

**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 CERTIFICATE OF
COMPLIANCE**

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

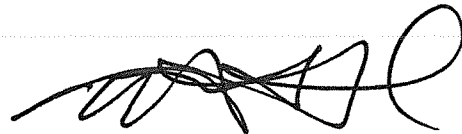
OAL Matter Number: 2022-0831-03

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

In this certificate of compliance, the Department makes permanent its emergency regulations which adopted definitions for youth offenders and established criteria for calculating their Youth Parole Eligible Date (YPED). It also amends regulations to allow the YPED of a youth offender inmate to be advanced based on Educational Merit Credit.

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

Date: October 13, 2022



**Thanh Huynh
Senior Attorney**

**For: Kenneth J. Pogue
Director**

**Original: Kathleen Allison, Secretary
Copy: Sarah Pollock**

CERT

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-2022-0304-01	2022-0831-03	

For use by Office of Administrative Law (OAL) only

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

OCT 13 2022
1:59 PM

OFFICE OF ADMIN. LAW
2022 AUG 31 PM 3:01

NOTICE	REGULATIONS
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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 Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE	
	2022, 11-Z	3/18/2022	

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) 2021-1123-02EON, 2022-0511-01EON
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
15	3498.1, 3498.2
	AMEND
	3043, 3043.5
	REPEAL

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 Resubmittal of disapproved or withdrawn nonemergency filing (Gov.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

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
 May 27, 2022 to June 12, 2022 per agency 10/13/2022

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs. title 1, §100)
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input 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	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
Sarah Pollock	916 445-2308		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.

SIGNATURE OF AGENCY HEAD OR DESIGNEE	DATE
	8-16-22
TYPED NAME AND TITLE OF SIGNATORY	
JEFF MACOMBER, Undersecretary, Operations	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

OCT 13 2022

Office of Administrative Law

FINAL TEXT OF ADOPTED REGULATIONS

In the following, changes will appear in underline and ~~strikethrough~~ format, which indicates additional added text, and additional deleted text to the currently approved emergency 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, ~~and Minimum Security 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, 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.

FINAL STATEMENT OF REASONS

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

UPDATES TO THE INITIAL STATEMENT OF REASONS:

On December 13, 2021, emergency regulations concerning Youth Parole Eligible Date were approved by the Office of Administrative Law (OAL), and effective on January 1, 2022, with an expiration date of June 11, 2022.

On March 18, 2022, the Notice of Proposed Regulations for Youth Parole Eligible Date (YPED) was published, which began the public comment period. The department's Notice of Change to Regulations (NCR) #22-05 was also mailed the same day to individuals who had requested to be on the department's mailing list for regulation changes. In addition, they were posted on the California Department of Corrections and Rehabilitation (CDCR) internet website, and copies posted in CDCR institutions. The department received 832 written comments, which are included below under *Summaries and Responses to the Written Public Comments Received During the Initial Comment Period*. Per commenter request, a public hearing was held on May 10, 2022. There were no commenters at the public hearing.

On May 24, 2022, an emergency readoption of the regulations was approved by OAL and effective on June 11, 2022. This readoption extended the period of emergency authority to September 10, 2022.

After publication of the Notice of Proposed Regulations, it was determined that additional changes to the proposed regulations were necessary. The department determined that ending the application of the Educational Merit Credit (EMC) to the YPED once the inmate is scheduled for an Initial Parole Consideration Hearing (IPCH) could potentially negatively impact the inmate by the inmate having to serve a longer period of time. An inmate is eligible for an IPCH based on the parole eligibility date which affords the earliest IPCH. Once granted parole by the Board of Parole Hearings the inmate would be eligible for release on the earliest parole eligible date. The application of EMCs to a YPED after the scheduling of an IPCH based on a Minimum Eligible Parole Date, could potentially result in the YPED becoming the earlier parole eligible and release date. Therefore the department determined removing 3043.5(g)(2) was necessary. The amendments to the originally proposed text and the reasons for these revisions are explained below under the heading *Notice of Change to Text as Originally Proposed – Re-Notice*. The Notice of Change to Text as Originally Proposed (Re-Notice) was distributed on May 27, 2022 to those who provided comments during the public comment period, and was posted on the department's website the same day. The department accepted public comments from this date through June 12, 2022. No comments were received regarding the Re-Notice changes during this period.

