

**State of California  
Office of Administrative Law**

**In re:**  
**Department of Corrections and  
Rehabilitation**

**Regulatory Action:**

**Title 15, California Code of Regulations**

**Adopt sections:** 3040.2  
**Amend sections:** 3000, 3040.1, 3041, 3041.3,  
3043.6, 3379

**Repeal sections:**

**NOTICE OF APPROVAL OF CERTIFICATE OF  
COMPLIANCE**

**Government Code Sections 11349.1 and  
11349.6(d)**

**OAL Matter Number: 2016-0726-09**

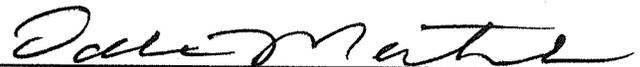
**OAL Matter Type: Certificate of Compliance  
(C)**

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This rulemaking action makes permanent the emergency operational needs regulations adopted by the California Department of Corrections and Rehabilitation concerning the Long Term Offender Program (LTOP). The regulations permanently replace the LTOP pilot program at Title 15 California Code of Regulations section 3999.15, which expired on February 11, 2016, with a permanent program that enables inmates serving long-term sentences to continue to receive cognitive behavioral treatment to meet their rehabilitative needs. More specifically, the regulations: define the LTOP; establish eligibility and exclusionary criteria, a priority system for placement, and inmate transfer procedures; and specify that inmates are not subject to discipline for failure to participate, that they are exempt from the standard institution wait list merging process, and that they will receive priority for work reassignments upon completion of their LTOP assignments.

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

Date: September 6, 2016



Dale P. Mentink  
Senior Attorney

For: Debra M. Cornez  
Director

Original: Scott Kernan  
Copy: Rosie Ruiz



(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-2016-0229-03</b>	REGULATORY ACTION NUMBER <b>2016-0726-09C</b>	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

SEP -6 2016

1:37pm

**JUL 26 P 3 31**  
**OFFICE OF ADMINISTRATIVE LAW**

AGENCY WITH RULEMAKING AUTHORITY California Department of Corrections and Rehabilitation	AGENCY FILE NUMBER (if any) 15-0282
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**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER <b>2016, 11-2</b>	PUBLICATION DATE <b>3/11/2016</b>

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Long Term Offender Program	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2016-0129-01EON
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT 3040.2
AMEND 3000, 3040.1, 3041, 3041.3, 3043.6, and 3379
TITLE(S) 15
REPEAL <del>3999.15</del>

*On per agency request 8/22/16*

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input checked="" type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify)	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) March 11, 2016-May 5, 2016
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5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify)

7. CONTACT PERSON Rosie Ruiz	TELEPHONE NUMBER 445-2244	FAX NUMBER (Optional) 324-6075	E-MAIL ADDRESS (Optional) rosie.ruiz@cdr.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 7-26-16
TYPED NAME AND TITLE OF SIGNATORY Ralph M. Diaz, Undersecretary, Operations	

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

SEP 06 2016

Office of Administrative Law

## TEXT OF ADOPTED REGULATIONS

In the following text, bold underline indicates additional text, and bold strikethrough indicates additional deleted text, to the originally proposed text.

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

### Chapter 1. Rules and Regulations of Adult Operations and Programs

TABLE OF CONTENTS is amended to delete the existing title and to adopt a new title in Section 3040.2:

3040.2 Long Term Offender Program.

#### Article 1. Behavior

##### Section 3000. Definitions.

Section 3000 is amended to alphabetically merge the definition below with those that exist in the regulations.

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Long Term Offender Program means a voluntary program that provides Cognitive Behavioral Treatment and other rehabilitative programs to inmates who are subject to parole suitability hearings conducted by the Board of Parole Hearings.

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Note: Authority cited: Sections 243(f)(4), 2717.3, 3000.03, 5058, 5058.3 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 600, 646.9, 653m, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3020, 3450, 3550, 4570, 4576, 5009, 5050, 5054, 5068, 7000 et seq. and 11191, Penal Code; Sections 1132.4 and 1132.8, Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; and Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Sections 8550, 8567, 12838 and 12838.7, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *In re Bittaker*, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; Section 11007, Health and Safety Code; *Madrid v. Cate* (U.S.D.C. N.D. Cal. C90-3094 TEH); *Sassman v. Brown* (E.D. Cal. 2015) 99 F.Supp.3d 1223; *Mitchell v. Cate*, USDC ED 2:08-CV-01196-TLN-EFB; and *In re Garcia* (2012) 202 Cal.App.4th 892.

