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December 17, 2018

**NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED
REGARDING NCR 18-05, TRANSFER OF PAROLE**

The full text of the California Code of Regulations regarding the Transfer of Parole is provided in its original single underline and strikethrough format. Changes to this original text, which are being proposed in this notice, are indicated by **bold double underline** for newly added text, and **bold ~~double strikethrough~~** for additionally deleted text to the originally proposed text. These proposed changes are being made available for public comment. The attached text contains the following changes:

Article 17.5: The title of the article is amended from “Transfer of Parole” to “Return and Transfer of Parole”. Prior to this renote, the regulation text used the term “transfer” only to refer to placement of a parolee into the community. However, the statute that these regulations are implementing, interpreting and making specific (Penal Code 3003), uses the terms “transfer” and “return”. In order to ensure consistency with statute, the text is amended to add the word “return”. For purposes of these regulations, the term “return” refers to an offender’s initial return to the community from prison. The term “transfer” refers to an offender already in the community who is being placed in another county.

Section 3741: The Note portion is updated with the correct authority and reference codes for consistency with provisions specified in Government Code 11349.1.

Section 3742: The Note portion is updated with the correct authority and reference codes for consistency with provisions specified in Government Code 11349.1.

Section 3743: The title of this section is changed from “Parole Transfer Outside the County of Last Legal Residence” to “Parole Return or Transfer to a County Other than the County of Last Legal Residence and Transfer to the County of Last Legal Residence” to be more consistent with PC Section 3003.

Section 3743(a): The word “returned” is added in place of “transferred” in the first instance of this subsection to be more consistent with PC Section 3003. The phrase “upon release” is added for further specificity and emphasis that an offender is “returned” to the community upon release from incarceration. The word “outside” is replaced with the phrase “a county other than” to be more clear and specific the county being referred to is different than the County of Last Legal Residence (CLLR). The phrase “while in the community” is added for further specificity and emphasis that when a parolee is moved from one county to another, whether from their CLLR to another county, or vice versa, they are considered “transferring”. The words “his or her” are removed and replaced with “their” to avoid limitations with gender specificity. Also, the Note portion is updated with the correct authority and reference codes for consistency with provisions specified in Government Code 11349.1.

Section 3743(b): This subsection is added to specify another circumstance in the process of transferring and returning to and from the CLLR. This subsection makes it clear that offenders in a county other than the CLLR can be “transferred” back to the CLLR.

Section 3743(c): This subsection was renumbered from 3743(b) to 3743(c) but is otherwise unchanged.

Section 3744: The title is changed from “Factors Considered For Transfer Outside the County of Last Legal Residence” to “Factors Considered for Return or Transfer to a County Other than the County of Last Legal Residence” to be more consistent with the purpose of the article and PC Section 3003. Also, the Note portion is updated with the correct authority and reference codes for consistency with provisions specified in Government Code 11349.1.

Section 37744(a): The word “return” is added to be more consistent with the scope of PC Section 3003. The word “another” is removed and replaced with the phrase “a county other than the CLLR” to be more clear and specific that the county referred to is different than the CLLR.

Section 3744(a)(6): Subsection 3744(a)(6) has been removed for lack of necessity and 3744(a)(7) is renumbered to 3744(a)(6).

Section 3745: The title is changed from “Transferred Offender Returned to the County of Last Legal Residence” to “Transfer or Return of Offender to the County of Last Legal Residence” to be more consistent with the purpose of the article and PC Section 3003. Also, the Note portion is updated with the correct Authority and reference codes for consistency with provisions specified in Government Code 11349.1.

Section 3745(a): The word “return” is added to be more consistent with the scope of PC Section 3003. The word “outside” is removed and replaced with the phrase “to a county other than the CLLR” to be more clear and specific that the county referred to is different than the CLLR.

Section 3745(b): The word “return” is added to be more consistent with the scope of PC Section 3003. The phrase “a county other than the CLLR” is added to be more clear and specific that the county referred to is different than the CLLR.

Section 3745(c): The language of this subsection is added to provide another provision for when a parolee is to be transferred to the CLLR from a county other than the CLLR.

