



Department of Corrections and Rehabilitation
NOTICE OF CHANGE TO REGULATIONS

Sections: 3043, 3043.5, 3498.1, and 3498.2	NCR Number: 22-05	Publication Date: March 18, 2022
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INSTITUTION POSTING AND CERTIFICATION REQUIRED

This Notice announces the proposed amendment of sections 3043 and 3043.5, and the proposed adoption of sections 3498.1 and 3498.2 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, regarding Youth Parole Eligible Date.

PUBLIC COMMENT PERIOD

The public comment period will close on **May 2, 2022**. Any person may submit written comments about the proposed regulations by mail to the California Department of Corrections and Rehabilitation (CDCR), Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, or by e-mail to RPMB@cdcr.ca.gov. All written comments must be received or postmarked no later than **May 2, 2022**.

POSTING

This Notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each department facility and field office not later than five calendar days after receipt. Also, institutions and facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies, and shall distribute it to inmate law libraries and advisory councils. CDCR Form 621-A (Rev. 05/19), Certification of Posting, shall be returned to RPMB by mail or email. See Department Operations Manual Section 12010.6.7 for posting and certification of posting procedures.

CONTACT PERSON

Inquiries regarding this Notice should be directed to S. Pollock, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2308, or e-mail to RPMB@cdcr.ca.gov. Inquiries regarding the subject matter of these regulations should be directed to Marilyn Ouye, Division of Adult Institutions, Case Records Unit, at (916) 445-3716.

Original signed by:

JEFF MACOMBER
Undersecretary, Operations
California Department of Corrections and Rehabilitation

Attachments

NOTICE OF PROPOSED REGULATIONS
California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or Department), proposes to amend sections 3043 and 3043.5, and adopt sections 3498.1 and 3498.2, into Title 15, Division 3, Chapter 1, regarding Youth Parole Eligible Date (YPED).

PUBLIC COMMENT PERIOD

The public comment period begins **March 18, 2022** and closes on **May 2, 2022**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to rpmb@cdcr.ca.gov, before the close of the comment period. For questions regarding the subject matter of the regulations, call the program contact person listed below.

No public hearing is scheduled for these proposed regulations; however, pursuant to Government Code Section 11346.8, any interested person or their duly authorized representative may request a public hearing, no later than 15 days prior to the close of the written comment period.

CONTACT PERSONS

Primary Contact

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Program Contact

Marilyn Ouye
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AUTHORITY AND REFERENCE

Government Code Section 12838.5 provides that commencing July 1, 2005, CDCR succeeds to, and is vested with, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of abolished predecessor entities, such as Department of Corrections, Department of the Youth Authority, and Board of Corrections.

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations. **PC Section 5050** provides that commencing July 1, 2005, any reference to the Director of Corrections in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR. **PC Section 5055** provides that commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR. **PC Section 5058** authorizes the Director to prescribe and amend rules and regulations for the administration of prisons and for the administration of the parole of persons. **PC Section 5058.3** authorizes the Director to certify in a written statement filed with the Office of Administrative Law that operational needs of the Department require adoption, amendment, or repeal of regulation on an emergency basis.

PC Section 3051 subdivision (j), provides that the Secretary of the Department of Corrections and Rehabilitation may authorize persons described in paragraphs (1), (2), and (3) of subdivision (b) to obtain an earlier youth parole eligible date by adopting regulations pursuant to subdivision (b) of Section 32 of Article 1 of the California Constitution.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Penal Code section 3051(j) authorized the Secretary of the department to adopt regulations allowing youth offenders to earn credits, as determined by the department, to advance their YPEDs and obtain an earlier initial parole consideration hearing date. The proposed regulations will broaden the range and availability of credit-earning opportunities to specified youth offenders who complete educational programs. With the expansion of credit earning opportunities for youth offenders, the department aims to incentivize inmates' participation in educational programming, encouraging rehabilitation, thereby protecting and enhancing public safety.

Additionally, Penal Code section 3051 sets forth the criteria for a youth offender determination, which is currently codified in California Code of Regulations, Division 2, Board of Parole Hearings regulations, sections 2440 and 2441. To establish better clarity for inmates and the public in determining when an inmate qualifies as a youth offender, and to provide a reference in Division 3 regulations for Case Records staff when making a youth offender determination, the proposed regulations adopt new sections 3498.1 and 3498.2, Youth Offender Criteria, and Youth Offender Determinations into Division 3, Adult Institutions, Programs, and Parole regulations.

