

**Staff Memorandum 2024-13**  
**Conduct Credits for Indeterminately-Sentenced Incarcerated People  
and Related Matters**

At its September 2024 meeting, the Committee on Revision of the Penal Code will consider credits for indeterminately-sentenced incarcerated people, including impacts from ongoing litigation in *Criminal Justice Legal Foundation v. California Department of Corrections and Rehabilitation*.

**Status quo before *CJLF v. CDCR* litigation**

Incarcerated people can earn credits towards their sentence in two ways: good conduct credits for maintaining appropriate behavior while incarcerated and other credits awarded for completing education or rehabilitative programs.<sup>1</sup> The discussion here focuses on good conduct credits because they are the most common credits as they do not rely on program availability.<sup>2</sup>

CDCR makes credit-earning rules under authority from Proposition 57, an initiative approved by voters in November 2016. Among other provisions, Proposition 57 created a new section of the California constitution that “notwithstanding ... any other provision of law” gave CDCR “authority to award credits earned for good behavior and approved rehabilitative or educational achievements.”<sup>3</sup>

Since Proposition 57 became effective, people with an indeterminate sentence — a sentence that requires appearing before the parole board to determine if release is appropriate, such as a 15 to life sentence — can advance their “minimum eligible parole date” with credits. The MEPD is the earliest someone can be released from prison if they have an indeterminate sentence. The current good conduct credit rules, effective December 28, 2021, allow people to earn 33% off their minimum sentence to advance their MEPD.<sup>4</sup>

No matter how much an MEPD is moved up, people with an indeterminate sentence are only released from prison if the Board of Parole Hearings determines they do not pose an “unreasonable risk of danger to society if released from prison.”<sup>5</sup> A parole hearing is held one year before an MEPD.<sup>6</sup>

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<sup>1</sup> See CDCR, *In-Prison Credit-Earning Opportunities*.

<sup>2</sup> See Heather Harris, Brandon Martin, and Sean Cremin, *California Prison Programs and Reentry Pathways*, Public Policy Institute of California, 14 (June 2024).

<sup>3</sup> California Constitution, Article 1, § 32(a)(2).

<sup>4</sup> 15 CCR § 3043.2(b)(2)(B). The rate is higher for people serving an indeterminate sentence for a nonviolent offense under the Three Strikes law: they can earn 50% off their minimum to advance their MEPD. 15 CCR § 3043.2(3)(B). Both groups can also advance their MEPD with credits for education or rehabilitative programming. See, e.g., 15 CCR §§ 3043.5(b) & 3043.3(c).

<sup>5</sup> Board of Parole Hearings, *The California Parole Hearing Process Handbook*, 39, March 8, 2024.

<sup>6</sup> *Id.* at 9; Penal Code § 3041(a)(2).

### **Superior Court ruling**

*CJLF v. CDCR* is about CDCR's authority under Proposition 57 to make rules for conduct and educational and rehabilitative credits.<sup>7</sup> The Superior Court affirmed CDCR's "broad authority" under Proposition 57 to make credit regulations for most people in prison, even if CDCR's rules conflict with specific provisions of the Penal Code.<sup>8</sup> But the court held that CDCR does not have the power to make credit rules that advance MEPDs for people with indeterminate sentences.<sup>9</sup>

The court reached this conclusion because, in its view, Penal Code section 3046 "prevents credits from reducing an inmate's MEPD"<sup>10</sup> and nothing in the text of or ballot materials for Proposition 57 discussed credits for indeterminately-sentenced people.<sup>11</sup>

### **Impact and status**

The Superior Court's opinion issued on December 13, 2023. The court paused some consequences of its ruling, but beginning June 4, 2024, it required CDCR to keep in prison people with indeterminate sentences who had been found safe to release by the parole board but had an MEPD that had been advanced through credits made under Proposition 57.<sup>12</sup>

As the litigation continues, more and more people will be affected by the Superior Court's ruling. Under Proposition 57, CDCR has had credit rules that

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<sup>7</sup> Sacramento County Superior Court Case No. 34-2022-80003807. Unless noted, citations to documents are to those filed in this case. The Criminal Justice Legal Foundation is a nonprofit corporation "dedicated to defending and enhancing the rights of victims of crime." There are also three other individual plaintiffs in the lawsuit who are crime victims or family of crime victims. See, e.g., Second Amended Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, 4–6, ¶¶ 1–4, May 18, 2023.