#### Article 3. Work and Education

##### Section 3040.1. Cognitive Behavioral Treatment and Substance Abuse Treatment Criteria.

Subsection 3040.1(a) is amended to read:

(a) Prisons may establish Cognitive Behavioral Treatment (CBT) programs to provide evidence-based treatment services to inmates. Priority placement into CBT programs shall be for inmates who have a

criminogenic need for the specific CBT program as identified by a validated automated risk and needs assessment tool. For placement into a CBT program, the inmate's remaining time to serve shall be within the prescribed length of participation required for the CBT program, with the exception of placement into a Long Term Offender Program as outlined in Section 3040.2. CBT programs include but are not limited to Substance Abuse Treatment (SAT), Criminal Thinking, Anger Management and Family Relationships.

**Subsections 3040.1(b) – 3040.1(d) remain unchanged.**

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code.

**Section 3040.2. Long Term Offender Program.**

**New subsection 3040.2(a) is adopted to read:**

(a) The Long Term Offender Program (LTOP) is a voluntary program that provides Cognitive Behavioral Treatment (CBT) and other rehabilitative programs to inmates who are subject to a Board of Parole Hearings parole suitability hearing as described in CCR Title 15, Division 2, Section 2280, Parole Consideration Criteria and Guidelines for Life Prisoners. All LTOP participants shall be provided Victim Impact and Denial Management programs. Prisons may establish an LTOP to provide evidence-based treatment services for inmates who meet the eligibility criteria specified in subsections 3040.2(c)-3040.2(c)(3).

**New subsection 3040.2(b) is adopted to read:**

(b) Inmates assigned to an LTOP are subject to the program participation requirements of section 3040 and the performance requirements of section 3041. The LTOP shall operate as a voluntary program, and inmates who are enrolled in LTOP are not subject to disciplinary action pursuant to subsections 3314(a)(3)(F) and 3315(a)(3)(J) or placement into Work Group C or Privilege Group C pursuant to subsections 3044(b)(5)(A) and 3044(f)(1)(A), solely for refusing to participate, but may be removed from LTOP.

**New subsections 3040.2(c) - 3040.2(c)(3) are adopted to read:**

(c) Inmates who meet the following criteria may be considered for placement into LTOP:

- (1) Reside within the General Population and does not have case factors that would preclude placement at an institution operating an LTOP.
- (2) Must have a criminogenic need identified by an automated needs assessment tool, as described in section 3000.
- (3) Is serving an indeterminate sentence with the possibility of parole or a long term determinate sentence and be within one to five years from a parole suitability hearing. Inmates housed at an institution operating an LTOP who have less than one year remaining to their parole suitability hearing may be considered on a case-by-case basis.

**New subsection 3040.2(d) is adopted to read:**

(d) Inmates who are enrolled in the Mental Health Services Delivery System (MHSDS) at the Correctional Clinical Case Management System (CCCMS) or Enhanced Outpatient (EOP) Level of Care may be considered for participation in an LTOP if they meet the listed eligibility criteria. However, due to their higher need for psychiatric services, EOP inmates shall only be approved on a case-by-case basis, if they can benefit from the program as determined by an Interdisciplinary Treatment Team.

**New subsections 3040.2(e) - 3040.2(e)(2) are adopted to read:**

(e) Long Term Offender Program Exclusionary Criteria:

(1) The inmate has been found guilty of a Division A, B or C disciplinary offense, as described in section 3323, within the last 12 months. Division C disciplinary offenses for inmate manufactured alcohol or possession of controlled substances are non-exclusionary, and inmates may still be considered for the LTOP.

(2) The inmate has served a Security Housing Unit (SHU) term and less than 12 months have passed since the Minimum Eligible Release Date, as defined in section 3000, or if the SHU term was suspended and less than 12 months have passed since the date of the suspension action.

**New subsections 3040.2(f) and (f)(1) are adopted to read:**

(f) Assignments and transfers.