This action will:

- Allow for the application of Educational Merit Credit (EMC) towards a YPED, for youth offenders as specified in Penal Code section 3051(b)(1), (2) and (3).
- Specify that EMC credit shall be awarded once to an inmate's YPED.
- Establish an effective date of January 1, 2022 for the award of EMC as set forth in section 3043.5, with retroactivity from August 1, 2017.
- Provide the exclusionary criteria for awarding EMC to a YPED (as delineated in Penal Code section 3051(j)).
- Specify that EMC forfeitures will not affect the application of EMC in the YPED calculation.
- Provide a reference within Division 3 regulations for Youth Offender Criteria and Youth Offender Determinations.

DOCUMENTS INCORPORATED BY REFERENCE

N/A

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The proposed regulations will incentivize rehabilitation for youth offenders, and will benefit our criminal justice system and our communities by creating opportunities for youth offender inmates to improve academically while incarcerated. These regulations enhance public safety by encouraging youth offender inmates to pursue educational opportunities and make personal preparation for the transition to supervised release in the community upon release. Providing incentives to youth offender inmates to engage in educational programming also reduces inmate disciplinary misconduct and violence in the prisons, yielding safer conditions for inmates and a safer workplace for staff.

Successful implementation of these regulations will help reduce overcrowding in state prisons and aid the department in keeping its inmate prison population below court-ordered thresholds. Furthermore, by maintaining the inmate population below the federal court cap, the department and the State avoid the possibility of indiscriminate court-ordered early releases of prisoners. Establishing a durable remedy to prison overcrowding can eventually lead to the end of federal court intervention and substantial savings from reduced litigation costs.

Additionally, the proposed regulations will define who qualifies as a youth offender, and benefits all stakeholders by resolving ambiguities and clarifying how to determine whether an inmate will qualify for a youth parole consideration hearing.

EVALUATION OF INCONSISTENCY / INCOMPATIBILITY WITH EXISTING LAWS AND REGULATIONS

Pursuant to Government Code 11346.5(a)(3)(D), the department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the department has concluded that these are the only regulations that concern the Youth Parole Eligible Date (YPED).

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 - 17630.

FISCAL IMPACT STATEMENT

- Cost to any local agency or school district requiring reimbursement:None
- Cost or savings to any state agency: The California Department of Corrections and Rehabilitation budget was increased as follows: Fiscal Year (FY) 2020/2021 - \$504,000; FY 2021/2022 - \$589,000; FY 2022/2023 and ongoing - \$280,000.
- Cost or savings in federal funding to the state:None
- Other nondiscretionary cost or savings imposed on local agencies:None

EFFECT ON HOUSING COSTS

The department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The department has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations place no obligations or requirements on any business.

EFFECT ON SMALL BUSINESSES

The department has determined that the proposed regulations will not affect small businesses. This action has no significant adverse economic impact on small businesses because they place no obligations or requirements on any business.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing, jobs or businesses within California, or affect the expansion of businesses currently doing business in California. The proposed regulations add the opportunity for an earlier YPED through achievement of EMC, and clarify youth offender eligibility criteria and determinations, therefore any impact to jobs will only be within the department. Expanding the EMC application will result in an increase in workload. The department will need to hire at least one two-year limited-term Correctional Case Records Administrator to coordinate the implementation of the EMC for YPEDs. The department has determined that the proposed regulation will have no effect on worker safety or the state’s environment. These regulations may benefit the welfare of California residents by enhancing public safety through incentivizing rehabilitation of youth offender inmates. Rehabilitation through

educational opportunities will aid youth offenders in their transition to supervised release in the community upon release.

CONSIDERATION OF ALTERNATIVES

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. Interested persons are invited to present statements or arguments with respect to any alternatives to the changes proposed during the written comment period or at a scheduled hearing should one be scheduled.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the department's contact person. The proposed text, ISOR, and Notice of Proposed Regulations will also be made available on the department's website: www.cdcr.ca.gov.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the department may adopt the proposed regulations substantially as described in this Notice. If the department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the department adopts, amends or repeals the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

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, and Extraordinary Conduct Credit as set forth in sections 3043.2, 3043.3, 3043.4, and 3043.6 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.

INITIAL STATEMENT OF REASONS

INTRODUCTION AND PROBLEM STATEMENT

On November 8, 2016, Proposition 57, the Public Safety and Rehabilitation Act of 2016, was approved by California voters. This proposition authorized the California Department of Corrections and Rehabilitation (CDCR or department) to develop regulations to award credits earned for good behavior and approved rehabilitative or educational achievements.

On May 1, 2018, in compliance with Proposition 57, the department enacted regulations that provided inmates the ability to earn credits for Good Conduct, Milestone Completion, Rehabilitative Achievement, Educational Merit, and Extraordinary Conduct. For a determinately-sentenced inmate, earned credits reduce an inmate's Earliest Possible Release Date (EPRD). For an indeterminately-sentenced inmate, earned credits reduce their Minimum Eligible Parole Date (MEPD), which can advance their initial parole consideration hearing date.