DETERMINATION:

The department has determined that no alternative considered 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 action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law, than the action proposed. This determination was reached by a consensus of the department's Division of Adult Institutions.

Except as set forth and discussed in the summary and response to the comments received, no other alternatives have been proposed or otherwise brought to the department's attention that would alter the department's decision.

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.

NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED – RE-NOTICE:

Subsection 3043.5(g) was 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) was 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 will 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. As a result of the deletion of subsection 3043.5(g)(2), language in subsection 3043.5(g)(1) was combined with subsection 3043.5(g).

SUMMARIES AND RESPONSES TO THE WRITTEN PUBLIC COMMENTS RECEIVED DURING THE INITIAL COMMENT PERIOD:

Commenter #1

Comment 1A: I would like you to modify the proposed subsection 3043(f) to include Milestone Completion Credit (MCC), Rehabilitation Achievement Credit (RAC), and Extraordinary Conduct Credit (ECC) to advance an inmate's initial YPED made retroactive to 1/1/20 when AB 965 was passed. The purpose of AB 965 is to incentivize youth offenders to engage in positive rehabilitation programs. MCC, RAC, and ECC are the measure of rehabilitative conduct in CDCR.

Response 1A: Assembly Bill (AB) 965 amended Penal Code (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 Youth Parole Eligible Date (YPED) and obtain an earlier initial parole consideration hearing date. Subsection (j) left the determination 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 proposed to revise California Code of Regulations (CCR) section 3043, and 3043.5, to expand a youth offender's credit earning to include application of EMC to advance a youth offender's YPED. As explained in the ISOR, due to 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, scheduling and preparation of a youth offender's initial parole consideration hearing, while at the same time providing incentives to youth offender inmates to engage in educational programming and positive rehabilitative conduct.

Comment 1B: The proposed regulation argues that giving these credits would inject too much uncertainty into scheduling the YPED, as these dates change multiple times per year. This ignores the fact that all indeterminately sentenced inmates (excluding LWOPs) already earn all of these credits through regulations from Prop 57 and undergo all the same processes and scheduling issues that youth offenders do, such as risk assessments, appointment of counsel, and notifications. There is no reason youth offenders cannot be granted these credits as well.

Response 1B: Prior to AB 965, the YPED was not subject to advancement from credit earning. The YPED was a static date. AB 965 authorized the advancement of an inmate's YPED and initial parole consideration hearing with the application of earned EMCs. As specified in the ISOR, the department also needs to balance the goal of incentivizing youth offenders with the operation need to limit the fluctuation of the YPED. Good Conduct Credit (GCC), MCC, RAC, EMC and ECC could apply multiple times per year to a Minimum Eligible Parole Date (MEPD) and are subject to credit forfeitures and restoration, which already inject uncertainty into operational scheduling. Applying GCC, MCC, RAC and ECC to the YPED calculation would further increase scheduling issues. The application of EMC to an inmate's YPED best harmonizes the intent of PC section 3051(a) to allow youth offenders to earn credits to advance their YPEDs while also considering the operational needs of the department and the Board of Parole Hearings (BPH).