Section 3745(d): This subsection is renumbered from 3745(c) to 3745(d). The words “or returned to a county other than” are added and the words “outside of” are removed to be more consistent with the scope of PC Section 3003 and to be more clear and specific that the county referred to is different than the CLLR. The word “transferred” is added to replace the word “returned” to be more consistent with the scope of PC Section 3003. The phrase “at any time” is removed for lack of clarity as to the duration of time after a parolee violates conditions to when they are actually transferred. The words “his or her” are removed and replaced with “their” to avoid limitations with gender specificity. The words “general or special” are added to be more specific of the types of conditions of parole. This section is also amended to more clearly and specifically state what factors a unit supervisor takes into consideration when deciding whether to transfer a parolee who violates their conditions of parole back to the CLLR.

Section 3745(d): This subsection is renumbered from 3745(d) to 3745(e). The words “outside of” are removed and replaced with the phrase “in a county other than” to be more clear and specific that the county referred to is different than the CLLR.

Section 3746: The title is changed from “County Closed to Parole Transfer” to “County Closed to Parole Return or Transfer” to be more consistent with the purpose of the article and PC Section 3003. Also, the Note portion is updated with the correct Authority and reference codes for consistency with provisions specified in Government Code 11349.1.

Section 3746(a)(2): The words “outside of his or her” is removed and replaced with the phrase “to counties other than their” to be more clear and specific that the county referred to is different than the CLLR. The words “Return”, “returns”, and “returning” are added in front of “transfer” to be more consistent with the scope of PC Section 3003. The word “intake” is removed and replaced with “import” to be consistent with the terms of the section.

Section 3746(a)(2)(C): This subsection is added to ensure an offender is not denied admittance into their CLLR even if the county is at or over the import ratio.

Section 3747: The title of this section is changed from “Parole Transfer to Another State” to “Parole Return or Transfer to Another State” to be more consistent with the purpose of the article and PC Section 3003. Also, the Note portion is updated with the correct Authority and reference codes for consistency with provisions specified in Government Code 11349.1.

Section 3747(a): The word “return” is added to be more consistent with the scope of PC Section 3003.

Section 3747(b): The word “return” is added to be more consistent with the scope of PC Section 3003.

Section 3748: The title of the section is changed from “Parole Transfers for Life Term Offenders Released to Parole” to “Parole Returns or Transfers for Life Term Offenders Released to Parole” to be more consistent and PC Section 3003. Also, the Note portion is updated with the correct Authority and reference codes for consistency with provisions specified in Government Code 11349.1.

Section 3748(a): The specific subsections of PC Section 3000 are added for clarity and specificity. PC Section 3000.1 is also added as a referenced code for more specificity in regards to board grants to parole. The word “return” is added to be more consistent with the scope of PC Section 3003.

Section 3748(a)(1): The word “return” is added to be more consistent with the scope of PC Section 3003.

Section 3748(a)(2): The word “return” is added to be more consistent with the scope of PC Section 3003.

ADDENDUM TO THE ISOR

New Subsection 3746(a) – 3746(a)(2) is adopted to define how the Department will give “consideration to the equitable distribution of parolees” as described in Penal Code (PC) 3003(i). In the mid 1990’s, county government officials and the local law enforcement departments within counties throughout California expressed concern with the number of offenders being released from prison to the county of commitment when the actual last legal residence of the offender was that of another county, in many cases the county of last legal residence was a neighboring county. During this time, the law required offenders to be returned to the county of commitment upon release from prison. Often offenders had to establish residence in the county of commitment which was not always the county of the offender’s last legal residence. Upon release from prison, many offenders are not immediately able to consistently secure life’s basic necessities such as food and shelter through lawful means without the assistance of local resources. County government officials and local law enforcement departments concerns were heard, leading to new legislation.

On September 17, 1996 the Governor of California signed Assembly Bill (AB) 614 into law. AB 614 amended PC section 3003 to require offenders paroling on or after January 1, 1997 to parole to their CLLR instead of their county of commitment. In addition, pursuant to PC Section 3058.6, if the inmate paroled to a county other than his or her county of last legal residence, the reason for alternate placement must be recorded on the notification to law enforcement agencies. AB 614 did not define “county of last legal residence”, nor did it provide any legislative intent to define that term and other related terms. Trying to comport with the provisions of PC 3003 (i) – (at the time it was (G)) – the Department defined that an equitable distribution of parolees with regards to out-of-county commitments should not exceed 5% as determined by Department Executives in conjunction with the Governor’s Office. This means that if the parolee population in a given county is 5% or higher than the number of parolees whose county of last legal residence is that county, the Department may deny the parolee’s transfer request regardless of other criteria. The decision was based on the parolee overall population statewide and the services and programs offered through the Department. The Department resources are limited based on the size, location, and population density within a county. The Department manages the parolee import export and overall population in all 58 counties. The 5% import/export ratio allows the Department to manage these resources at the same time affording parolees the opportunity to transfer to another county other than the CLLR without overburdening Department resources and the use of public assistance programs in one area.