Most determinately-sentenced inmates are released under their EPRD and many indeterminately-sentenced inmates become eligible for their initial parole consideration hearing date through their MEPD. Both determinately and indeterminately-sentenced inmates, however, can also become eligible for an initial parole consideration hearing before the Board of Parole Hearings (BPH or Board) if they qualify as a youth offender under Penal Code (PC) section 3051.

Pursuant to California Code of Regulations, Division 2, section 2441(b) a Youth Parole Eligible Date (YPED) is the earliest date on which a youth offender is eligible for a youth offender parole consideration hearing under PC section 3051(b), unless they are eligible for earlier release or an initial parole consideration hearing under other law. Regulations, as initially enacted pursuant to Proposition 57, did not advance a youth offender's YPED by application of program credits because PC section 3051, as previously written, did not allow for the reduction of a YPED through credits.

On January 1, 2020, Assembly Bill (AB) 965 amended PC section 3051 to add subsection (j), which permitted the Secretary of the department to adopt regulations allowing youth offenders to earn credits, as determined by the department, to advance their YPEDs and obtain an earlier initial parole consideration hearing date. PC section 3051(j), excluded PC section 3051(b)(4) "persons convicted of a controlling offense that was committed before the person had attained 18 years of age, and sentenced to life without the possibility of parole," from eligibility to obtain an earlier youth parole eligible date.

The Secretary's authority to award credits under Proposition 57 includes a grant of broad rulemaking authority to "adopt regulations in furtherance of these provisions." (Cal. Const., Article 1, Section 32(b).) The purpose and intent statement of Proposition 57 commits the department and the people of California to prevent federal courts from

indiscriminately releasing prisoners, and to stop the revolving door of crime by emphasizing rehabilitation. Further, as noted above, with the passage of AB 965 the department was granted specific authority with respect to authorizing credits towards a YPED.

In keeping with the stated goals of Proposition 57 and the subsequent direction of AB 965, the department proposes to broaden the range and availability of credit-earning opportunities to specified youth offenders who complete educational programs. With the expansion of credit earning opportunities for youth offenders, the department aims to incentivize inmates' participation in educational programming, encouraging rehabilitation, thereby protecting and enhancing public safety.

California Code of Regulations, Title 15, Division 2, section 2441 refers to CDCR, Correctional Case Records Services to determine whether an inmate qualifies as a youth offender as defined in this section. The proposed regulations include the addition of regulations to provide clarity on youth offender criteria, qualifications and determinations.

OVERVIEW AND GENERAL NECESSITY

These regulations are necessary to implement, interpret, and make specific the new provision of PC section 3051, subsection (j), which authorizes the department to adopt regulations allowing specified youth offenders to earn credits to advance their YPEDs and obtain an earlier initial parole consideration hearing date.

Subsection (j) left the determinations of whether to offer credits toward a YPED as well as which credits to allow, to the discretion of the department. Under this authority, the department proposes to revise sections 3043 Credit Earning, and 3043.5 Educational Merit Credit (EMC), to amend the inmate credit earning rules to allow specified credits to advance a youth offender's YPED.

When an inmate is admitted to state prison, the department's Correctional Case Records Services uses the Strategic Offender Management System (SOMS) to document details about the incoming inmate, such as the inmate's sentence and any pre-sentence credits. For an indeterminately-sentenced inmate, an MEPD is generated, and the inmate is eligible for parole consideration one year before their MEPD. For a determinately-sentenced inmate, an EPRD is generated, indicating the date on which the inmate's determinate sentence is completed and the inmate will be released. SOMS routinely adjusts both the MEPD and EPRD throughout an inmate's incarceration depending on credits gained and lost over the course of an inmate's incarceration. Under current law, MEPDs and EPRDs can both be advanced by the application of various credits inmates can earn based on good conduct, educational or programming achievements, or other positive institutional behavior.

Both determinately-sentenced inmates and indeterminately-sentenced inmates may be eligible for a youth offender parole consideration hearing if they were under 26 at the time of their commitment offense. Youth offenders have a YPED calculated based on their

sentence and pre-sentence credits. The YPED will be used to schedule a youth offender's initial parole consideration hearing if it results in the earliest opportunity for a parole consideration hearing. Under PC section 3051, subsection (a)(2)(C), if the YPED gives an inmate their earliest opportunity for release, their initial parole consideration hearing is scheduled within six months following their YPED.