Commenter #2

Comment 2A: The original enactment of Prop 57 included many categories of credits since the voters' intent was to provide comprehensive incentives for good behavior and approved rehabilitative or educational achievements. AB 965's intent is to extend to the YPED Prop 57's incentive structure, as application to the MEPD (in many cases well after the YPED) often provides no meaningful opportunity for potential advancement of an initial parole consideration hearing, thereby violating the voters' original intent in approving Prop 57. CDCR's stated intent is to incentivize youth offenders to engage in

positive rehabilitative conduct. Unfortunately, the present proposal is minimally incentivizing as CDCR will exclude all credits except EMC. This restriction is not in principle due to CDCR's determination that only the EMC should be applied to the YPED, but is rather due to potential operational issues in planning and scheduling hearings. One alternative implementation of AB 965 is to apply all credit categories arising from Prop 57 to the original (i.e. sentence plus pre-sentence credits) YPED calculation, at which point no new credits are applicable to the YPED due to operational needs. The YPED in BITS, currently static, must be reprogrammed in any case to allow for potential changes due to the EMC application. It is technically feasible to embed any dynamic credit accrual/forfeiture calculations within a conditional branch, allowing for their execution if and only if the time remaining until the original YPED is greater than one year. If one year or less remains until the original YPED, no accrual calculations occur. There are important details I have considered, but here omit for time's sake. I grant that handling all these details is not as straightforward as my comments suggest, however for experienced programmers the matter is tractable. This alternative implementation of AB 965 comports with the latter's purpose while allowing for CDCR's operational needs in planning and scheduling initial parole consideration hearings.

Response 2A: The Public Safety and Rehabilitation Act of 2016 (Proposition 57) was overwhelmingly approved by California voters on November 8, 2016. Pursuant to this proposition, the California Constitution was amended to include Section 32 of Article 1. Subdivision 32(a)(2) reads as follows: *(2) Credit Earning: The Department of Corrections and Rehabilitation shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements.* This provision of law gives CDCR explicit authority. Through AB 965, the department was granted specific authority with respect to authorizing credits to be applied towards a YPED. AB 965 states in part: The Legislature recognizes that it is within the full discretion of the Secretary of the Department of Corrections and Rehabilitation to determine what, if any, credit earning programs shall apply to an incarcerated person, including any and all credits to advance a YPED. Under this authority, the department is amending CCR section 3043 and 3043.5, to authorize the application of EMC to advance a youth offender's YPED.

Commenter #3

Comment 3A: With the passing of AB 965, it gave CDCR authority to apply milestones and credits to advance a youth offender parole date. CDCR is only applying education merit credit of 6 months (1 time only). I think this is unfair and not in line with the purpose of AB 965. CDCR is saying only education merit credit is worthy of applying to our YPED. In my case, I was a gang member on drugs. So if I change my life for the better, then why can't rehabilitative achievement credits like Criminal Gang-Members Anonymous, Narcotics Anonymous, Alcoholics Anonymous, or any vocation completion be applied to advance a YPED? CDCR is implying that all other good we do or positive change we accomplish doesn't matter. This is unfair and not in line with AB 965. Any vocation completion, college milestones, and RAC credits should also be applied to advance our YPED. It just doesn't make sense for CDCR to not award our milestones for attending a gang self-help group, when my case was gang related, or narcotics anonymous groups

when I had a drug problem. Please reconsider applying milestone credits for any vocation completion, college credits of 1 week per 3 units, and maybe certain self-help groups that help change our life.

Response 3A: 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. Subsection (j) left the determination 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 CCR section 3043 and 3043.5, to expand a youth offender's credit earning to include application of EMC to advance a youth offender's YPED. As explained in the ISOR, due to 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, scheduling and preparation of a youth offender's initial parole consideration hearing while at the same time providing incentives to youth offender inmates to engage in educational programming and positive rehabilitative conduct.

Although GCC, MCC, RAC and ECC are not applied to advance a YPED, pursuant to CCR section 3043(a) they are applied in the calculation of an inmate's earliest possible release date (EPRD) or Minimum Eligible Parole Date (MEPD) and provide inmates incentive to engage in positive rehabilitation. Good conduct and program participation and completion are factors the BPH takes into consideration when determining parole suitability.