This language is necessary to clearly define and to inform the general public, parolees, external stakeholders, and Department staff of the manner in which the Department gives consideration to PC section 3003(i), while providing reintegration services and maintaining public safety.

PUBLIC COMMENT PERIOD

The 15-day comment period on these changes shall close on January 4, 2019. Submit any comments to Ying Sun, Chief, Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA, 94283-0001, or by e-mail, at rpmb@cdcr.ca.gov before the close of the public comment period. Comments must be received no later than 5:00 p.m. on January 4, 2019.

You are receiving this notice because you provided a written comment or expressed an interest in receiving the notice of changes regarding this rulemaking action.

Only those comments relating directly to the changes that are indicated by **bold double underline** or **~~bold double strikethrough~~** will be considered.

Original Signed By:

YING SUN, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation

Attachment

TEXT OF PROPOSED REGULATIONS

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 Subchapter 6. Adult Parole is amended.

New Article 17.5 is adopted to read:

Article 17.5. **Return and** Transfer of Parole

3741 County of Last Legal Residence

3742 Determining the County of Last Legal Residence

3743 Parole **Return or** Transfer ~~Outside to a County Other than~~ the County of Last Legal Residence **and Transfer to the County of Last Legal Residence**

3744 Factors Considered ~~For~~ **Return or** Transfer ~~Outside to a County other than~~ the County of Last Legal Residence

3745 ~~Transferred or Return of~~ Offender **Returned** to the County of Last Legal Residence

3746 County Closed to Parole **Return or** Transfer

3747 Parole Transfer to Another State

3748 Parole Transfers for Life Term Offenders Released to Parole

Subchapter 6. ADULT PAROLE

New Article 17.5 is adopted to read:

Article 17.5. **Return and** Transfer of Parole

New Section 3741 is adopted to read:

3741. County of Last Legal Residence.

Pursuant to Penal Code (PC) Section 3003, all offenders released on parole shall be returned to the County of Last Legal Residence (CLLR). For the purposes of this Section, the CLLR is the last county in which an offender resided prior to incarceration for the commitment offense. If an offender has multiple commitment offenses, the most recent of the offenses shall be used to determine the CLLR. Offenses that occur in custody shall not be considered in determining the CLLR. For the purposes of this Section, custody is defined as being confined in State prison, local jail, or a State hospital for treatment.

Note: Authority cited: Section **5058, Penal Code. Reference:** 3003, Penal Code.

New Section 3742 and subsections 3742(a) through 3742(e) are adopted to read:

3742. Determining the County of Last Legal Residence.

(a) The Division of Adult Parole Operations (DAPO) determines the CLLR based on the last residence as recorded on the following documents, listed in order of precedence:

(1) The current Probation Officer's Report, as defined in Section 3000. If an address is not recorded, DAPO shall assess 3742(a)(2).

(2) If available, the sentencing transcript for the current commitment. If an address is not identified, DAPO shall assess 3742(a)(3).

(3) The arrest report for the current commitment offense. If an address is not recorded, DAPO shall assess 3742(a)(4).

(4) The abstract of judgment with the recorded county of commitment for the current commitment offense. For the purposes of this Section, the county of commitment is the county where the commitment offense occurred.

(b) The address designated as an offender's CLLR must be a complete address including a street number, street name, city name, and ZIP code.

(c) Incomplete addresses, ambiguous references to street intersections in lieu of a complete address, and addresses listed only by the name of a business shall not be considered when determining the CLLR.

(d) Post office boxes may be considered for rural areas if the parole unit responsible for that area confirms that only post office boxes are used.

(e) If all of the documents in Sections 3742(a)(1)-(4) list the offender as either transient or homeless, or fail to list a complete address, the offender shall be paroled to the county of commitment.

Note: Authority cited: Section **5058, Penal Code. Reference:** 3003, Penal Code.