(1) Placement into and removal from an LTOP assignment shall be by classification committee action pursuant to subsection 3375(c).

**New subsections 3040.2(f)(2) through 3040.2(f)(2)(B) are adopted to read:**

(2) Priority for assignment into LTOP is based on the following:

(A) First, inmates who are closest to their next subsequent parole suitability hearing as described in CCR Title 15, Division 2, Section 2306, Subsequent Parole Hearing.

(B) Second, inmates who are closest to their initial parole suitability hearing as described in CCR Title 15, Division 2, Section 2304, Initial Parole Hearing.

**New subsections 3040.2(f)(3) through 3040.2(f)(5) are adopted to read:**

(3) Inmates assigned to an LTOP may be assigned in combination with other institutional assignments.

(4) Upon completion of the LTOP assignment, if the inmate requests placement back into a similar work assignment held prior to placement in LTOP, they shall receive priority placement over all other inmates with the exception of those offenders who have also participated in LTOP. In these situations, first priority for assignment will be given by the oldest LTOP completion date. The assignment process provided in this subsection does not guarantee placement back into the exact position and/or pay rate held prior to assignment into LTOP. Furthermore, for purposes of this section, priority means that an inmate will be placed at the top of the institution's waiting list for reassignment. It does not mean that the inmate can replace another inmate from his or her current assignment.

(5) Inmates may receive temporary transfers to an institution operating an LTOP. Inmates who receive temporary transfer shall normally be returned back to the sending institution upon completion of the LTOP assignment unless case factors preclude the transfer.

Note: Authority cited: Sections 5058, Penal Code. Reference: Section 5054, Penal Code.

**Section 3041. Performance.**

**Subsections 3041(a) through 3041(c) remain unchanged.**

**Subsection 3041(d) is amended to read:**

(d) Inmates assigned to educational, Career Technical Education, Reentry Hub assignments, Long Term Offender Program (LTOP) assignments, substance abuse treatment, or other training programs must cooperate with the instructor or the person in charge, and must comply with instructions, and all requirements for participation in the assigned activity. LTOP participants will be removed from the program per subsection 3040.2(b).

**Subsections 3041(e) through 3041(e)(2) remain unchanged.**

Note: Authority cited: Section 5058, Penal Code. Reference: Section 5054, Penal Code; and Sections 2297, 2318, 2320 and 1798 et seq., Civil Code.

**Section 3041.3. Inmate/Parolee Access to Computers.**

**Subsection 3041.3(a) is amended to read:**

(a) Inmates shall not access any computer outside of their authorized work, Career Technical Education program, educational assignment, Reentry Hub, Long Term Offender Program or substance abuse treatment assignment, or as needed for legal research on the Law Library Electronic Delivery System, except as authorized by the department's Information Security Officer (ISO).

**Subsections 3041.3(b) through 3041.3(c)(1) remain unchanged.**

**Subsection 3041.3(c)(2) is amended to read:**

(2) Inmates assigned to one computer for work, Career Technical Education program, education, Reentry Hub, Long Term Offender Program or substance abuse treatment shall not be assigned to, or permitted to use, any other computer, except as approved by the ISO.

**Subsections 3041.3(d) through 3041.3(n) remain unchanged.**

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 502, 502.7 and 2702, Penal Code.

**Article 3.5 Credits**

**Section 3043.6. Impact of Transfer on Credit Earning.**

**Subsections 3043.6(a) through 3043.6(a)(2) remain unchanged.**

**Subsection 3043.6(a)(3) is amended to read:**

(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:

**Subsections 3043.6(a)(3)(A) through 3043.6(f) remain unchanged.**

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.

## **Subchapter 4. GENERAL INSTITUTION REGULATIONS**

### **Article 10. Classification**

#### **Section 3379. Inmate Transfers.**

**Subsections 3379(a) through 3379(a)(10)(B)2 remain unchanged.**

**New subsection 3379(a)(11) is adopted to read:**

(11) Long Term Offender Program (LTOP) Transfers. Inmates who meet the criteria for placement into an LTOP may receive a temporary transfer to an institution operating an LTOP, pursuant to subsection 3040.2(f)(5). Upon completion of the program, they shall be transferred back to the sending institution unless case factors preclude the transfer.

