

August 22, 2017

# Proposition 57 Regulations

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L E G I S L A T I V E   A N A L Y S T ' S   O F F I C E

Presented to:  
Senate Public Safety Committee  
Hon. Nancy Skinner, Chair

Assembly Public Safety Committee  
Hon. Reginald B. Jones-Sawyer, Sr., Chair





## Major Provisions of Proposition 57



### Makes All Nonviolent Offenders Eligible for Parole Consideration

- Amended the State Constitution to specify that individuals convicted of a nonviolent felony offense shall be eligible for parole consideration after completing the term for their primary offense and required the California Department of Corrections and Rehabilitation (CDCR) to adopt regulations to implement this change.
- As a result, the Board of Parole Hearings (BPH) can release nonviolent offenders after they serve the longest term imposed excluding any additional terms added to their sentence, which include any sentencing enhancements (such as the additional time an inmate serves for having prior felony convictions).



### Expands CDCR's Authority to Award Sentencing Credits

- Amended the State Constitution to specify that CDCR shall have the authority to award credits to inmates for good behavior and rehabilitative or educational achievements and authorized CDCR to adopt regulations to implement changes to credits.
- As a result, CDCR can allow inmates to reduce their sentences through credits by more than is specified in statute.



### Requires a Judge to Decide Whether Youths Should Be Tried in Adult Court

- Changed statute to require that all youths have a hearing in juvenile court before they can be transferred to adult court.
- As a result, prosecutors can no longer file charges directly in adult court and no youths can have their cases heard in adult court on a mandatory basis due to the circumstances of the offense.



## Status of Proposition 57 Regulations

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### **Emergency Regulations**

- To implement the parole consideration and credit earning provisions of Proposition 57, CDCR submitted emergency regulations to the Office of Administrative Law (OAL) on March 20, 2017.
- These emergency regulations became effective on April 13, 2017 and will expire on September 21, 2017.



### **Permanent Regulations**

- An emergency regulation can become permanent if an agency adopts it through the regular rulemaking process within the time period that the emergency regulation is in effect and it is subsequently approved by OAL.
- On July 14, 2017, CDCR issued a public notice to begin the regular rulemaking process, which includes a 45-day public comment period that ends on September 1, 2017.
- If CDCR adopts the emergency regulations through the regular rulemaking process by September 20, 2017, the regulations remain in effect for 30 working days while OAL reviews them for compliance with state rulemaking procedures. If OAL approves the regulations, they become permanent.



## Implementation of Parole Consideration Process

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### **Exclusion of Certain Offenders With Nonviolent Convictions**

- The emergency regulations define “nonviolent offenders” in such a way as to exclude nonviolent offenders required to register as sex offenders and those who are serving indeterminate sentences (such as under the three strikes law) from the new parole consideration process.



### **Inclusion of Certain Offenders With Violent Convictions**

- The definition makes eligible for parole consideration certain offenders who have completed a prison term for a violent felony but are still serving a prison term for a nonviolent felony of which they were convicted at the same time.



### **Inmate File Reviews Rather Than Actual Hearings**

- Rather than in-person hearings, a BPH deputy commissioner reviews certain information about an inmate collected by CDCR. The inmate is approved for parole if the deputy commissioner concludes that the inmate does not pose an unreasonable risk of violence.



### **Review Initiated After Primary Term Served**

- The administration interprets Proposition 57 to prohibit deputy commissioners from reviewing inmates’ files until they have served the terms for their primary offenses. As a result, inmates that are granted parole are not released until after reentry planning is completed—about 60 days after completing their primary terms.



## LAO Assessment of the New Parole Consideration Process

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### **Direct Administration to Justify Definition of Nonviolent Offender**

- The exclusion of certain offenders (such as sex registrants) convicted of nonviolent offenses and inclusion of certain offenders convicted of violent offenses may violate Proposition 57.
- Accordingly, we recommend directing the administration to justify the legal and policy basis for its definition of nonviolent offender.



### **Assess Whether BPH Could Initiate Parole Consideration Earlier**

- Rather than waiting until their primary terms are served, BPH could make a *preliminary* release decision before inmates complete their primary terms. A *final* parole consideration decision would be made upon the completion of their terms. As a result, those approved could be released up to 60 days earlier, potentially resulting in several millions of dollars in savings annually.
- Accordingly, we recommend seeking an opinion from Legislative Counsel on whether this approach is allowable.



### **Direct BPH to Investigate Using Structured Decision-Making Tools**

- Because the parole decision-making process is inherently subjective and decisions may lack consistency and transparency, several states use statistically validated, structured decision-making tools to improve accuracy and objectivity of such decisions.
- We recommend directing BPH to report on available structured decision-making tools and the estimated costs, opportunities, and challenges associated with adapting such tools for use in California.



# Implementation of New Sentencing Credits

## Administration's Changes to Inmate Credit Earning

Inmates Affected	Pre-Implementation	Post-Implementation
<b>Good Conduct Credits</b>		
Most violent offenders	Up to 15%	Up to 20%
Nonviolent third strikers	—	Up to 33.3%
Inmates in fire camps, firehouses, or who have completed training for these assignments		
• Violent	Up to 15%	Up to 50%
• Nonviolent second strikers	Up to 33.3%	Up to 66.6%
<b>Milestone Credits</b>		
Non-sex registrant, nonviolent, non-third strikers	Up to 6 weeks per year	Up to 12 weeks per year
All other inmates except those sentenced to death and life without the possibility of parole	—	Up to 12 weeks per year
<b>New Educational Merit Credits</b>		
All inmates except those sentenced to death and life without the possibility of parole	—	3 to 6 months per achievement
<b>New Participation Credits</b>		
All inmates except those sentenced to death and life without the possibility of parole	—	Up to 4 weeks per year



### Expands Sentencing Credits

- As shown above, the administration increased the number of credits inmates earn for good behavior (effective May 1, 2017) and for participation in rehabilitation programs (effective August 1, 2017).



### Codifies Court-Ordered Credits

- A federal court order to reduce prison overcrowding required CDCR to implement certain credits. The administration included these court-ordered changes in the emergency regulations so that inmates will continue to receive these credits once the court order is lifted.



## LAO Assessment of New Sentencing Credits



### **Direct Department to Assess Effect of Program Capacity on Population Impact of New Credit Policies**

- The population effect of the credit expansions will depend on inmates' access to rehabilitation programs. However, the administration has not done an analysis of how the availability of these programs will impact credit earning.
- Accordingly, we recommend directing the department to report on the number and type of programs through which inmates receive credits, their current capacity and attendance rates, and the effect they may have on the inmate population.



### **Direct Administration to Contract With Independent Researchers to Evaluate Credit-Yielding Programs**

- To protect public safety, it is critical that programs for which inmates receive credits are effective at reducing recidivism. However, CDCR currently has only done a limited analysis of the effectiveness of its programs.
- As such, we recommend directing CDCR to contract with independent researchers (such as a university) to evaluate the effectiveness of its programs and that it prioritize credit-yielding programs for evaluation.



### **Direct Administration to Explain Credit Reductions**

- The administration reduced credits awarded for a few programs. It is unclear why the administration chose to reduce credits awarded for these programs.
- Accordingly, we recommend directing the administration to report on its rationale for reducing milestone credits for specific programs.