The determination of whether an inmate qualifies as a youth offender and the subsequent calculation of a qualified youth offender's YPED are performed by the department's Correctional Case Records Services. BPH is then responsible for timely scheduling the inmate's initial parole consideration hearing. Correctional Case Records Services' calculation of the YPED and BPH's scheduling of the inmate's initial hearing is conducted through the Board's Information Technology System (BITS). BITS provides the functionality for the department's staff to determine the inmate's qualification as a youth offender and calculate the youth offender's YPED. Once a YPED is calculated, BPH uses BITS to schedule youth offenders for their initial parole consideration hearing. Prior to AB 965, the YPED was not subject to advancement from credit earning. Thus, the YPED is currently a static date and BITS is only programmed to calculate it based on the amount of time the youth offender is required to serve under California Code of Regulations, Title 15, section 2441, subsection (b), less any applicable pre-sentence credits.

Following AB 965's authorization for the department to offer credit earning toward a YPED to obtain an earlier initial parole consideration hearing date, the department determined that allowing specified credits to advance a YPED so a youth offender could obtain an earlier initial parole consideration hearing date would incentivize youth offenders to engage in positive rehabilitative conduct. However, the department also needed to balance the goal of incentivizing youth offenders with the operational need to eliminate fluctuation of the YPED that could occur due to credits earned or lost. Scheduling and planning for a parole consideration hearing take six months. Specifically, as part of scheduling a parole consideration hearing, BPH conducts a comprehensive risk assessment of the inmate, appoints counsel, generates all statutorily required hearing notifications, and schedules any necessary reasonable accommodations. As such, dynamic credit accrual and forfeiture applied to the YPED would potentially create significant issues for scheduling and completing the aforementioned requirements necessary for a youth offender's initial parole consideration hearing.

For these reasons, the proposed regulations' application of EMC in the YPED calculation will not be affected by credit losses or restorations. In contrast, other credits described in the department's regulations, such as Good Conduct, Milestone Completion, Rehabilitative Achievement, Extraordinary Conduct, and Minimum Security could apply multiple times per year and are subject to broader credit forfeitures, both of which inject significant uncertainty into operational scheduling. The department determined that applying the EMC to an inmate's YPED best harmonizes the intent of PC section 3051(j) to allow youth offenders to earn credits to advance their YPEDs while also considering the operational needs of the department and the BPH. Although EMCs are earned less frequently than other program credits, when applied they will advance an inmate's YPED each time the EMC is earned.

The department determined that implementation of the revised EMC credit earning program will begin January 1, 2022, but will retroactively award credits for youth offender inmates who have completed educational programs as described in section 3043.5(h). The date of January 1, 2022 was selected because it will allow logistical implementations that are needed to begin the new process.

In addition to the proposed revisions to sections 3043 and 3043.5 regarding credit earning, the proposed regulations include the adoption of new Article 3, Parole Consideration for Youth Offenders, under Subchapter 5.5, Parole Consideration, to add new sections 3498.1 and 3498.2, Youth Offender Defined, and Youth Offender Determinations. Although these new sections mirror Title 15, Division 2, sections 2440 and 2441, which establish the youth offender definition and youth offender determinations, because the process of determining an inmate as a youth offender, and calculating the YPED is a process performed by the department's Division of Adult Institutions (DAI), Correctional Case Records Services, it is necessary to establish this language in the Division 3 regulations.

Correctional Case Records Services determines if the inmate qualifies as a youth offender and sets the YPED. In order for DAI, Correctional Case Records Services to reference the youth offender determination criteria within Title 15, Division 3, when making youth offender determinations, it is necessary to add these new sections to Title 15, Division 3.

Since both entities (DAI and BPH) use the information provided within sections 2440 and 2441 these new sections will provide a reference within DAI's regulations to support DAI's Correctional Case Records Services' youth offender determination when responding to grievances, appeals, and litigation. Additionally, establishing this language within Division 3 will provide inmates with the information, as inmates within the institutions do not receive copies of Division 2 regulations, but do receive copies of Division 3 regulations. This will provide better clarification for inmates and the public to determine when an inmate qualifies as a youth offender.

RULEMAKING AUTHORITY

With the passage of Proposition 57, Article 1 of the California Constitution was amended to include Section 32, subsection (b), which states, "The Department of Corrections and Rehabilitation shall adopt regulations in furtherance of these provisions, and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety." Additionally, AB 965 recently amended PC section 3051 to include subsection (j), which states, "The Secretary of the Department of Corrections and Rehabilitation may authorize persons described in paragraphs (1), (2), and (3) of subdivision (b) to obtain an earlier youth parole eligible date by adopting regulations pursuant to subdivision (b) of Section 32 of Article 1 of the California Constitution." Accordingly, the Secretary has been granted broad authority under the California Constitution and the PC to adopt, amend, or repeal regulations in furtherance

of the goals of Proposition 57 and AB 965 and hereby invokes that provision of law in support of this rulemaking action and affirmatively certifies that these regulations do protect and enhance public safety.