**Subsections 3379(b) through 3379(d)(4) remain unchanged.**

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 2911, 5025, 5054, 5068, 5080 and 11191, Penal Code; Sections 8550 and 8567, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *Armstrong v. Schwarzenegger*, United States District Court, N.D. Cal., No. C-94-2307 CW, Stipulation and Proposed Order issued November 30, 2006; *Coleman v. Schwarzenegger*, United States District Court, E.D. Cal., No. CIV-S-90-0520 LKK JFM P, Order issued November 6, 2006; and *Whitaker v. Rushen* (9th Cir. 1983) 720 F.2d 1132, 1135.

## **FINAL STATEMENT OF REASONS:**

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

## **UPDATES TO THE INITIAL STATEMENT OF REASONS**

The Notice of Emergency Regulations was published on March 11, 2016. Notice of Change to Regulations #16-03 was mailed on the same day to persons who requested to be placed on the Department's mailing list to receive notification of rulemaking actions. These documents were also posted on the Department's Intranet and Internet websites.

The public hearing was held on May 5, 2016, the final day of the public comment period. No one commented at the public hearing. During the 45-day comment period, six written comments were received. These comments are discussed below under the heading, "*Summaries and Responses to Written Public Comments.*"

## **DETERMINATION**

The Department has determined that no alternative considered would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law, than the action proposed.

The Department has determined that this action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter CDCR's initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 of the Government Code.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on private persons or small businesses than the action planned.

## **DOCUMENTS RELIED UPON**

A listing and explanation of documents relied upon in the development of the proposed regulations may be found on page three of the Initial Statement of Reasons, which is incorporated by reference into this document. The document itself may be found under Tab #11 of the Rulemaking File.

**Non-substantive formatting changes and typographical errors and/or omissions are corrected throughout the document to ensure clarity and consistency.**

## **PUBLIC HEARING COMMENTS**

### **Public Hearing: Held May 5, 2016, at 10:00 a.m.**

Nobody commented at the public hearing.

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

### **COMMENTER #1**

Commenter commends the Department for the proposed regulations and feels as though CDCR really cares about their inmates. Commenter explains that many offenders who are serving long term sentences were kids when they committed their offense crime and were too immature to realize the harm they were causing. Commenter is grateful for this opportunity at education and the chance to improve their lives.

**Response 1:** The Department agrees with the Commenter. The Department views the Long Term Offender Program (LTOP) as a valuable program to assist long term inmates address their criminal behavior that led to their incarceration.

### **COMMENTER #2**

Commenter inquiries about transfer regulations that are already in place and the transfer procedure for the LTOP described in new subsection 3040.2(f)(1), which states that placement/removal from an LTOP shall only be made by classification committee action. Commenter explains that recently, his institution transferred him from an “Enhanced Program Facility” to another facility within the prison that is not an “Enhanced Program Facility.” Commenter states he considers an “Enhanced Program Facility,” a program, like the LTOP, so the same transfer regulations apply. Commenter questions if fundamental due process rights regarding transfers and removal from program exist.

Commenter also feels that his Due Process rights may have been violated in this transfer action as he did not receive a notice, hearing, and written decision concerning this action. In addition, Commenter states that this transfer violated sections 3375(c) and 3379 because the transfer decision was not made by Classification Committee.

**Response 2:** The Commenter’s interpretation of subsection 3040.2(f)(1) is inaccurate. New subsection 3040.2(f)(1) only applies to the Long Term Offender Program. The definition of a Long Term Offender Program is provided in Section 3000 and states “*Long Term Offender Program means a voluntary program that provides Cognitive Behavioral Treatment and other rehabilitative programs to inmates who are subject to parole suitability hearings conducted by the Board of Parole Hearings.*” An “Enhanced Program Facility” does not fall within this definition; therefore, subsection 3040.2(f)(1) does not apply.

The Commenter has made a complaint about his transfer within his institution facility and has no correlation to the LTOP regulations.

### **COMMENTER #3**

**Comment 3A:** Commenter states that in the event of a temporary transfer, the issue of an inmate’s personal property is not addressed. Commenter explains that he is housed in an “Enhanced Program Facility” and that these inmates are allowed to possess property in their cell beyond the limitation of six cubic feet provided in subsection 3190(d). Commenter states that a temporary transfer to an LTOP facility could result in the inmate losing that extra property, which would create an “adverse transfer.”