New Section 3743 and subsections 3743(a) and 3743(b) are adopted to read:

3743. Parole Return or Transfer ~~Outside~~ to a County Other than the County of Last Legal Residence and Transfer to the County of Last Legal Residence

(a) Pursuant to PC Section 3003(b), **upon release** an offender may be ~~transferred~~ **returned** to ~~another~~ a county ~~outside of~~ **other than** the CLLR or **while in the community, transferred from their CLLR to a county other than the CLLR** to serve ~~his or her~~ **their** parole if it is in the best interest of the public, and DAPO determines placement in ~~another a county outside of~~ **other than** the CLLR is appropriate based on criteria as defined in subsections 3744(a)(1) through 3744(a)(~~7~~**6**).

(b) An offender may also be transferred back to their CLLR pursuant to section 3745.

~~(b)~~(c) If placed in a county other than the CLLR, the reasons shall be documented on the offender's CDCR Form 1650-D (Rev 06/12), Record of Supervision. Notification shall be made to the sheriff or chief of police, or both, and the district attorney, in the receiving county, pursuant to PC Section 3058.6(a). Notice shall be made on a CDCR Form 863 (Rev. 08/11), Notice of Release, which is incorporated by reference.

Note: Authority cited: Section 5058. Reference: Sections 3003 and 3058.6, Penal Code.

New Section 3744 and subsections 3744(a) through 3744(a)(7) are adopted to read:

3744. Factors Considered For Return or Transfer Outside to a County Other than the County of Last Legal Residence.

(a) For return or transfer to another a county other than the CLLR, DAPO shall consider the following factors to determine if such a return or transfer is appropriate:

(1) The need to protect the life or safety of a victim, a witness, the parolee, or any other person.

(2) Public concern that would reduce the chance of the offender's parole being successfully completed such as cases in which the offender's chances of successfully completing parole in the CLLR are greatly reduced due to the offender's criminal history, public recognition, family ties, career, or behavior in custody that has resulted in extensive media coverage, public interest, or high notoriety.

(3) The existence of a work offer or an educational/vocational training program.

(A) For the purposes of this Section, work offer is a conditional letter of employment, and work is permanent employment that may enable the offender to be financially self-sufficient. Short-term employment is not of sufficient duration to qualify.

(B) For the purposes of this Section, educational and vocational training are full-time programs that materially upgrade the offender's employment skills or education level.

(4) The existence of immediate family members, as defined in Section 3000, in another county with whom the offender has maintained strong ties.

(A) Upon proof of a biological relationship, on a case-by-case basis, DAPO may give consideration to other relatives that are not immediate family members if strong family ties have been maintained and the familial relationship would increase the chance of successful completion of parole. Documentation proving a biological relationship may include birth certificates, marriage certificates, or adoption records.

(5) The availability of necessary outpatient treatment programs for offenders receiving treatment pursuant to PC Section 2960.

~~(6) The residence prior to the CLLR was in another county and placement in that county would increase the chance of successful completion of parole.~~

(7) Availability for direct placement into a CDCR-funded community-based residential treatment program which shall be approved for transfer provided there are no victim or witness residence restrictions as recorded in the offender's special conditions of parole. CDCR-funded community-based residential treatment programs may include Female Offender Treatment and Employment Program, Residential Multi-Service Center, Parolee Service Center, and Specialized Treatment for Optimized Programming.

Note: Authority cited: Section 5058. Reference: Sections 2960 and 3003 Penal Code.

New Section 3745 and subsections 3745(a) through 3745(d) are adopted to read:

3745. ~~Transferred~~ Transfer or Return of Offender ~~Returned~~ to the County of Last Legal Residence.

(a) If ~~the a~~ transfer **or return** of an offender ~~outside to a county other than~~ the CLLR is based on placement into a CDCR-funded community-based residential treatment program, and the offender does not successfully complete the CDCR-funded community-based residential treatment program, the offender shall be ~~returned~~ **transferred** to the CLLR.

(b) If ~~the a~~ transfer **or return** of an offender **to a county other than the CLLR** is based on participation in an educational, employment, training, or a treatment program and the qualifying program is no longer offered within that county, the offender may be allowed to participate in a similar program in another county if one is available and provided there are no victim or witness residence restrictions as recorded in the offender's special conditions of parole or board-ordered conditions prohibiting placement in a specific county. The offender shall be ~~returned~~ **transferred** to the CLLR if no programs are available, or if the offender does not successfully complete the program.