Commenter #4

Comment 4A: Commenter requests a public hearing.

Accommodation: Full accommodation.

Response 4A: A public hearing was held on May 10, 2022.

Commenters #5 through #13 are duplicative (9 duplicates)

Comment 5-13A: I write on behalf of myself and Families United to End Life Without Parole (FUEL). We support all 5 of CDCR's inmate credit earning to be utilized. All 5 credit categories incentivize rehabilitative efforts and decrease violence against other incarcerated persons and staff. Credit earning is a key incentive for individuals to engage in rehabilitative pursuits. Incentivizing rehabilitation keeps our communities safe, and these regulations are based on research that demonstrates the effectiveness of this approach.

Response 5-13A: See Response to Comment 3A.

Comment 5-13B: CDCR releases an average of 125,000 returning citizens annually. This one aberration should not discount the rehabilitative success of thousands of others. The BPH has a success rate of 98%. This one tragic incident should not be used to decide or detract us from the reality of that success. Though it is rare that returning citizens fail after BPH suitability hearings, the question should be, what did CDCR do for those men when they were inside? Call the media out for not contextualizing the situation. We rely on the media to investigate and give the public the full, informed picture. We must start reporting the truth.

Response 5-13B: Although the above comment does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the department in refutation of or accommodation to the comment.

Commenters #14 through #62 are duplicative (49 duplicates)

Comment 14-62A: Youth offenders need to have all credits applied to their Youth Parole Eligibility Dates (YPED). It does not make any sense to pick and choose what should or should not apply. The current draft violates the intent and purpose of AB 965 as passed by legislators. Short term administrative burden is not an acceptable reason to limit this expansion of credit application. CDCR needs to apply all credits earned toward YPED if the YPED is the earliest date.

Response 14-62A: See Response to Comment 1A.

Personalized Duplicate Comments (included in the 49 duplicates above)

Duplicate Commenters #14 and #19

Comment 14/19A: AB 965 directly impacts me. I've worked hard to earn all of my credits. I believe all my credits should be applied to my Youth Offender Date.

Response 14/19A: See Response to Comment 3A.

Duplicate Commenter #21

Comment 21A: I was 18 years old at the time of my crime. My YPED is in 2032 on my 24th year of incarceration. However, my Elderly Parole Eligibility Date is in 2035. Both my YPED and EPED are three years apart. Even the EPED requires a person to be in prison for 20 years. If I only received my Merit credits upon completion, in total is six months off. Makes no difference, all credits/merits should be taken off from YPED. I work hard for my college milestones, however it does not affect me due to my 50 years to life sentence. Please consider giving me a second chance as a youth offender.

Response 21A: See Response to Comment 1A.

CCR Section 3043 authorizes the application of earned credits for GCC, MCC, RAC, EMC and ECC to advance a MEPD. Pursuant to CCR section 2441(b) a 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 an earlier initial parole consideration hearing under other law. Indeterminately sentenced youth offender inmates shall have an initial parole consideration hearing based on the parole eligibility date, which will afford the youth offender with the earliest hearing date.

Duplicate Commenter #54

Comment 54A: Don't be lazy. Give us what we worked for.

Response 54A: Although the above comment does regard some aspect or aspects of the subject proposed regulatory action, the comment is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the department in refutation of or accommodation to the comment.

Commenters #63 through #93 are duplicates (31 duplicates)

Comment 63-93A: I vehemently oppose these changes. For the following reasons, these changes should not take place: The changes will do little to incentivize Youth Offender's to participate in rehabilitative programs because these Milestone Credits will not be applied to our YPED.

Response 63-93A: See Response to Comment 3A.

Comment 63-93B: The changes will not effectively reduce the time frame before a Youth Offender may reach the Board of Parole Hearings.