To remedy this issue, Commenter suggests adding language to subsection 3040.2(f)(5) to state that the sending institution will store additional property until the inmate returns from the LTOP facility.

**Response 3A:** On January 1, 2014, Enhanced Program Facilities were implemented at select institutions within the California Department of Corrections and Rehabilitation. As part of that program, inmates may possess certain property items that are in addition to those items listed in the Department's "Authorized Personal Property Schedule." The commenter states because he is housed on an Enhanced Programming Facility he is allowed to possess property beyond the six cubic feet provided in subsection 3190(d). Furthermore a temporary transfer to an LTOP would be adverse as he would forfeit his extra property.

Per the December 31, 2013, memorandum entitled "Enhance Program Facility," inmates housed at an Enhanced Program Facility are allowed additional property items; however, they are not authorized to exceed the combined six cubic feet limit outlined in Section 3190(d) of the California Code of Regulations, Title 15, Division 3 as the commenter contends. In addition, in the event an inmate transfers from an Enhanced Program Facility, they are no longer authorized to possess the additional property items and have the option to ship them to a person in the outside community.

The LTOP is a voluntary program, and, due to limited resources, is only being operated at a select number of institutions which does not include an Enhanced Program Facility. Because this is a voluntary program, if an inmate chooses to participate they are agreeing to the transfer and to the property limitations of the LTOP institution.

**Comment 3B:** Commenter states that although the Long Term Offender Pilot Program appeared to apply to all life-term inmates who are subject to a Board of Parole Hearings (BPH) parole suitability hearing, he noted that "no life-term sex offender programs were pilot tested for sex offenders who are life-term."

Commenter states that it appears that a pilot program needs to take place before an actual statewide implementation of regulations. Commenter asks if the Department will immediately make rehabilitative programs available for long term sex offenders. If this is not the case, Commenter states that it appears to be an equal protection issue.

**Response 3B:** Sex offenders were not excluded from participation in the Long Term Offender Pilot Program. However to participate they had to meet the following eligibility criteria:

- Reside in the General Population.
- Willing to participate.
- Have moderate or high criminogenic needs as identified by the Correctional Offender Management Profiling for Alternative Sanctions Men's/Women's Long Term Reentry Assessment.
- Serving an indeterminate sentence with the possibility of parole.
- Already appeared before BPH for a parole suitability hearing and denied parole for a three or five year period, or were granted a three or five year stipulation to unsuitability.

Under the LTOP regulations, sex offenders continue to be eligible to participate if they meet the eligibility criteria outlined in subsections 3040.2(c)-3040.2(c)(3) and do not have any exclusionary factors as outlined in subsections 3040.2(e)-3040.2(e)(2). The eligibility criteria outlined in sections 3040.2(c)-3040.2(c)(3) is the same criteria provided in the LTOP pilot and also noted above.

**Comment 3C:** Commenter notes that the proposed regulations do not require that program developers, designers, or administrators of the LTOP to include terminology, definitions, and treatment expectations

used by BPH. Commenter states that if CDCR and BPH do not coordinate overlapping terms used in the LTOP, there can be significant differences that can result in a denial of parole.

**Response 3C:** Although program participation in the LTOP likely will be considered by the BPH during a parole consideration hearing, a parole approval or denial solely rests with the authority of the BPH hearing panel and many factors are considered when making that decision. The BPH parole consideration hearing is a separate process from the LTOP.

The LTOP is a program that is specifically intended to assist inmates in rehabilitative programming through the use of an individual treatment plan that is developed after an assessment of treatment needs has been made through the use of a scientifically proven assessment instrument.

As stated in the Initial Statement of Reasons, the LTOP was specifically designed to provide CBT programs for inmates who are serving long term sentences, which is consistent with the Department's goal of providing rehabilitative programs to 70 percent of its population. CBT programs are intended to reduce recidivism by preparing inmates for their release and successful reintegration back into society. The LTOP was not developed to instruct inmates how they should participate, act, or communicate during their parole suitability hearings.

