

**State of California
Office of Administrative Law**

In re:
Department of Corrections and
Rehabilitation

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections: 3499, 3499.1, 3499.2

Amend sections:

Repeal sections:

NOTICE OF APPROVAL OF REGULATORY
ACTION

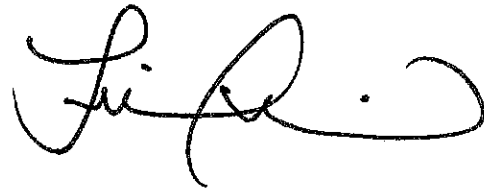
Government Code Section 11349.3

OAL Matter Number: 2023-0601-01

OAL Matter Type: Regular Resubmittal (SR)

This rulemaking action by the Department of Corrections and Rehabilitation adopts requirements for elderly parole eligible date determinations and a grievance procedure for inmates.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 10/1/2023.



Date: June 13, 2023

Lindsey S. McNeill
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Jeffrey Macomber, Secretary

Copy: Dmitry Kostyuk

TEXT OF ADOPTED REGULATIONS

In the following text, all new language is indicated by underline and deleted text is indicated by ~~strikethrough~~.

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

Chapter 1. Rules and Regulations of Adult Operations and Programs

Subchapter 5.5. Parole Consideration

Article 4. Elderly Parole Program and Elderly Parole Eligible Date

3499. Elderly Parole Program Determination.

(a) An inmate who qualifies for the statutory Elderly Parole Program pursuant to Penal Code 3055 is identified as an elderly inmate for the purpose of the statutory Elderly Parole Program if they meet all the following criteria:

(1) Is fifty years of age or older;

(2) Has served a minimum of 20 years of continuous incarceration on the inmate's current sentence;

(3) Is currently serving a determinate or indeterminate sentence with the possibility of parole;

(4) Was not sentenced pursuant to Penal Code section 667, subdivisions (b) through (i), or Penal Code section 1170.12;

(5) Was not convicted of first-degree murder of a peace officer, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who was killed while engaged in the performance of their duties, and the individual knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of their duties; and

(6) Was not convicted of first-degree murder of a peace officer or former peace officer under any of the Penal Code sections listed in subsection (a)(5) and who was intentionally killed in retaliation for the performance of their official duties.

(b) For purposes of this article, "incarceration" means detention in any city or county jail, local juvenile facility, mental health facility, Division of Juvenile Justice facility, or department facility including Community Correctional Facilities, and facilities designated as the place for reception and service of the California term under Penal Code section 2900.

(c) For purposes of this section, “continuous incarceration” means an uninterrupted period of detention in one or more facilities described in subsection (b).

Note: Authority cited: Cal. Const., art. 1, sec. 32; and Sections 2081.5, 3055, 5054, 5055 and 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32; and Sections 2900, 2900.5, 2901, 3055 and 5054, Penal Code.

3499.1. Elderly Parole Eligible Date (EPED) Determinations.

(a) An Elderly Parole Eligible Date (EPED) means the date on which an inmate who qualifies as an elderly offender is eligible for release from prison .

(b) The department’s case records staff shall determine whether an inmate qualifies as an elderly inmate as defined in section 3499(a) for the purpose of calculating an EPED.

(c) The department’s case records staff shall calculate the EPED within 60 calendar days of an inmate’s admission to the department.

(d) An EPED is the date an inmate, who meets the criteria to qualify as an elderly inmate for the statutory Elderly Parole Program, reaches 50 years of age and has served 20 years of continuous incarceration.

(1) For purposes of calculating an EPED, a break in custody shall include instances where an inmate:

(A) Escapes from custody; or

(B) Is released on their own recognizance or bail after sentencing for their current term.

(2) For purposes of calculating an EPED, a break in custody shall not include instances where an inmate:

(A) Is released on their own recognizance or bail prior to sentencing for their current term; or

(B) Released from custody in error.

Note: Authority cited: Cal. Const., art. 1, sec. 32; and Sections 2081.5, 3055, 5054, 5055 and 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32; and Sections 2900, 2900.5, 2901, 3055 and 5054, Penal Code.