CONSIDERATION OF ALTERNATIVES

The department must determine that no reasonable alternatives considered, or that has otherwise been identified and brought to the attention of the department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the youth offender credit earning implementation of AB 965.

Currently, no reasonable alternatives have been brought to the attention of the department that would alter the department's initial determination.

Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the proposed changes at the scheduled hearing or during the written comment period.

ECONOMIC IMPACT ASSESSMENT

In accordance with Government Code section 11346.3(b), the department has made the following assessments regarding the proposed regulations:

Significant Adverse Economic Impact on Business

The department has made an initial determination that the proposed regulations will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the department's initial determination. The proposed regulations affect the internal management of the department, and place no requirements or restrictions on businesses.

Creation of New or Elimination of Existing Jobs within the State of California

The department believes the proposed regulations will have no significant impact on the creation of new, or elimination of existing jobs within the State of California. The proposed regulations add the opportunity for an earlier YPED through achievement of EMC, and clarify youth offender eligibility criteria and determinations, therefore any impact to jobs will only be within the department.

Expanding the EMC application will result in an increase in workload. The Department will need to hire at least one two-year limited-term Correctional Case Records Administrator to coordinate the implementation of the EMC for YPEDs.

Creation of New, Expansion, or Elimination of Existing Businesses Currently Doing Business within the State of California

The department believes the proposed regulations will not have an impact on the creation of new, expansion, or the elimination of existing businesses currently doing business within the State of California, including the ability of California businesses to compete with businesses in other states, because private businesses are not significantly affected by the management of correctional facilities.

Benefits to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The department has determined the proposed regulations may have a positive impact on the health and welfare of California residents, worker safety, and the environment, by reducing prison overcrowding.

BENEFITS OF THE REGULATIONS

The proposed regulations will incentivize rehabilitation for youth offenders, and will benefit our criminal justice system and our communities by creating opportunities for youth offender inmates to improve academically while incarcerated. These regulations enhance public safety by encouraging youth offender inmates to pursue educational opportunities and make personal preparation for the transition to supervised release in the community upon release. Providing incentives to youth offender inmates to engage in educational programming also reduces inmate disciplinary misconduct and violence in the prisons, yielding safer conditions for inmates and a safer workplace for staff.

The proposed regulations will provide a reference within DAI's regulations to support Correctional Case Records Services' determination when responding to grievances, appeals, and litigation, and will codify within Title 15, Division 3, the youth offender definition and determination.

Successful implementation of these regulations will help reduce overcrowding in state prisons and aid the department in keeping its inmate prison population below court-ordered thresholds. Furthermore, by maintaining the inmate population below the federal court cap, the department and the State avoid the possibility of indiscriminate court-ordered early releases of prisoners. Establishing a durable remedy to prison overcrowding can eventually lead to the end of federal court intervention and substantial savings from reduced litigation costs.

MATERIALS RELIED UPON

The department has not relied upon any technical, empirical, or theoretical report, study, or similar document.

SPECIFIC PURPOSE AND RATIONALE FOR EACH PROPOSED REGULATORY SECTION PER GOVERNMENT CODE 11346.2(b)(1)

Subsection 3043(f) is adopted to establish that the EMC that currently advances an inmate's release date or initial parole consideration hearing date pursuant to PC section 3041(a)(2), shall also advance a qualified youth offender's YPED, as described in California Code of Regulations, Title 15, section 3043.5, subsection (g). This credit earning program will allow youth offender inmates who seek educational opportunities while in prison to advance their YPED. This section also makes clear that other credits, as described in sections 3043.2, 3043.3, 3043.4, and 3043.6 will not advance an inmate's YPED. As explained above, due to the preliminary requirements for initial parole consideration hearings, limiting the YPED credits to the EMC is necessary to achieve a level of certainty in the timing and scheduling of a youth offender's initial parole consideration hearing.

Subsection 3043.5(c) is amended to add language regarding the application of Educational Merit Credit, stating that it shall only be applied once to an inmate's release date or initial parole consideration hearing date, and once to an inmate's Youth Parole Eligible Date. The limited application of EMC is necessary to allow for stability within the scheduling system and provide inmates and others involved in the parole consideration hearing process more certainty regarding when a youth offender's initial parole consideration hearing will occur. The language "as approved by the California Department of Education" is removed for consistency with the Program and Credit Earning regulations, which are removing this language. As stated in those regulations, new federal regulations no longer use regional or national terms to refer to an accrediting agency, since the United States Department of Education holds all accrediting agencies to the same standard. A minor capitalization revision of the word "Department" to "department" is made to align language in the California Code of Regulations with that of the California Style Manual.