**Comment 3D:** Commenter states that new subsections 3040.2(c)(3) and 3040.2(f)(2)(A) run counter to the *Gilman v. Brown* ruling. In *Gilman v. Brown*, Ninth Circuit Court ruled that inmates who have already appeared before BPH, were denied parole for a specified number of years (for example, 3, 5, or 7 years before their next scheduled parole suitability hearing), and were also given benchmarks to complete before appearing before the parole board again, can petition for an advance parole suitability hearing if those required benchmarks are met before the scheduled parole suitability hearing that was initially imposed.

Commenter states that these subsections effectively make the advanced hearing option unavailable and suggests amending the regulations to give priority for participation in the LTOP to those inmates who were denied parole at their last parole suitability hearing and are required to complete a treatment program before they can appear before the parole board again.

**Response 3D:** In developing this program, it was necessary to establish specific time frames for eligibility in order to maximize the use of limited resources. Inmates who were closest to their next parole suitability hearing received highest priority for placement. This was done to ensure that in the event an inmate was paroled at their hearing the inmate would have completed the LTOP and thus assist in reducing their chances of recidivating upon release.

Inmates with longer periods of incarceration left to serve prior to their next parole suitability hearing would have an opportunity to participate in the LTOP as they got closer to their scheduled hearings due to an increase in their priority level. The LTOP was developed to reduce an inmate's chances of recidivism upon release; it was not intended to assist inmates in getting an advancement to his/her next parole suitability hearing or to meet the BPH's parole suitability criteria.

**Comment 3E:** Commenter says that the State creates a liberty-property interest as BPH requires inmates to participate in specific treatment programs in order to meet its parole suitability criteria, yet the Department prohibits inmates from participating in the LTOP if they are not within one to five years from their next parole suitability hearing.

Commenter states that if an inmate is required to take a treatment program to gain his freedom, but is precluded from a program by a regulation, then that regulation is in violation of a liberty and property interest by making a rehabilitative program a requirement of freedom.

**Response 3E:** The Department recognizes the need to offer CBT programs specifically designed for inmates who are serving long term sentences and are required to participate in a BPH parole suitability hearing prior to release. However, as stated above, in developing the LTOP it was necessary to establish specific time frames for eligibility to maximize the use of limited resources. See also Response 3D.

#### **COMMENTER #4**

Commenter discusses the positive results of Assembly Bill (AB) 109-Committee on Budget: Criminal Justice Alignment (Chapter 15, Statutes of 2011). Commenter states that this Bill will save tax payers money that could instead be used for the benefit of our future society and our children. Commenter feels AB 109 gives hope to again for The American Dream.

Further, Commenter states that morality and civil commitment are only achieved through the chance for early education as it is the foundation for an individual's mind and skills. However, Commenter also acknowledges that there are individuals who can no longer be rehabilitated and states these individuals need to be re-instructed because they are not willing to improve and are only profiting from their actions, further burdening tax payers.

**Response 4:** Although the comment addresses an aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3), it is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by CDCR in refutation of or accommodation to the comment.

#### **COMMENTER #5**

Commenter states that inmates who have a current controlling case that is for a non-violent crime should be eligible for the same rehabilitative programs that are available to other inmates.

Commenter states that inmates who have a conviction for a "violent" crime, such as for violation of Penal Code (PC) section 290 (crimes for sexual offenses requiring sex offender registration) are not able to participate in certain rehabilitative programs, such as GED programs or other vocational rehabilitation programs, and explains that he has a conviction for violation of PC section 290 that is 20 years old, but that he is doing time for a drug conviction, (a non-violent crime), and as such should be allowed to participate in the rehabilitative programs offered to non-violent offenders and not be restricted to those rehabilitative programs that are offered to offenders of "violent" crimes.

**Response 5:** Please see Response 4.

#### **COMMENTER #6**

**Comment 6A:** Commenter states that the locations for the LTOP should be spread out between prisons and yards of various security levels so that prisoners who need access to these programs have access to the yards where the program is hosted.

Commenter notes that an LTOP was not established at a Level IV prison during the pilot stage, and that the proposed regulations do not specify the prisons that will provide the LTOP either.