(c) **The offender shall be transferred from a county other than the CLLR to the CLLR upon a new misdemeanor or felony criminal conviction.**

(d) At the discretion of the unit supervisor, an offender transferred **or returned to a county other than** ~~outside of~~ the CLLR may be ~~transferred~~ ~~returned~~ to the CLLR ~~at any time if~~ the offender violates ~~his or her~~ **their general or special** conditions of parole. **In determining whether to transfer an offender back to the CLLR after a violation of a general or special condition of parole, the unit supervisor shall consider the following factors:**

(1) **Seriousness of the violation.**

(2) **Victim related violation.**

(3) **Goals and progress performance while under supervision.**

(4) **Overall conduct while under supervision.**

~~(e)~~ If an offender successfully completes an educational, employment, training, treatment or a CDCR-funded community-based residential treatment program ~~outside of~~ **in a county other than** the CLLR, the offender shall be given the option to remain in that county provided the offender does not violate any condition of parole and has established an appropriate residence. A residence is considered appropriate as long as it does not cause the offender to violate his or her general or special conditions of parole or any other applicable statutory requirements. A residence found to be in violation of any condition of parole or applicable statutory requirement is not appropriate. The Department verifies a residence is appropriate and completes a CDCR Form 1658 (Rev. 6/11), Pre-Parolee Residence/Employment Verification, which is incorporated by reference.

Note: Authority cited: Section **5058**. Reference: **Section** 3003, Penal Code.

New Section 3746 and subsections 3746(a) through 3746(a)(2)(B) are adopted to read:

3746. County Closed to Parole Return or Transfer.

(a) Pursuant to PC Section 3003(i), DAPO shall give consideration to the equitable distribution of offenders serving parole in a particular county.

(1) In order to give consideration to the equitable distribution, DAPO shall observe a five percent offender return or transfer limitation.

(2) DAPO shall monitor county import and export ratios of offenders released for parole supervision and ~~returning or transferring outside of his or her~~ **returning or transferring to counties other than their** CLLRs. ~~Return and Transfer~~ imports shall not exceed an additional five percent of the total number of active parolees under the jurisdiction of CDCR who are required to be paroled to a particular CLLR. Any county that has an import ratio of five percent shall be closed to **returns and** transfers and shall not reopen for ~~intake import~~ until the import ratio is below five percent except in the following circumstances:

(A) The Board of Parole Hearings orders the placement of an offender released as a result of a board grant.

(B) Direct Placement of an offender into a CDCR-funded community-based residential treatment program.

(C) The county is the CLLR of an offender, and they are not returning or transferring to a county other than the CLLR pursuant to section 3743(a).

Note: Authority cited: **Section 5058. Reference:** Sections 3003 ~~and 5054~~, Penal Code.

New Section 3747 and subsections 3747(a) and 3747(b) are adopted to read:

3747. Parole Return or Transfer to Another State.

(a) Pursuant to PC Section 3003(j), an offender may be **returned or** transferred to another state to serve his or her parole.

(b) Before CDCR **returns or** transfers an offender to another state, the offender shall be in compliance with PC Section 11177.2.

Note: Authority cited: **Section 5058. Reference:** Sections 3003, ~~5054~~, and 11177.2, Penal Code.

New Section 3748 and subsections 3748(a) through 3748(a)(2) are adopted to read:

3748. Parole Returns or Transfers for Life Term Offenders Released to Parole.

(a) In addition to Sections 3741 through 3747, if an offender is released as a result of a board grant to parole pursuant to PC Sections ~~3000(b)(1) and (3), and PC Section 3000.1~~, the following shall apply when considering the **return or** transfer of the offender's parole.

(1) If the offender requests to serve his or her parole in a different county other than the CLLR, any previous BPH order or recommendation for parole placement must be amended or vacated prior to **return or** transfer if an order or recommendation exists. In addition, there must be no

victim or witness concerns, as documented on the offender's special conditions of parole, in the desired county.

(2) Parole **return or** transfer for offender cases released as a result of a board grant and accepted by the Interstate Compact for an out-of-state transfer of parole must be reviewed by BPH in order to be granted placement in the desired state. If the parole **return or** transfer is granted, the offender must have any previous BPH orders or recommendations for parole placement amended or vacated prior to the **return or** transfer, and DAPO shall ensure there are no victim or witness concerns within the desired state, as documented on the offender's special conditions of parole.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections ~~646.9, 667.5,~~ 3003(a), 3003(b)(5), 3003(b)(5)(d), 3003(i), 3003(j), ~~3058.6,~~ **and** 11177.2, ~~12022.7, 12022.9, and 12022.53,~~ Penal Code.