3499.2. Elderly Inmate Determination Review.

If an inmate disagrees with a determination they are not qualified as an elderly inmate under section 3499.1 or disagrees with the calculation of their Elderly Parole Eligible Date (EPED), the inmate may submit a grievance by filing a CDCR Form 602-1 (Rev. 01/22), Grievance, pursuant to section 3482.

Note: Authority cited: Cal. Const., art. 1, sec. 32; and Sections 2081.5, 3055, 5054, 5055 and 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32; and Sections 2900, 2900.5, 2901, 3055 and 5054, Penal Code.

FINAL STATEMENT OF REASONS

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

UPDATES TO THE INITIAL STATEMENT OF REASONS:

On June 10, 2022, the California Department of Corrections and Rehabilitation (CDCR or the department) published the Notice of Change to Regulations for Elderly Parole Eligible Date (EPED), which began the public comment period. The department's Notice of Change to Regulations #22-08 was mailed the same day to individuals who had requested to be on the department's mailing list for regulation changes, was posted on the department's website, and copies were posted in CDCR institutions. The department received eight written comments, which are included below under "Summaries and Responses to Written Public Comments Received During The Public Comment Period." A public hearing was held on August 1, 2022, there were no attendees.

On February 14, 2023, a 15-Day Renotice was posted and mailed. The revisions in the renotice amended the following:

Subchapter 5.5 Article 4 title is amended to clarify the primary focus of Article 4 is not to define an elderly inmate. The primary focus is specifically the Elderly Parole Program and EPED.

Section 3499 is amended to clarify that this section is not defining an elderly inmate. The section establishes the criteria for an inmate to be identified as an elderly inmate for the purpose of qualifying for the statutory Elderly Parole Program. Subsection (a)(1),(a)(3), and (a)(4) have minor non-substantial changes made. The word "official" was added to Subsection (a)(6) to incorporate the description of duties provided in Penal Code (PC) section 3055(h). The "Note" section is amended to remove "*People v. Culp* (2002) 100 Cal.App.4th 1278," because the department no longer finds it is necessary to rely on this case to clarify "continuous incarceration," since it is defined in the regulation.

Section 3499.1 is amended by renumbering subsection (c) to (a), (c)(1) to (d), (a) to (b) and (b) to (c), the purpose for these changes is to correct the reading structure of text in the section to create a logical reading order for clarity. The title of this section is amended because the purpose of this section is to focus on EPED. Additional changes were made throughout the section to focus on EPED requirements and limit citations to other subsections of subchapter 5.5 Article 4. Changes were also made to the section to clarify that an EPED does not establish the criteria for an inmate to qualify as an "elderly inmate." The criteria to qualify as an elderly inmate was established in 3449(a). An additional non-substantive change was made to subsection to include, "the department's" to be consistent with subsection (b). Subsection (a) was amended to align the definition of EPED with Penal Code 3055. "Correctional Case Records Services" was changed to "case records staff" to align with section 3371.1 regarding responsibility for the calculation of inmate release and eligibility dates.

Section 3499.2 is amended to establish the acronym for EPED and replace the word appeal with grieve to align with approved regulations stating inmates may submit a grievance. An additional non-substantive change was made to the order of wording, to be consistent with other adopted regulations.

The authority sections for 3499, 3499.1, and 3499.2 are revised to include citations for CDCR's authority to determine an inmate's parole date.

An Addendum to the Initial Statement of Reasons is included to further explain the necessity for each of the changes reflected in this Renotice.

During the 15-Day Renotice, the department received 1 comment. Comments and responses corresponding to the 15-day renotice can be found under the heading "Summaries and Responses to Written Public Comments Received During the 15-Day Renotice Public Comment Period."

Pursuant to PC 2901 the CDCR is to receive persons sentenced to imprisonment in a State prison and such persons shall be imprisoned until duly released according to law. The calculation of an inmate's release date is the responsibility of Case Records pursuant to California Code of Regulation (CCR) 3371.1. This includes the calculation of the earliest possible release date and parole eligibility dates. When the 3 Judge Panel (JP) court ordered CDCR to implement an elderly parole program, Case Records was responsible for the calculation of the EPED under the 3 JP court order as their responsibilities already included the calculation of release and parole eligibility dates.