Response 63-93B: AB 965 amended PC section 3051 to allow the application of EMC to advance a youth offender inmate's YPED. Pursuant to CCR section 3043.5(b), EMC's are awarded in the increments set forth in the schedule below upon demonstrated completion of the corresponding diploma, certificate, or degree:

- (1) Category 1. High School Diploma or High School Equivalency approved by the California Department of Education: 90 calendar days (took effect August 1, 2017), 180 calendar days (effective May 1, 2019).
- (2) Category 2. Offender Mentor Certification Program (alcohol and other drug counselor certification recognized and approved by the California Department of Health Care Services): 180 calendar days.
- (3) Category 3. Associate of Arts or Science Degree: 180 calendar days.
- (4) Category 4. Bachelor of Arts or Science Degree: 180 calendar days.
- (5) Category 5. Post-Graduate Degree: 180 calendar days.
- (6) Peer Literacy Mentor: 90 calendar days (Effective December 1, 2019).

Comment 63-93C: These regulations do not align with the California Assembly intentions when passing AB 965 and the communities desire to reduce California’s prison population and give a second chance to those who were developmentally immature during the time of their crime, which is the main reason for SB206.

Response 63-93C: See Response to Comment 1A.

Comment 63-93D: I demand a public hearing on the proposed changes, wherein the community, my family, and other interested parties can weigh in on the changes which directly affect their lives.

Accommodation: Full accommodation.

Response 63-93D: A public hearing was held on May 10, 2022.

Commenter #94

Comment 94A: A friend of mine is directly affected by these regulations. The regulations will add a section which grants Education Merit Credit to advance initial YPED dates, however, it will exclude advancement from Good Conduct Credit, Milestone Completion Credit, Rehabilitative Achievement Credit, or Extraordinary Conduct Credit. CDCR claims that adding the credits for these other positive rehabilitation steps would be too difficult, but that is completely against already existing factual evidence since all indeterminately sentenced inmates (lifers) are currently eligible for all of these credits, have the same initial parole scheduling issues, and the SOMS already adjusts their Minimum Eligibility Parole Date (MEPD). Since the goal of AB 965 is to incentivize Youth Offenders to engage in positive rehabilitation then they should be given credit for ALL positive rehabilitation they participate in. Youth Offenders deserve a chance to show they can rehabilitate themselves and turn their lives around. How frustrating it must be to go through all the work to show they are willing to become upstanding citizens, just to have CDCR say it’s not worth the effort to recognize their hard work. A human life is worth more than “it’s too much work on our part to give them credit.” Please let these inmates have a chance to get out sooner and show the world that their hard work to turn their lives around in prison has made a difference.

Response 94A: See Responses to Comments 3A and 1B.

Commenter #95

Comment 95A: I have a loved one currently incarcerated. These incentives work to provide pride and accountability and should be provided for all. Try harder to work on the “R” in CDCR, so they are better prepared for release back into their communities. I have seen the positivity in my own son, who is not a youth offender. It only stands to reason the younger you can give them self-worth, the better chance they have on the outside.

Response 95A: See Response to Comment 3A.

Commenter #96

Comment 96A: We object to the release of a prisoner based on his/her age. Everyone should have to stay in prison for the term of their sentence. Just because someone is 60 years old, does not mean they have become an ideal citizen. There still could be evil in their heart! And this isn't fair to the victim who thought they would be safe from them for the set number of years of their sentence. We know the state thinks this is the ideal way to reduce prison overcrowding. It is not! Thank you for considering our appeal to you to stop this practice and not make it permanent.

Response 96A: Although the above comment does regard some aspect or aspects of the subject proposed regulatory action, the comment is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the department in refutation of or accommodation to the comment.

Comment 96B: The closing of the prison in Susanville is ill thought. We need more prisons, not fewer! We need to keep the bad people off the street so that the good people can live their lives in peace. Stop closing prisons!!!

Response 96B: Although the above comment does regard some aspect or aspects of the subject proposed regulatory action, the comment is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the department in refutation of or accommodation to the comment.

