

**State of California
Office of Administrative Law**

In re:
Department of Corrections and
Rehabilitation

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections: 3498.1, 3498.2

Amend sections: 3043, 3043.5

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6, and Penal Code Section 5058.3**

OAL Matter Number: 2021-1123-02

**OAL Matter Type: Emergency Operational
Necessity (EON)**

This action is an Emergency by Operational Necessity, pursuant to Penal Code section 5058.3. The Department adopts regulations to define youth offenders and establish criteria for calculating their Youth Parole Eligible Date (YPED). It further amends regulations to allow the YPED of a youth offender inmate to be advanced based on Educational Merit Credit.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code, and section 5058.3 of the Penal Code.

This emergency regulatory action is effective on 1/1/2022 and will expire on 6/11/2022. The Certificate of Compliance for this action is due no later than 6/10/2022.

Date: December 13, 2021



Thanh Huynh
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Kathleen Allison, Secretary
Copy: Sarah Pollock

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW
EMERGENCY SUBMISSION

EMERGENCY

For use by Secretary of State only

STD. 400 (REV. 10/2019)

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|------------------|---------------------------------|-----------------------------------------|---------------------------------------|
| OAL FILE NUMBERS | NOTICE FILE NUMBER Z- | REGULATORY ACTION NUMBER 2021 | EMERGENCY NUMBER 1123-02EON |
|------------------|---------------------------------|-----------------------------------------|---------------------------------------|

For use by Office of Administrative Law (OAL) only

OFFICE OF ADMIN. LAW
2021 NOV 23 AM 10:32

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

DEC 13 2021

2:47 pm

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)

21-11

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 | ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn | | NOTICE REGISTER NUMBER | PUBLICATION DATE | |

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

| | |
|------------------------------------------------------------|----------------------------------------------------------|
| 1a. SUBJECT OF REGULATION(S) Youth Parole Eligible Date | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) |
|------------------------------------------------------------|----------------------------------------------------------|

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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 3498.1, 3498.2 |
| AMEND 3043, 3043.5 |
| TITLE(S) 15 |
| REPEAL |

| | | | |
|---------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| 3. TYPE OF FILING | | | |
| <input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) | <input 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"/> Emergency Readopt (Gov. Code, §11346.1(h)) | <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) |
| <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) | <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) | <input type="checkbox"/> File & Print | <input type="checkbox"/> Print Only |
| <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) | <input checked="" type="checkbox"/> Other (Specify) <u>Emergency Op. Necessity, PC 5058.3</u> | | |

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)

| | | | |
|-----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|
| 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 checked="" type="checkbox"/> Effective other (Specify) <u>Der agency request 1/1/2022</u> |

| | | | |
|--------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|---------------------------------------------|--|
| 6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY | | | |
| <input checked="" 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 Sarah Pollock | TELEPHONE NUMBER 916 445-2308 | FAX NUMBER (Optional) | E-MAIL ADDRESS (Optional) sarah.pollock@cdcr.ca.gov |
|------------------------------------|----------------------------------|-----------------------|--------------------------------------------------------|

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.

| | | |
|----------------------------------------------------------------------------------------|--|--------------------|
| DocuSigned by: SIGNATURE OF AGENCY HEAD OR DESIGNEE Jeffrey Macomber | | DATE 11/19/2021 |
| PRINTED NAME AND TITLE OF SIGNATORY JEFF MACOMBER, Undersecretary, Operations, CDCR | | |

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 13 2021

Office of Administrative Law

TEXT OF PROPOSED REGULATIONS

In the following text, ~~strikethrough~~ indicates deleted text; underline indicates added text.