Although PC 3055 specifies the Elderly Parole Program is to be administered by the Board of Parole Hearing (BPH) for purposes of reviewing for parole suitability, it is not specific as to who will determine inmate eligibility or calculate the EPED. This regulation will specify that CDCR Case Records determine elderly parole eligibility and calculate the EPED. PC 5054 vests the Secretary of CDCR with the responsibility for the supervision, management and control of the state prisons. PC 5055 established that all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the Department of Corrections and Rehabilitation, except where those powers and duties are expressly vested by law in the BPH. The California Constitution, Article I, Section 32(b) and PC 5058 give the CDCR and the Secretary of CDCR the authority to adopt regulations. PC 2081.5 specifies the director shall appoint such employees under his control for the proper performance of the duties of the BPH. The Constitution and statute support CDCR/Secretary of CDCR authority to promulgate regulations and to designate CDCR Case Records to complete the elderly inmate determination and EPED calculation. Both CDCR and the BPH agree CDCR Case Records will make the elderly parole eligibility determination and calculate the EPED. The BPH regulations, CCR 2449.40(b)(2), refers to CDCR Case Records making the determination and with the calculation of the EPED.

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 regulations are consistent with Elderly Parole Eligibility Date and do not deviate from the BPH regulations regarding Elderly Parole Eligibility Date. Instead, these regulations work together.

These regulations are partially duplicative of the BPH regulations regarding Elderly Parole Eligible Date. Pursuant to CDCR's authority discussed above the department is adopting these regulations because; CDCR Case Records has access to records required to determine statutory elderly parole eligibility and calculates the EPED. It is necessary to have within CDCR's regulations the criteria used by their staff to determine eligibility and to calculate the EPED. It provides the basis for the determination and calculation within its own regulations. If an inmate disagrees with a determination or calculation, the inmate may file a grievance and the regulations may be used to justify the department's decision.

DETERMINATIONS, ASSESSMENTS, MANDATES, AND FISCAL IMPACT:

The department has determined that no alternative considered would be more effective in carrying out the purpose for which this regulation is proposed, or would be as effective and less burdensome to affected private persons, 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. No such alternatives were proposed or brought to the department's attention during the adoption of this rulemaking action. The department has made an initial determination that the action 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 department has determined that this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 of the Government Code (GC). The department has determined that no reasonable alternatives to the regulation have been identified or brought to the attention of the department that would lessen any adverse impact on affected private persons or small businesses than the action planned. The department, in proposing the adoption of these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document. The department has relied upon the results of the Economic Impact Assessment, which can be found in the Notice of Proposed Regulations and is available for review as part of the rulemaking file.

NOTE REGARDING FINAL STATEMENT OF REASONS INCORPORATED BY REFERENCE (CCR, TITLE 1, SECTION 20):

The Elderly Parole Eligible Date Final Statement of Reasons (FSOR) is incorporated by reference, will be made available to the public, and will continue to be made available upon request.

It would be unduly cumbersome, expensive, and impractical to publish the FSOR in the CCR, therefore the department is incorporating the FSOR by reference.

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

Commenter #1

Comment 1: Subsection 3499 (a)(2) lacks clarity because “Inmate current sentence” can be interpreted differently at various prisons. For example, inmates who serve a consecutive term of 10 years and then go into their current term which is a 25 year term will not be credited the first 10 years of continuous incarceration. Revise the text by removing current and clarify time tolled if prior sentence continued into current.

Response 1: There is no accommodation provided because PC section 3055 specifically states a minimum of 20 years of continuous incarceration on the inmate’s current sentence.

Commenter #2

Comment 2: Commenter is an inmate who has been incarcerated since 1996 and currently has 10 years of positive programming. Commenter has been involved in his community, many self-help programs, has been attending college, involved with his family and has support outside of prison. Commenter has recently turned 50 and does not qualify for elderly parole, because he is sentenced under the three-strike law even though this is his first sentence. Commenter states that the three-strike law is faulty legislation and should not set him back a decade from being able to qualify for elderly parole.