Commenter #97

Comment 97A: I am an outside organizer with Initiate Justice. It has come to attention that although in 2019 we passed AB 965, which authorized CDCR to implement regulations allowing those sentenced as youth to advance their YPED, they still only want to implement educational credits on the youth offenders' behalf. This in general is not fair as there are many factors to an individual having growth. There are several ways an individual can grow other than that of education merit credits. Such as, Good Time Credits, Milestone Credits, Rehabilitation Credit, and Extraordinary Conduct Credits. All factors of an individual's rehabilitation process should be given acknowledgement and it shows proof that an individual can come back into the community and share with others tools and a different path than what got them incarcerated to begin with.

Response 97A: See Response to Comment 3A.

Commenter #98

Comment 98A: I strongly recommend that AB 965 applies ALL credits earned, in multiple facets, toward the YPED. The intent of AB 965 to incentivize and encourage rehabilitation is crucial for allowing youth offenders to become a positive part of society. Please consider this important aspect, as it affects the lives of many to move into a constructive place whereby adding their contribution to the world.

Response 98A: See Response to Comment 3A.

Commenter #99

Comment 99A: I write on behalf of Uncommon Law to oppose NCR 22-05 regarding the use of credits to advance YPEDs. We are deeply concerned that CDCR is attempting to exclude Good Time Credits, Milestone Credits, Rehabilitation Achievement Credits, and Extraordinary Conduct Credits from eligibility – for the simple reason that doing so would be an inconvenience to the department. The department admitted that the decision to exclude other types of credits arose not out of any public safety considerations but because of concerns about scheduling difficulties and the potential hardship for staff. This is a poor way to make decisions about administrative policies that impact the people in your care. We urge you to reconsider these regulations and to expand the list of eligible credits for all of the reasons listed.

Response 99A: See Response to Comment 3A.

Comment 99B: Prop 57 marked a turning point for California: It gave incarcerated people an incentive to participate in programming that addressed their rehabilitation while also promising to reduce wasteful prison spending. With Prop 57's regulations in place, people who met the criteria were able to earn credits to advance either their release or initial parole hearing date. When AB 965 was passed in 2019, CDCR was also directed to implement regulations to allow those sentenced as youth to advance their YPEDs. While the bill recognized the CDCR Secretary's authority to decide how to adopt regulations to implement this bill, it also expressed that the process should *start* with educational merit credits, and not just end with them. Just as Prop 57 allowed for multiple types of credit eligibility, so should these regulations. This would honor the will of California's voters when they passed Prop 57, as well as the spirit of AB 965.

Response 99B: See Response to Comment 3A.

Comment 99C: We are also concerned that these regulations are only accessible to a minority of people who are eligible for a youth offender parole hearing. Many incarcerated people are not eligible for Educational Merit Credits, including people who have learning disabilities and are unable to participate in academic programs, people who want to earn these credits but cannot access the necessary programming at their institutions, and people who are excluded for technical reasons, such as due to their educational institution not being accredited.

Response 99C: Pursuant to CCR section 3043(b) all eligible inmates shall have a reasonable opportunity to earn GCC, MCC, RAC, and EMC in a manner consistent with the availability of staff, space, and resources, as well as the unique safety and security considerations of each prison.

Although only EMCs are applied to advance a YPED, pursuant to CCR section 3043(a), inmates who comply with the regulations and rules of the department and perform the duties assigned to them shall be eligible to earn GCC as set forth in CCR section 3043.2. Unless otherwise precluded, all inmates who participate in approved rehabilitative programs and activities shall be eligible to earn MCC, RAC, and EMC as set forth in CCR sections 3043.3, 3043.4, and 3043.5. The award of these credits, as well as ECC as set forth in CCR section 3043.6, shall advance an inmate's EPRD date if sentenced to a determinate term or advance an inmate's MEPD and initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole.

