

**REGULATION AND POLICY MANAGEMENT BRANCH**

P.O. Box 942883  
Sacramento, CA 94283-0001



May 27, 2022

**NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED**

You are receiving this notice because you provided comments or expressed an interest in receiving notice of changes to the California Department of Corrections and Rehabilitation amendments to the California Code of Regulations concerning Youth Parole Eligible Date.

Notice of Change to Regulations 22-05 was noticed to the public on March 18, 2022. The full text of the originally proposed amendments is shown in its original single underline and ~~striketrough~~ format. The changes provided in this 1st Notice of Change to Text as Originally Proposed are indicated by **bold double underline** for additional added text, and ~~**bold double striketrough**~~ for additional deleted text to the originally proposed text.

In the attached text:

Subsection 3043.5(g) is amended to remove the language “one or both of the following applies,” and delete subsections 3043.5(g)(1) and (2). Language in subsection 3043.5(g)(2) is deleted to continue incentivizing inmates’ participation in educational programming and encouraging rehabilitation, thereby protecting and enhancing public safety. After being scheduled for an initial parole consideration hearing, the inmate’s youth parole eligible date would continue to be advanced with the application of earned educational merit credit and result in an earlier hearing unless the youth offender is entitled to an earlier parole hearing under another provision of law. Therefore, as a result of the deletion of subsection 3043.5(g)(2), language in subsection 3043.5(g)(1) is combined with subsection 3043.5(g).

The comment period on these changes shall close on June 12, 2022. Please submit comments to Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA, 94283-0001; fax to (916) 324-6075; or e-mail to [rpbm@cdcr.ca.gov](mailto:rpbm@cdcr.ca.gov) before the close of the comment period. Only those comments relating directly to the enclosed changes will be considered.

Ying Sun, Associate Director  
Regulation and Policy Management Branch  
Department of Corrections and Rehabilitation

Attachment(s)

## 15-DAY RE-NOTICE TEXT OF PROPOSED REGULATIONS

In the following, **double underline** indicates additional text and **~~double strikethrough~~** indicates additional deleted text to the originally proposed text presented in the original single underline and strikethrough format.

### 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:~~ **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).**

~~(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.