Response 2: There is no accommodation provided because PC section 3055 establishes the criteria for the statutory Elderly Parole Program. Subsection (g) of PC section 3055 specifies this section shall not apply to cases in which sentencing occurs pursuant to PC section 1170.12 and 667(b) to (i).

Commenter #3

Comment 3: Stop Early Release of Criminals.

Response 3: There is no accommodation provided because the comment is either insufficiently related to the specific action proposed or to the procedures followed by the department in proposing or adopting these regulations, or generalized or personalized to the extent that no meaningful response can be formulated by the department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to GC, Section 11346.9(a)(3).

Commenter #4

Comment 4: Assembly bill 3234 was passed so that the pool of eligible inmates for early parole would increase. Assembly bill 3234 did not exclude second-strike inmates when considering lowering the elderly parole eligible age and time served. Almost anyone sentenced in California for twenty years or more is going to be a second-strike inmate. Excluding second-strike inmates from regulations will defeat the purpose of lowering the

age and time served to be considered for elderly parole. Second-strikers should be eligible for elderly parole.

Response 4: There is no accommodation provided because Assembly Bill 1448 was signed by the Governor and filed with the Secretary of State on October 11, 2017. It added PC section 3055, which established the statutory Elderly Parole Program and became operative on January 1, 2018. PC section 3055(g) specified this section shall not apply to cases in which sentencing occurs pursuant to PC section 1170.12 and 667(b) to (i). At this time PC section 3055(g) has not been amended.

Commenter #5

Comment 5: I am writing today to share my support of the amendment to Title 15 to change elderly inmate release in California. It just seems fair, and frankly common sense, that serving 20+ years of their sentence and being at least 50 years of age should be a factor considered by the Parole Board. It leaves room and possibility for those who no longer pose a threat to society to be able to live with purpose outside of prison for the remainder of their years, while still having served a significant consequence for their actions.

Response 5: The department acknowledges the commenter's support for the proposed regulations.

Commenter #6

Comment 6A: Elderly inmate should be any inmate of the age of 50 years.

Response 6A: There is no accommodation provided because PC section 3055 specifies the criteria for elderly parole as 50 years of age or older and has served a minimum of 20 years of continuous incarceration. It excludes inmates sentenced to life in prison without the possibility of parole or inmates sentenced to death, inmates sentenced pursuant to PC section 1170.12 or 667(b)-(i), and persons convicted of First Degree Murder of a peace officer as defined in PC section 3055(h).

Comment 6B: An elderly inmate should qualify for elderly parole if the inmate has been incarcerated for 20 years and has met 2 of the 3 benchmarks to be determined as an elderly inmate, eligible for parole.

Response 6B: See response for Comment 6A.

Comment 6C: Second-strike inmates should not be excluded, excluding second-strike inmates will cost more taxpayer dollars to keep inmates who have low recidivism in prison. Prisons are accommodating significantly more inmates with a variety of prison programs and basic necessities than the budget can handle already. Not including exclusions will help with making more rehabilitation resources and programs more available, as well as stabilize the prison population.

Response 6C: See response for Comment 4

Comment 6D: Incarceration should be defined as, imprisonment; the act or process of confining someone. Continuous incarceration is imprisonment marked by uninterrupted extension in space, time, or sequence.

Response 6D: There is no accommodation provided because PC section 3055 established the Elderly Parole Program. Subsection (b)(2) specifies “incarceration” means detention in a city or county jail, local juvenile facility, a mental health facility, a Division of Juvenile Justice facility, or a Department of Corrections and Rehabilitation facility. PC section 3055 specifies the criteria for elderly parole as 50 years of age or older and has served a minimum of 20 years of continuous incarceration.

Comment 6E: The Board of Parole Hearings (BPH) should be the responsible agency to determine whether an inmate qualifies as an elderly inmate, as well as the calculation for EPED. Allocating the calculation aspect of EPED process to any office besides BPH, serves to disrupt the streamlining of the processing.