Comment 99D: According to the legislative report that CDCR prepared for the Assembly Committee on Public Safety, the regulations as currently drafted are expected to result in the releases of *fewer than 25 people annually*. If the department were to expand credit eligibility, we can be certain that more than 20 people would be impacted every year.

Response 99D: See Response to Comment 3A.

Comment 99E: These regulations also impede parole preparation and readiness. CDCR has decided that education is the most important marker that should be used to advance a person's YPED. However, this conflicts with the reality of what parole applicants face at the Board of Parole Hearings. Far beyond education, parole applicants are expected to have taken rehabilitative programming that helps them understand the factors that led to their life crime and to have developed tools that help them cope with triggers in the outside community. The programs that incarcerated people participate in when achieving Milestone Credits and Rehabilitative Achievement Credits have a huge impact on parole suitability, and such, these credits are particularly relevant for these regulations. Rehabilitative and non-educational programs are also often more accessible than educational programs, given the length of waiting lists and the costs of completing classes. And to be clear, non-educational programming has benefits that extend far beyond the parole process. Many of the most healing-centered and impactful programs are non-educational in nature, and many people who are touched and transformed by these programs first engaged in them for the credit-earning incentive. Since the vast majority of people who are eligible for a youth parole hearing are going to be coming home at some point, the department should expand the list of eligible credits to ensure that these people are incentivized to participate in all positive programming as early and as often as possible.

Response 99E: See Response to Comment 3A.

Commenter #100

Comment 100A: I have learned that CDCR proposes to exclude parole advancement for Good Conduct Credit, Milestone Completion Credit, and Extraordinary Conduct Credit. If the purpose of AB 965 is to incentivize youth offenders to engage in positive rehabilitative conduct, they should be given the credit for doing so. It appears to me that taking positive conduct into account would result in better parole decisions. I hope the above mentioned credits will continue to be considered.

Response 100A: See Response to Comment 3A.

Commenter #101

Comment 101A: I am in support of AB 965 being implemented in all credit earning types towards all Youth Offender population.

Response 101A: See Response to Comment 1A.

Commenter #102

Comment 102A: I am in strong support and wish for CDCR to implement ALL milestone credits available towards an individual's YPED.

Response 102A: See Response to Comment 1A.

Commenters #103 through #832 are duplicative (730 duplicates)

Comment 103-832A: I am a stakeholder in this process. While I appreciate the Department's willingness to make credit earning more than just for the incarcerated population, I write in hopes CDCR will consider the expansion of the proposed components. I am concerned about the inclusion of only one type of credit because I believe people who are incarcerated should be given equal opportunity to take part in their rehabilitation – the proposed regulations indicate otherwise and we should be increasing access instead of curbing it. Proposition 57 marked a new era for people who were incarcerated in CDCR facilities. With Prop 57's regulations in place, people who met the criteria were able to earn credits to advance either their release or initial parole hearing date. People were finally given an incentive for participating in programming that addressed their rehabilitation. We should be trying to encourage individuals to continue working towards their rehabilitation, which, in turn, can have a positive impact on their return to our communities upon their release.

Response Comment 103-832A: See Response to Comment 3A.

Comment 103-832B: The proposed regulations indicate CDCR is planning to only include educational-merit credits in regulations. This is extremely concerning as this regulation contradicts what Prop 57 sought to accomplish. Prop 57 was sold to California voters as the solution to create change that we had impatiently been waiting for. Through

Prop 57, CDCR created 5 separate credit-earning categories: Good Time Credits, Milestone Credits, Rehabilitation Achievement Credits, Educational Merit Credits, and Extraordinary Conduct Credits. Limiting the type of credits that youth offenders can apply to their Youth Parole Eligible Date would limit the spirit of AB 965. By only adopting one of the possible 5 credit types, goes against what the voters approved when they passed Prop 57. CDCR is creating a barrier for people who are actually working towards their rehabilitation from being able to have an earlier hearing to be considered for parole. This is bad policy and makes CDCR appear as if they are not trying to fully incentivize rehabilitation for the incarcerated population.