Subsection 3043.5(g) is adopted to provide qualified youth offender inmates an opportunity to earn EMCs in order to advance their YPED. Previously, EMCs were only used to advance an inmate's EPRD or MEPD. Allowing EMCs to advance an inmate's YPED provides youth offenders with the opportunity to obtain an earlier initial youth offender parole consideration hearing. This language is necessary to effectuate the legislative intent of AB 965 to create incentives for qualified youth offenders to engage in rehabilitative efforts when their YPEDs provide their earliest initial parole consideration hearing. Specifically, prior to the enactment of AB 965, if youth offenders were entitled to their earliest hearing in accordance with their YPED, they had no mechanism through which to advance that hearing date, regardless of any positive achievements. By amending this section to apply EMC to a YPED, youth offenders who undertake rehabilitative efforts to increase their education may now advance their YPED to obtain an earlier initial parole consideration hearing date. The selection of EMC for this purpose is also necessary to best achieve AB 965's goal of rehabilitative incentive for youth offenders because these credits require substantial time and investment from the inmate to earn. Specifically, EMCs are awarded to inmates who achieve a general education

development certificate, high school diploma, college-level degree, post-graduate degree, or certain professional certificates. These achievements recognize the inmate's sustained commitment to their educational development, increase prospects for their employment, and reduce their risk of recidivism. By extending this credit to apply towards an inmate's YPED, the department intends to encourage more inmates to not only engage in educational programs, but also increase the percentage of inmates who complete them with a certificate, diploma, or degree.

Limiting the application of credit toward a YPED to EMC is necessary to balance the rehabilitative goals of AB 965 with the operational needs of the department and the BPH for certainty with respect to scheduling hearings, due to the pre-hearing preparation requirements for each hearing. In contrast, with Good Conduct, Milestone, Rehabilitative Achievement, Extraordinary Conduct, and Minimum Security Credit, EMCs may only be awarded once per level of educational achievement or level of degree earned and are awarded only at the completion of a lengthy and significant rehabilitative effort. Having a credit apply once would allow stability within the scheduling system and provide inmates and others involved in the parole consideration hearing process more certainty regarding when a youth offender's initial parole consideration hearing will occur. Applying EMC credits to a YPED allows more stability for scheduling purposes, and it increases predictability of when a youth offender's initial parole consideration hearing will be scheduled, which is necessary to allow youth offenders to best prepare for their initial parole consideration hearings.

An effective date of January 1, 2022 was selected in order to allow logistical implementations that are needed to begin this process. The prospective date represents the need for hiring staff, updating information technology systems, calculating an updated YPED, and auditing release date calculations, while still balancing the goal of initiating these changes quickly. This date represents the earliest date on which the department and BPH can feasibly make all necessary staffing and technology changes and complete all preliminary audits to fully implement this new credit earning process.

Subsection 3043.5(g)(1) is adopted to clarify that inmates who were sentenced to life without the possibility of parole will not receive the EMC to advance their YPED. This exception is necessary to retain compliance with PC section 3051, as amended by AB 965. Specifically, under PC section 3051, qualified "youth offenders" include inmates sentenced to life without the possibility of parole for an offense they committed prior to reaching age 18. These inmates do not receive EPRDs or MEPDs due to the nature of their sentence, but do receive YPEDs under section 3051 that entitle them to parole consideration hearings during their 25th year of incarceration. However, under AB 965, newly added subsection (j) of section 3051 excluded any inmates who have a YPED but are otherwise sentenced to life without the possibility of parole. At the direction of subsection (j), these regulations are adopted to reflect the exclusion of youth offenders with YPEDs who are serving a sentence of life without the possibility of parole.

Subsection 3043.5(g)(2) is adopted to clarify that, if a youth offender has already received an initial parole consideration hearing, applying the EMC to their YPED would

have no effect in advancing their initial parole consideration hearing, as it has already occurred. This exception is necessary to avoid the waste of public resources. Specifically, if a youth offender has already received their initial parole consideration hearing, the hearing cycle has begun and parole eligibility dates no longer have an impact on when future hearings will be scheduled. Instead, future subsequent hearings must be scheduled in accordance with the statutory denial periods contained in PC section 3041.5, subsection (b)(3). Consequently, recalculating the YPED would be a waste of department and BPH resources because the recalculation would have no effect on the timing of a youth offender's initial parole consideration hearing, nor would it advance any future hearings. Thus, to avoid waste of public resources, eliminating the YPED recalculation for any youth offenders who have already received their initial hearing is necessary.