**Response 6A:** Due to limited resources, the Department is not able to provide this program to all inmates who meet the criteria for placement. In determining the locations where the LTOP is provided, the Department considers the largest number of offenders who qualify for the program who are housed at a single location with similar custody requirements. The Department then takes into consideration the available space to run the program including classroom space for participants and contract staff. The third consideration is the negative impact to other programs already operating at a facility by introducing a new program that requires additional housing for the transfer of qualified inmates to and from that location. The vast majority of inmates who qualify for the LTOP are housed within Level II and Level III facilities. This is where the LTOPs have been established. Further expansion could occur in the future if funding is allocated to the Department.

The proposed regulations do not specify which prisons will have an LTOP due to the fact prisons change their missions, and funding for this program may also increase or decrease which could impact expansion or reduction of the number of LTOP sites. If prisons were identified in the regulations, a regulation change would be required prior to activating additional sites which would delay being able to provide therapeutic treatment if additional funding became available.

**Comment 6B:** Commenter states that inmates released from the Security Housing Unit (SHU) under the *Ashker v. Governor* Settlement Agreement were unjustly denied programming for years or decades, and states these inmates deserve equal, if not preferential, treatment and access to programming. Commenter states that instead these inmates are further punished for an additional 12-month period under the provisions of new subsection 3040.2(e)(2). Commenter states this subsection should be removed from the proposed regulations.

Subsection 3040.2(e)(2) states that inmates are excluded from participating in the LTOP if they have served a SHU term are not eligible to participate in the LTOP if less than 12 months have passed since their minimum eligible release date (MERD).

**Response 6B:** The LTOP is a rehabilitative program offered by the Department to inmates for their benefit under the authority of Title 15, subsection 3040.1(a) which states in part “*Prisons may establish Cognitive Behavioral Treatment (CBT) programs to provide evidence-based treatment services to inmates ...*.” This program is not a right and inmate candidate selection for participation in this program is selective, based in part on institutional safety and anticipated inmate success. An imposition of a SHU term occurs when an inmate’s disciplinary or disruptive behavior poses a serious safety and security risk to the institution if the inmate is left within the general population (GP). To ensure these inmates will successfully participate in the LTOP without disrupting the program and/or requiring removal, an observation period of 12-months from placement back into GP is required. This requirement ensures maximum use of limited resources.

**Comment 6C:** Commenter states that inmates who are given a suspended SHU term should have equal access to programming when they are placed back in general population and not have to wait to participate in the LTOP for a 12-month period.

Commenter states that if the officer does not think that a SHU term is appropriate for the disciplinary infraction and accordingly suspends the SHU term, the officer has the ability to impose a different disciplinary sanction instead of a SHU term, as listed in sections 3314-3315, which would not automatically exclude the inmate from participation in the LTOP.

**Response 6C:** A SHU term is imposed when an inmate's disciplinary or disruptive behavior poses a serious safety and security risk to the institution if the inmate is left within the general population. As provided in section 3341.5(a)(3), the Institution Classification Committee has the authority to suspend a SHU term and release the inmate to GP or to the Administrative Segregation Unit. However, as provided for in subsection 3341.6(a), the suspended SHU term can be re-imposed based on subsequent serious misconduct that occurred prior to the expiration of a previously established MERD. As previously stated in Response 6B, above, an imposition of a SHU term occurs when an inmate's disciplinary or disruptive behavior poses a serious safety and security risk to the institution if the inmate is left within GP. To ensure these inmates will successfully participate in the LTOP without disrupting the program and/or requiring removal, an observation period of 12-months from placement back into GP is required. This requirement ensures maximum use of limited resources.

**Comment 6D:** Commenter states that inmates who serve a standard SHU term (the term without additional incident) could still potentially be penalized beyond their original punishment time period because they are prohibited from participating in the LTOP for 12 months as provided for by subsection 3040.2(e)(2).

For example, Commenter states that an inmate with a three-month SHU term for misconduct who serves the term without additional incident would have a MERD of only 45 days, however under new subsection 3040.2(e)(2), the inmate would be prohibited from participating in the LTOP for a full 12-month period after their release from the SHU. Commenter notes that this time is equal to four times the length of the SHU term and states that this is not fair and also quite restrictive.

**Response 6D:** Please see Response 6B.