism based on reform and rehabilitation.

**Accommodation:** none

**Response 1D:** See response for 1B.

**Comment 1E:** Commenter states that because of the reasons stated above in Comment 1B and 1D the CSRA is not only inaccurate, but defrauds the State's taxpayers and offends the State's Constitution by achieving the interminable imprisonment of thousands of would-be parolees who would otherwise be (and at this time have repeatedly been) deemed low recidivism and public safety risks, to allegedly high risks, and will thereby convert the majority of life-with-the possibility-of-parole terms to life without parole – at an enormous waste of tax money and life.

**Accommodation:** none

**Response 1E:** The CSRA score is used as one of many factors in a suitability hearing to develop a recommendation for parole by the Board of Parole Hearings. Other factors include:

- counseling reports and psychological evaluations
- behavior in prison (i.e., disciplinary notices or laudatory accomplishments)
- vocational and educational accomplishments in prison
- involvement in self-help therapy programs that can range from anti-addiction programs for drugs and alcohol to anger management
- parole plans, including where an inmate would live and support themselves if they were released

**Comment 1F:** The Agency falsely represents or implies that feasible alternatives are not available. The Agency knows, and has again been advised by forensic psychologists, that because the recidivism rate of term-to-life prisoners is low (approximately 1%), and because these assessment tools are unproven and/or inapplicable, the clinical judgment of the evaluating forensic psychologists, based on the inmate's record and personal interviews, is a far more accurate method of risk evaluation.

**Accommodation:** none

**Response 1F:** Typically, actuarial tools have been found to be more accurate at predicting behavior than clinical judgment alone. In addition to improving the accuracy of predictions, actuarial tools such as the CSRA provide advantages over clinical judgment, which can be subject to assessor biases and limitations and illusory correlation (reporting a correlation between two events that may not be correlated).

**Commenter #2:**

**Comment 2A:** Commenter states that the criteria for High Control or Risk Classification has been clearly established, and fundamental procedures are already in place to fit the definition of a High Control or Risk Classification based on violent crimes or CSRA point system.

**Accommodation:** none

**Response: 2A:** These regulations are necessary to specify the definition of High Control or Risk Classification as they apply to a person released on parole, and to codify PC 3060.7 into these regulations.

**Comment 2B:** Commenter states that a person who falls under non-sexual crimes has a constitutional right to be excluded from any parts of policies, subsection, criterion related to any form of language, or illegal by-laws that are synonymous to sex crimes.

**Accommodation:** none

**Response: 2B:** Division of Adult Parole Operations staff have the statutory authority under PC sections 3053 and 5077 to impose conditions of parole upon persons released from state prison and placed on parole. Staff receive training to understand that a parole condition will be held valid only if it involves criteria from case law, (The People v. Lent, October 30, 1975, Supreme Court of California) of the following:

- 1) Has relationship to the crime of which the offender was convicted.
- 2) Relates to the conduct which is, in itself, criminal.
- 3) Requires or forbids conduct which is related to future criminality.

**Comment 2C:** Commenter reiterates that new subsections 3504.2(a)(1)-(a)(2) forms duplication of regulations that are contrary to law or by-laws that impose.

**Accommodation:** none

**Response 2C:** See response 2A.

**Comment 2D:** Commenter objects to adopt or make into policy these proposed regulations to the CCR, Title 15. Commenter states Penal Code section 3060.7 already requires reporting to parole offices on the first business day available.

**Accommodation:** none

**Response 2D:** see response for 2A.