Subsection 3043.5(h) is adopted to explain when the application of EMCs will begin taking place. This subsection also explains that these credits will be applied retroactively to a youth offender's YPED, which is the same way inmates had retroactive EMCs applied to their MEPD when section 3043.5 went into effect in 2018. Additionally, this subsection explains that EMC forfeiture will not affect the application of earned EMC in the YPED calculation. This subsection is necessary to balance the goal of advancing a YPED with the operational need to eliminate fluctuation of the YPED that could occur due to credits earned or lost. Specifically, as part of scheduling a parole hearing, BPH conducts a comprehensive risk assessment of the inmate, appoints counsel, generates all statutorily required hearing notifications, and schedules any necessary reasonable accommodations. As such, dynamic credit accrual and forfeiture applied to the YPED would potentially create significant issues for scheduling and completing the aforementioned requirements necessary for a youth offender's initial parole consideration hearing. An effective date of January 1, 2022 was selected in order to allow logistical implementations that are needed to begin this process. As explained above, the prospective date represents the need for hiring staff, updating information technology systems, calculating an updated YPED, and auditing release date calculations. Moreover, this retroactivity provision is limited to EMCs that are awarded on or after August 1, 2017, to align with the department's implementation of the current regulations for awarding EMCs, as stated in California Code of Regulations, Title 15, section 3043.5, subsection (b).

Section 3498.1 is adopted to define who qualifies as a youth offender. The definition will be used by DAI Correctional Case Records Services to determine if an inmate qualifies as a youth offender under PC section 3051. The proposed regulation will provide clarity to staff, inmates, and the public about how to determine if an inmate properly qualifies as a youth offender under PC section 3051. The proposed regulation will provide within DAI's regulations the youth offender definition.

The proposed regulations will clarify for staff, inmates and the public that different criteria apply when determining whether an inmate sentenced to a term of life without the possibility of parole for a controlling offense qualifies as a youth offender, as opposed to an inmate sentenced to a term of life with the possibility of parole, or a determinate term

for a controlling offense, specifically, the age at which an inmate committed the controlling offense. The proposed regulation will provide the definition provided by PC section 3051 for the convenience of staff, inmates, and the public reviewing the entire regulatory scheme governing the qualification of youth offenders, and verifying the veracity of an inmate's qualification or disqualification as a youth offender.

The reference to inmates sentenced to one-strike sex offenses under PC section 667.61 being disqualified as youth offenders, is not included in the proposed regulations, as the legality of this provision is currently in question. The appellate court in *People v. Edwards* (2019) 34 Cal.App.5th 183 determined that this exclusion was unconstitutional because it treated single sex offenses worse than single murders in violation of Equal Protection. This case was appealed to Cal. Supreme Court but was denied review and, thus, became current law. Following this case, neither CDCR nor the BPH is currently enforcing this provision at this time.

Additionally, it is necessary to interpret the statutory disqualification in PC section 3051, subsection (h), for offenses sentenced under California's strike-sentencing laws, to apply only when the strike is attached to the controlling offense, so as to harmonize the statutory language and best carry out the intended purpose of the youth offender laws and their exemptions. Specifically, in accordance with statutory construction laws, the department determined that, by using the word "cases" for this exemption, instead of "individuals" as used in the exemption for crimes committed after age 26 in the same subsection, the legislature must have intended this word to have a different meaning than the word "individuals." Thus, the department could not interpret this disqualification to apply to any individual who had ever been convicted of a strike. In reviewing the remaining possible interpretations for the word "cases," the department notes that the statute deliberately allowed for youth offenders to commit additional crimes after reaching age 26, so long as the post-26 crimes did not involve malice aforethought and did not result in a sentence for a term of life or for a term of sufficient length to become the inmate's new controlling offense. The department determined that interpreting the word "cases" in subsection (h) of PC section 3051 in this manner, in relation to "controlling offense," as defined in PC section 3051, subsection (a)(2)(B), best captured the intent and purpose of this disqualifying exemption.

For clarity purposes, section 3498.1, subsection (c), specifies PC section 3051(a)(2)(B) which defines the term "controlling offense" to assist staff, inmates, and the public in understanding youth offender definitions.

Based on the information above regarding PC 3051, subsection (h), the department deemed it necessary in subsection (d) of section 3498.1 of these proposed regulations, to clarify the criteria that will exclude an inmate from the definition of a youth offender.

In section 3198.1, subsection (d)(1) the proposed regulations clarify that inmates sentenced to death are disqualified from the youth offender process and receiving youth offender parole consideration hearings, because interpreting the statute as providing youth offender consideration to inmates sentenced to death would be antithetical to the

statute as a whole. As the legislature explicitly amended PC section 3051 through SB 394 to provide youth offender consideration for specified inmates sentenced to life without the possibility of parole, but did not do so for inmates sentenced to death, it would not be a reasonable interpretation of the statute to allow for qualification of any inmates sentenced to death as a youth offender. Thus, the department found it necessary to make it clear for the public, inmates, and staff that inmates sentenced to death could not qualify as a youth offender, regardless of what age they committed the offense for which they were sentenced to death.