<sup>8</sup> Ruling on Submitted Matter and Order, 13, December 13, 2023 (quoting *In re Canady*, 57 Cal.App.5th 1022, 1034 (2020)). In particular, the Superior Court rejected arguments that Proposition 57 was an impermissible "revision" to the California Constitution and that CDCR's credit rules violated California Constitution, Article 3, § 3.5, which forbids state agencies from refusing to enforce state statutes. Ruling on Submitted Matter and Order, 8–13, December 13, 2023.

<sup>9</sup> *Id.* at 15–18.

<sup>10</sup> Penal Code § 3046, as relevant here, provides: "(a) An inmate imprisoned under a life sentence shall not be paroled until he or she has served the greater of the following: (1) A term of at least seven calendar years. (2) A term as established pursuant to any other law that establishes a minimum term or minimum period of confinement under a life sentence before eligibility for parole."

<sup>11</sup> Ruling on Submitted Matter and Order, 16–18, December 13, 2023.

<sup>12</sup> Order Granting in Part and Denying in Part Petitioners' Motion to Enforce Petition for Writ of Mandate and Granting in Part and Denying in Part Respondents Motion for a Discretionary Stay of Judgment Pending Appeal, May 29, 2024. The stayed portion of the court's order addresses CDCR's and BPH's scheduling and holding parole hearings based on the Proposition 57 credit rules. CDCR is still allowed to schedule and hold these hearings — it just cannot release people based on the Proposition 57 credit rules.

advanced MEPDs effective since May 2017<sup>13</sup> and CDCR estimates that more than 26,000 incarcerated people with indeterminate sentences have MEPDs advanced by Proposition 57.<sup>14</sup> According to CDCR, approximately 20 people per month due for release after approval by the parole board will have release dates pushed back, with some release dates pushed back years.<sup>15</sup>

The case is currently on appeal in the Third Appellate District, though briefing is not completed and it will be some time before an appellate decision issues.<sup>16</sup>

### **Public safety consequences**

The incarcerated people affected by the Superior Court's ruling are among the safest to release from prison and are only approved for release after extensive consideration by the parole board and, for many, the Governor.<sup>17</sup>

For example, in 2023, less than 20% of people eligible for a parole hearing were found suitable for release.<sup>18</sup> And between Fiscal Years 2011–12 and 2018–19, the parole board approved 5,248 people for release; less than 3% had a new conviction of any kind — misdemeanor or felony — within 3 years of release, and less than half of a percent (23 people) had a new felony conviction for an offense against a person.<sup>19</sup> And in general, research has shown that in-prison credit-earning schemes improve safety for incarcerated people and those working in prisons.<sup>20</sup>

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<sup>13</sup> See CDCR Fact Sheet, *Criminal Justice Legal Foundation v. California Department of Corrections, et al. Litigation Update Background* (July 2024).

<sup>14</sup> Declaration of Jill Johnston in Support of Motion to Enforce Writ of Mandate, ¶ 11 (Exhibit A in support of Respondents' Opposition to Motion to Enforce Writ of Mandate, April 9, 2024).

<sup>15</sup> Cayla Mihalovich, *They Earned Parole. A Court Order Keeps Them From Returning Home*, KQED, August 25, 2024.

<sup>16</sup> Third Appellate District Case No. C100274. CDCR filed its opening brief on August 5, 2024; respondent's brief is due September 4, 2024. CDCR's brief only addressed the credits-for-indeterminate-sentences issue.

<sup>17</sup> If the person's conviction was for murder, the Governor must also review the decision. California Constitution, Article 5, § 8(b); Penal Code § 3041.2. For non-murder cases, the Governor can request additional review by the parole board of any parole grant. See Penal Code § 3041.1.

<sup>18</sup> Board of Parole Hearings, *2023 Report of Significant Events*, 1. The large majority, but not all, of these people were serving an indeterminate sentence: around 80% of people eligible for a parole hearing had an indeterminate sentence, while the remaining had long determinate sentences but were still eligible for parole release because of youth offender or elderly parole. *Id.* The number is approximate because some people are eligible for both an elderly and youth offender hearing. Grant rates for determinately-sentenced people with a parole hearing are generally lower than people with indeterminate sentences. *Id.*

<sup>19</sup> *Id.* at 10.

<sup>20</sup> See Jennifer Doleac, *The possibility of parole: A powerful incentive that makes us all safer*, Route Fifty, May 6, 2024 (discussing studies). See also *People v. Brown*, 54 Cal.4th 314, 317 (2012) (describing benefits of credits).

### **Staff Recommendation**

The Committee should consider recommending revisions to the Penal Code that would restore credit-earning for people with indeterminate sentences who are affected by *CJLF v. CDCR*.

### **Conclusion**

Staff looks forward to discussing these issues with the Committee.

Respectfully submitted,

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