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

Chapter 1. Rules and Regulations of Adult Operations and Programs

Article 3.3. Credits

3043. Credit Earning.

[Subsections 3043(a) through (e) are unchanged]

[New subsection 3043(f) is adopted to read:]

(f) The award of Educational Merit Credits as set forth in section 3043.5, shall also advance an inmate's Youth Parole Eligible Date as specified in subsection 3043.5(g). Good Conduct Credit, Milestone Completion Credit, Rehabilitative Achievement Credit, Extraordinary Conduct Credit, and Minimum Security Credit as set forth in sections 3043.2, 3043.3, 3043.4, 3043.6, and 3043.7 of this article shall not advance an inmate's Youth Parole Eligible Date.

Note: Authority cited: Cal. Const., art. 1, sec 32(b); and Sections 5054 and 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a)(2); and Sections 3041, 3051, 3058.6 and 3058.9, Penal Code.

3043.5. Educational Merit Credit.

[Subsections 3043.5(a) and 3043.5(b) are unchanged]

[Subsection 3043.5(c) is amended to read:]

(c) Credit for each category listed in subsection (b) shall only be awarded once to an inmate's release date or initial parole consideration hearing date, as described in subsection 3043(a), and once to an inmate's Youth Parole Eligible Date as described in subsection 3043(f) and 3043.5(g), upon proof the diploma, certificate, or degree was conferred during the inmate's current term of incarceration. Educational Merit Credit for achieving a high school diploma or high school equivalency as approved by the California Department of Education shall not be awarded to inmates already possessing a high school diploma, approved equivalent, or college degree prior to the date the inmate was received in prison for his or her current period of incarceration. Educational Merit Credit shall not be awarded for an associate, bachelor, or post-graduate degree, unless the

inmate earned at least 50 percent of the units necessary for that degree while serving his or her current term, the degree was conferred by an educational institution accredited by an accrediting agency approved by the United States Department of Education, and the inmate arranged for an official, sealed copy of their transcript to be sent by the educational institution directly to the Principal at the inmate's institution. Credit for such degrees shall be effective on the date the credit is entered into the department's information technology system. Commencing May 1, 2019, inmates who earned a High School Diploma or High School Equivalency that was entered into the Department's information technology system on or after August 1, 2017, through April 30, 2019, shall be awarded an additional 90 calendar days of credit.

[Subsections 3043.5(d) through (f) are unchanged.]

[New subsection 3043.5(g) is adopted to read:]

(g) Effective January 1, 2022, the award of Educational Merit Credit as set forth in this section shall also advance an inmate's Youth Parole Eligible Date as described in Title 15, Division 2, subsection 2441(b), and Title 15, Division 3, subsection 3498.2(b), except when one or both of the following applies:

(1) The inmate is a youth offender sentenced to life without the possibility of parole as described in Title 15, Division 2, subsection 2440(b), and Title 15, Division 3, subsection 3498.1(b).

(2) The inmate has been previously scheduled for an initial parole consideration hearing.

[New subsection 3043.5(h) is adopted to read:]

(h) Notwithstanding subsection 3043.5(g), commencing January 1, 2022, Educational Merit Credit entered into the department's information technology system on or after August 1, 2017 shall be applied to advance an inmate's Youth Parole Eligible Date pursuant to section 2441, subsections (b)(1)-(3) of Title 15, Division 2, and section 3498.2, subsections (b)(1)-(3) of Title 15, Division 3. Educational Merit Credit forfeitures do not affect the application of earned Educational Merit Credit in the Youth Parole Eligible Date calculation.

Note: Authority cited: Cal. Const., art. 1, sec. 32 (b); and Sections 5054 and 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a)(2); and Sections 2053.1, and 3041, and 3051(j) Penal Code.

Subchapter 5.5. Parole Consideration

[New Article 3 is adopted to read:]

Article 3. Parole Consideration for Youth Offenders

[New section 3498.1 is adopted to read:]

3498.1. Youth Offender Defined.

(a) A youth offender is an inmate who meets all of the following criteria:

(1) The inmate was convicted of a controlling offense that was committed before the inmate attained 26 years of age;

(2) The inmate was sentenced to a determinate term or a term of life with the possibility of parole for the inmate's controlling offense; and

(3) The inmate is currently incarcerated for the controlling offense or group of offenses that includes the controlling offense.