As mentioned above, SB 394 amended PC section 3051 to include specified inmates sentenced to life without the possibility of parole in the definition of a youth offender. In section 3498.1, subsection (d)(2), the proposed regulations clarify and make specific PC section 3051, subsection (h), that inmates with a sentence of life without the possibility of parole for an offense committed after the inmate attained the age of 18 are excluded from the youth offender definition.

Section 3498.1, subsection (d)(3) specifies that an inmate will be disqualified from youth offender status if their controlling offense for a prior felony conviction was sentenced under PC section 1170.12 or PC section 667, subsections (b) through (i). The department chose to include this portion in the same subsection where the department clarified the other factors that will disqualify an otherwise qualified youth offender from youth offender status based on the provisions of PC section 3051.

The youth offender exclusionary criteria outlined in section 3498.1, subsections (d)(4) and (d)(5) are explained above in the specifics outlining PC section 3051, subsection (h).

Establishing in section 3498.1, subsection (e), of the proposed regulations the department's process for identifying the controlling offense when an inmate has two or more offenses with identical longest sentence lengths, is necessary to provide guidance for staff, inmates, and the public about how to resolve these cases. This is particularly important if one offense would qualify the inmate as a youth offender, but others appear to disqualify the inmate. Because of the inclusive nature of the youth offender statute, the department determined that, as a general rule, the offense committed first in time should serve as the controlling offense as this best captures the legislative allowance for a youth offender to commit additional crimes, so long as the crimes are not increasing in severity. However, to also capture the disqualification of an inmate whose controlling offenses were sentenced under one of the disqualifying strike-sentencing laws, the department found it necessary to retain that exemption such that, if one of the tied longest offenses is sentenced under the strike-sentencing laws, that offense will be identified as the controlling offense and the inmate will be disqualified from youth offender status.

Additionally, the department found it necessary to include subsection (f) in section 3498.1 of the proposed regulations to make it clear for the public, inmates, and staff that an inmate is not disqualified from the youth offender parole process merely by being sentenced under the strike sentencing laws.

Section 3498.2 is adopted to establish youth offender determinations within Title 15, Division 3, and to provide a reference within DAI's regulations to support DAI's Correctional Case Records Services' youth offender determinations.

Identifying in section 3498.2, subsection (a), that the department's Correctional Case Records Services is responsible for determining which inmates qualify as a youth offender, and calculating a youth offender's YPED, is necessary so that inmates, the public, and staff are aware of the process through which youth offender determinations are made, and who to contact should they believe there is an issue with a youth offender determination. Further, clarifying that both determinations referenced in subsection (a) will be referred to as "youth offender determinations" is necessary because this allows the department to communicate how these determinations may be challenged throughout the rest of the proposed regulations without being overly redundant and difficult to comprehend.

Also in the interest of clarity and simplicity, the department found it necessary to define the earliest date on which a youth offender is eligible for a youth offender parole consideration hearing as specified by PC section 3051, subsection (b). Using the acronym "YPED" in section 3498.2, subsection (b) of the proposed regulations provides for consistency with how the department is identifying these dates.

Establishing the process for calculating a YPED in section 3498.2, subsection (b), is necessary to clarify the calculation for department staff, inmates, and the public. Specifically, since section 3051, subsection (b), established the maximum date for a youth offender to begin receiving hearings as being "during" the 15th, 20th, or 25th year of incarceration, the department determined that youth offenders first become eligible for hearings after completing 14, 19, or 24 years, since this is when an inmate's 15th, 20th, or 25th year of incarceration begins to run. Moreover, since the BPH needs to track the date on which youth offenders first become eligible for hearings under the youth offender laws, establishing the YPED at the completion of 14, 19, or 24 years is necessary to provide the BPH with proper tracking so that the BPH can establish scheduling requirements in relation to that eligibility date.

The department further deemed it necessary to define "incarceration" in subsection (c) of section 3498.2 of the proposed regulations, as required by PC section 3051, subsection (a)(2)(A), to clarify the calculations outlined in subsections 3498.2 (b)(1)-(4).

Since youth offender determinations regarding eligibility and YPED calculations are handled by the department, directing inmates to the department's appeal process in subsection (d) of section 3498.2 of the proposed regulations is necessary to inform inmates of the proper remedy for seeking redress when they believe errors were made. This will clarify the methods through which inmates may seek administrative remedy if they feel they were improperly disqualified or their YPED was incorrectly calculated, and is necessary to provide inmates with proper due process.