Response 6E: There is no accommodation provided because pursuant to PC section 3055 the BPH is responsible for reviewing the parole suitability of inmates who meet the elderly parole criteria. PC Section 3055 does not specify who is responsible for determining elderly parole eligibility or, if applicable, the calculation of the inmate’s EPED.

This regulation specifies that CDCR Case Records will determine eligibility and calculate the EPED. PC 5054 vests the Secretary of CDCR with the responsibility for the supervision, management and control of the state prisons. The California Constitution, Article I, Section 32(b) and PC 5058 give the CDCR and the Secretary of CDCR the authority to adopt regulations. PC 2081.5 specifies the director shall appoint such employees under his control for the proper performance of the duties of the BPH. The Constitution and statute support CDCR and the Secretary of CDCR authority to promulgate regulations and to designate CDCR Case Records to complete the elderly parole determination and EPED calculation. Pursuant to CCR 3371.1 the calculation of an inmate’s release date is the responsibility of CDCR Case Records staff. Both CDCR and the BPH agree case records will make the elderly parole eligibility determination and calculate the EPED. The BPH regulations, CCR 2449.40(b)(2), refers to CDCR Case Records making the determination and calculating the EPED.

CDCR Case Records is currently responsible for determining elderly parole eligibility and calculating the EPED under the *Coleman v. Newsom* and *Plata v. Newsom* Three Judge Court Order elderly parole program.

Commenter #7

Comment 7A: Opposes the adoption of the proposed regulations in response to PC section 3055. Declarations by the Secretary of CDCR are misrepresentations of the truth and concealment of material facts in violation of her oath of office as an employee of the state of California. Commenter quotes sections from pages 1-4 of the ISOR before proceeding with additional comments.

Response 7A: The department acknowledges the commenter's opposition to the proposed regulations, however the department will continue with this rulemaking action for the reasons provided in the Notice of Proposed Regulations and the Initial Statement of Reasons.

Comment 7B: California Forms of Pleadings and Procedures-Annotated section 470.12(4)(a) Agency structure; Nature of Administrative Agency, provides, Administrative agencies are government institutions that are authorized by statute (or constitution) and are part of the executive branch-See Cal. Const. Article VI. Sections 6, 8, also see sections 470.12(5)(a) Administrative powers.

Response 7B: See response for Comment 3.

Comment 7C: Administrative Powers are delegated to most agencies by legislature in statutes, thus, an administrative agency must act within the powers conferred upon it by law and may not validly act in excess of such powers. Compare: Cal. P.C. sections 3005(a).

Response 7C: See response for Comment 3.

Comment 7D: It is an undisputed fact, the legislature upon enactment of section 3055(a) declared: The Elderly Parole Program is hereby established, to be administered by the BPH, for purposes of reviewing the parole suitability of any inmate who is 50 years of age or older and served a minimum of 20 years of continuous incarceration on the inmates current sentence, serving either a determinate or indeterminate sentence. Compare: Cal. P.C. section 3055 (j).

Response 7D: See response for Comment 6E.

Comment 7E: It is an undisputed Fact, the legislature enacted section 3055 (j) imposing a clear statutory mandate, requiring by December 31, 2022, the board shall complete elderly parole hearings for individuals who were sentenced to determinate or indeterminate terms and who, on the effective date of the bill that added this subdivision, are or will be entitled to have their suitability considered at an elderly hearing before January 1, 2023 in accordance and compliance with section 3055 (a), clearly established statutory law governing the administration of parole, as expressed in section 3055 (a) pursuant to section 3041 et seq, under jurisdiction of the BPH. Compare: Sections 3055 (a) – (j) Elderly Parole Provisions.

Response 7E: See response for Comment 3.

Comment 7F: California's legislature did not confer upon the department any power to act in its enactment of California PC section 3055 (a) – (j) Elderly Parole Program, nor sections 3041 statutory powers of Parole Authority BPH governing the administration of parole, including but not limited to: see sections 3041.1 [1](a); [3] (b), the powers granted by statute authorizing Governor's request for review of decision by a parole authority; or section 3041.2 et seq. Review by governor. Therefore the department's proposed

adoption of sections 3499, 3499.1, and 3499.2 into Title 15, Article 4, Subchapter 5.5 are not within its administrative power governing the administration of parole delegated under PC section 5058, pursuant to legislative intent upon its enactment of 3055. Therefore the department proposed adoption of regulations regarding EPED are statutorily void.