(b) Notwithstanding (a), a youth offender is also an inmate who meets all of the following criteria:

(1) The inmate was convicted of a controlling offense that was committed before the inmate attained 18 years of age;

(2) The inmate was sentenced to a term of life without the possibility of parole for the inmate's controlling offense; and

(3) The inmate is currently incarcerated for the inmate's controlling offense or group of offenses that includes the controlling offense.

(c) For purposes of determining whether an inmate qualifies as a youth offender, the "controlling offense" is the single crime or enhancement for which any sentencing court imposed the longest term of imprisonment.

(d) Notwithstanding subsections (a) and (b), inmates who meet one or more of the following criteria are excluded from the definition of a youth offender:

(1) The inmate is sentenced to death;

(2) The inmate is sentenced to a term of life without the possibility of parole for an offense committed after the inmate attained 18 years of age;

(3) The inmate was sentenced on the controlling offense for a prior felony conviction under Penal Code section 1170.12 or Penal Code section 667, subsections (b) through (i);

(4) The inmate was convicted of any offense after attaining 26 years of age for which “malice aforethought” is a necessary element of the offense; or

(5) The inmate, after attaining 26 years of age, committed an additional crime for which the inmate is sentenced to a term of life in prison.

(e) If two or more crimes or enhancements carry identical sentence lengths and are the inmate's longest terms of imprisonment, the controlling offense shall be determined as follows:

(1) If none of the sentences were imposed under Penal Code section 1170.12, or Penal Code section 667, subsections (b) through (i), the controlling offense is whichever offense the inmate committed first in time.

(2) If one sentence was imposed under Penal Code section 1170.12, or Penal Code section 667, subsections (b) through (i), the controlling offense is that offense.

(f) If a sentence is imposed on a crime under Penal Code sections 1170.12, or Penal Code section 667, subsections (b) through (i), but the crime is not the controlling offense, the inmate is a youth offender notwithstanding subsection (d) of this section.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 667, 667.61, 1170.12, 1213, 2900, 2900.5, 2901, 3051 and 5054, Penal Code.

[New section 3498.2 is adopted to read:]

3498.2. Youth Offender Determinations.

(a) The department's Correctional Case Records Services determines whether an inmate qualifies as a youth offender as defined in section 3498.1 of this article, and calculates Youth Parole Eligible Dates (YPED) for all inmates who qualify as youth offenders. For purposes of this article, both determinations are referred to as “youth offender determinations.”

(b) A YPED is the earliest date on which a youth offender is eligible for a youth offender parole consideration hearing under Penal Code section 3051, subsection (b). A youth offender's YPED is set according to the following criteria:

(1) If the controlling offense is a determinate term of any length, the YPED is the first day after the youth offender has completed 14 continuous years of incarceration;

(2) If the controlling offense is an indeterminate term of less than 25 years to life, the YPED is the first day after the youth offender has completed 19 continuous years of incarceration;

(3) If the controlling offense is an indeterminate term of 25 years or more to life, the YPED is the first day after the youth offender has completed 24 continuous years of incarceration; or

(4) If the controlling offense is a term of life without the possibility of parole for a crime committed prior to reaching the age of 18, the YPED is the first day after the youth offender has completed 24 continuous years of incarceration.

(c) For purposes of subsection (b) of this section, "incarceration" means detention in any city or county jail, local juvenile facility, mental health facility, Division of Juvenile Justice facility, department facility, or facility designated by the Secretary, California Department of Corrections and Rehabilitation, pursuant to Penal Code section 2900.

(d) Youth offender determinations are subject to the department's Inmate Appeal Process under Article 1 of subchapter 5.1 of Chapter 1 of Division 3 of this title.

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 1213, 2900, 2900.5, 2901, 3051, and 5054, Penal Code.