Response Comment 103-832B: See Response to Comment 3A.

Comment 103-832C: There are only a specified number of people who are able to actually enroll in educational programs and adopting only 1 of the 5 possible credit types would go against what the voters approved when they passed Prop 57. There are individuals who are unable to read, write, or who may have disabilities that make it difficult for them to participate and complete educational programs.

Response Comment 103-832C: Pursuant to CCR section 3043(b) all eligible inmates shall have a reasonable opportunity to earn GCC, MCC, RAC and EMC in a manner consistent with the availability of staff, space, and resources, as well as the unique safety and security considerations of each prison. Although only EMCs are applied to advance a YPED, pursuant to CCR section 3043(a), GCC and program credits are applied to advance an inmate's EPRD or MEPD.

Comment 103-832D: There are several organizations that have made it possible for individuals to participate in rehabilitative and non-educational programs. People who are incarcerated are often able to get into these programs first as opposed to educational programs due to the waiting list as well as costs to complete classes. In addition, some of those individuals often end up creating and leading their own program as a result of the investment in their rehabilitation.

Response Comment 103-832D: Pursuant to CCR section 3043(b) all eligible inmates shall have a reasonable opportunity to earn GCC, MCC, RAC and EMC in a manner consistent with the availability of staff, space, and resources, as well as the unique safety and security considerations of each prison.

Comment 103-832E: Educational-merit credits are a great component to include in the regulations, but they shouldn't be the only one. In order to maximize the intent of Prop 57, CDCR must include all 5 credit-types in the regulations. This will ensure the credit-earning system reaches its full potential: to reward individuals who are actively working on themselves and give them a reason to participate in positive programming. Allowing these credits to be applied towards their YPED will serve as a motivator to continue working on themselves and gives youth offenders a sense of hope that they may be considered for parole sooner rather than later.

Response Comment 103-832E: See Response to Comment 3A.

Comment 103-832F: The people of California voted to authorize CDCR to create this credit-earning system so that we can reduce the wasteful spending on prisons and emphasize what the department is tasked with: the rehabilitation of the people in their care. Californians want to encourage people who are incarcerated to invest in their rehabilitation, positive re-entry, and public safety and finally close the revolving door of incarceration in order to drive down the recidivism rates in California, but we cannot do this without CDCR's help. I hope that CDCR can expand the proposed component to include the credit-types suggested in this letter and that the department finds an innovative way to accomplish this.

Response Comment 103-832F: See Response to Comment 3A.

Personalized Duplicate Comments (included in the 730 duplicates above)

Duplicate Commenter #103

Comment 103A: I have multiple family members with YOPDs. I myself was in prison when Prop 57 passed, and saw the hope of being able to earn one's time down transformed the people around me [sic]. All of a sudden everyone was motivated to stay out of trouble, take programs and go home. Everyone but youth offenders—the people who deserved it and needed it the most. Please give people who went to adult prison as children the same opportunity for hope, transformation, and freedom, that the rest of us had. Your facilities, people who live there, and greater community will benefit.

Response 103A: See Response to Comment 3A.

Duplicate Commenter #104

Comment 104A: I'm the adopted child of a formerly incarcerated person, so I can never forget that the rehabilitation-oriented programs that were in place when my parent was incarcerated basically gave me my family. I'd like to see more people get out, and get to coaching peewee soccer and building sets for their kids' dance recitals.

Response 104A: Although the above comment does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Duplicate Commenter #105

Comment 105A: I am one of millions of citizens of Los Angeles who are calling for a new approach to justice, because the status quo has not only proven unquestionably to be a complete failure for the well-being of our city, it has also created a humanitarian

rights crisis of overwhelming scale. It is time to end our complicity in this crisis and take bold creative action.

Response 105A: Although the above comment does regard some aspect or aspects of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(a)(3), the comment is either insufficiently related to the specific action, or too generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.