Response 7F: See response for Comment 6E.

Commenter #8

Comment 8A: Commenter gives background information about his confinement in prison, and health conditions. The commenter was sentenced under the three strikes rule and objects to the proposed regulations due to inmates sentenced under three strikes will not be able to be released on elderly parole. Commenter is currently confined in prison and is an elderly inmate but cannot get an EPED. Commenter provides personal information about trying to receive an EPED as well as court cases to aid with his reasons as to why he objects to the proposed regulations.

Response 8A: See response for Comment 6A.

Comment 8B: The proposed regulations violate the “Consent Decrees” of *Coleman v. Wilson*, and *Plata v. Brown*, as well as are age discriminating, disability discriminating and conflict with cruel punishment.

Response 8B: See response for Comment 6A.

Summaries and Responses to Written Public Comments Received During the 15-Day Renotice Public Comment Period:

Comment 9A: Commenter specifies the determination for youth as 26 years old, elderly as 50 years old and provides the name of an inmate who met the youth criteria as he was incarcerated and is now still incarcerated but considered elderly. Commenter states the terms youth and elderly implies age/eligibility which is misleading to the public who support criminal justice reform and legislation. Therefore any use of the terms youth and elderly should be removed from any text, up until the time they are used in the full meaning, towards all who are indeed youth or elderly.

Response 9A: There is no accommodation provided because the comment is either insufficiently related to the specific action proposed or to the procedures followed by the department in proposing or adopting these regulations, or generalized or personalized to the extent that no meaningful response can be formulated by the department in refutation or accommodation of the comment, therefore the comment is irrelevant pursuant to GC Section 11346.9(a)(3).

Comment 9B: The point of legislation was to determine suitability to return into society. Suitability is based on the totality after sentencing not whether an inmate was sentenced as a second or third-striker, and anything else violates the 5th Amendment and equal protection for those similarly situated.

Response 9B: There is no accommodation provided because PC Section 3055(a) states the Elderly Parole Program was established for the purposes of reviewing the parole suitability of any inmate who is 50 years of age or older and has served a minimum of 20 years of continuous incarceration on the inmate's current sentence, serving either a determinate or indeterminate sentence.

PC Section 3055(g) states the Elderly Parole Program does not apply to cases in which the sentencing occurs pursuant to PC Section 1170.12, subdivision (b) to (i), inclusive of PC Section 667, or in cases when an individual was sentenced to life in prison without the possibility of parole or sentenced to death.

Although the PC excludes second and third-strike inmates, they continue to receive elderly parole consideration under the three-judge court ordered Elderly Parole Program criteria of 60 years of age or older, and 25 years of continuous incarceration.

The proposed regulations are designed to bring the department's regulations into compliance with the statutory Elderly Parole Program pursuant to PC Section 3055 as enacted by Assembly Bill (AB) 1448 and amended by AB 3234.

Comment 9C: The three specifications of the risk assessment performed by the forensic pathologist on behalf of the board of prison hearings, were age, long term confinement, diminished physical condition and the three factors gauge risk, nothing mentioned of PC used to sentence offenders.

Response 9C: See response for Comment 9B.

Comment 9D: The purpose for excluding inmates sentenced to death and life without parole inmates is to keep the prison population high, to keep the correctional officers' count high, and to appease the Correctional Officer Union. Evidence of this is when CDCR lowers the age requirements of elderly parole and reinforces the statutory exclusion.

Response 9D: There is no accommodation provided because individuals sentenced to life without the possibility of parole, or sentenced to death, are excluded from the statutory Elderly Parole Program pursuant to PC section 3055.

The proposed regulations are designed to bring the department's regulations into compliance with the statutory Elderly Parole Program pursuant to PC Section 3055 as enacted by AB 1448 and amended by AB 3234.

Comment 9E: When Governor Brown signed Bill 1448 he expressed the need and desire to expand elderly parole and (legislative intent).

Response 9E: See response for Comment 9A.