



## OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LASSEN

**\*\*PRESS RELEASE\*\***

**\*\*MAY 13, 2021\*\***

Lassen County District Attorney Susan M. Rios announced today that she and 40 other elected District Attorneys throughout the State, have filed a petition with the CDCR Secretary requesting the repeal of temporary emergency regulations awarding additional credits to over 76,000 state prison inmates.

The regulations were passed under a claim of an “emergency” and first made public on Friday April 30, 2021 at 3pm. They went into effect, prospectively, the very next day on Saturday May 1, 2021.

The CDCR Secretary stated these regulations were necessary to comply with “the direction outlined in the Governor’s Budget Summary” presented *a year ago* on May 14, 2020. By invoking an emergency, CDCR was able to bypass the traditional regulatory scheme and transparent public comment period. The regulations and their supporting documents do not comply with the requirements of Penal Code section 5058.3 in that *no emergency has been cited nor identified*.

These credit-earning provisions will significantly shorten the length of sentence for violent and serious offenders, some by up to 50%, and are not rationally related to any articulable operational need or circumstance of CDCR.

The administrative law petition is the first step in seeking a formal court order declaring the regulations unlawful. If the request to CDCR to repeal is denied, the next step will be to file for declaratory relief in court. If the emergency regulations are nullified by a court, CDCR would be forced to pass the regulations in the traditional manner, requiring the State’s Office of Administrative Law to provide greater transparency and public input.

District Attorney Rios stated:

“On May 11, 2021, representatives from CDCR addressed the Lassen County Board of Supervisors regarding the closure of CCC. One of the reasons cited in support of the closure is that there has been a decrease in the amount and type of inmates that an institution like CCC can accommodate. Yet, CDCR administration then implements these credit provisions which further dwindle the inmate

population. The Governor declared an emergency a year ago and the State is currently phasing out of COVID restrictions – so why now the sudden push for release? What is the ‘emergency’?

“CDCR keeps using the phrase ‘nonviolent offenders’ when it refers to these regulations. To be clear: the only types of individuals being sentenced to state prison, with rare exception, are the serious and violent criminals. We do not send people to state prison for theft or controlled substance related crimes unless they have specific disqualifiers from local jail commitments. This means that the state prison inmates eligible for these credits are rapists, child molesters, human traffickers, domestic abusers, those who have used a weapon or inflicted great bodily harm on someone, and prior sex offenders or prior “strikers” who have continued to reoffend.

“The ramifications of these changes are too drastic to be made in a shroud of secrecy. In filing this petition, we are asking CDCR to repeal these regulations to allow for transparency and public input. Crime victims deserve that. The general public deserves that.”

Attachments:  
Petition to CDCR



# Sacramento County District Attorney's Office

ANNE MARIE SCHUBERT  
District Attorney

Rod Norgaard  
Chief Deputy

Michael M. Blazina  
Assistant District Attorney

May 13, 2021

Kathleen Allison  
Office of the Secretary  
Department of Corrections and Rehabilitation  
PO Box 942883  
Sacramento, CA 94283-0001

Dear Secretary Allison:

Pursuant to Government Code sections 11340.6 and 11340.7, I, Anne Marie Schubert, District Attorney of Sacramento County, along with the forty (40) undersigned Elected District Attorneys across California, hereby petition to repeal the temporary emergency regulations contained in the Minimum Security Credit and Inmate Credit Earning rulemaking action filed with the Office of Administrative Law (OLA) on April 8, 2021. The reason for this request is that the proposed emergency regulations and their supporting documents contained in regulatory action number 2021-0408-04EON do not comply with the requirements under Penal Code section 5058.3.

Penal Code section 5058.3, subdivision (a)(2) states in relevant part:

Notwithstanding subdivision (b) of Section 11346.1 of the Government Code, no showing of emergency is necessary in order to adopt, amend, or repeal an emergency regulation if the director instead certifies, in a written statement filed with the Office of Administrative Law, that operational needs of the department require adoption, amendment, or repeal of the regulation on an *emergency basis*. The written statement shall include a description of the underlying facts and an explanation of the operational need to use the emergency rulemaking procedure. This paragraph provides an alternative to filing a statement of emergency pursuant to subdivision (b) of Section 11346.1 of the Government Code. *It does not preclude filing a statement of emergency* [emphasis added]. This paragraph only applies to the initial adoption and one readoption of an emergency regulation.

Subdivision (b) provides that:

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It is the intent of the Legislature, in authorizing the deviations in this section from the requirements and procedures of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, to authorize the department to expedite the exercise of its power to implement regulations as its unique operational circumstances require.

The purpose of the emergency procedure outlined in Penal Code section 5058.3 is to immediately put into place regulations on an *emergency basis*. However, the proposed regulations contained in the rulemaking file are credit earning provisions that have the effect of significantly shortening the length of sentence for 76,000 violent and serious offenders rather than a regulation that goes to an operational need or circumstance of the department.

Further, there is no “description of the underlying facts and an explanation of the operational need to use the emergency rulemaking procedure” in the proposed regulations as required by Penal Code section 5058.3(a)(2). In your Certification of Operational Needs, you cited the need to “Comply with the direction outlined in the Governor’s Budget Summary, *May Revision 2020-2021*.<sup>1</sup> Nowhere in the supporting documents is there an explanation of how *last year’s* budget has become an operational need for adoption of the regulations on an emergency basis.<sup>2</sup> As such, the public was denied an adequate opportunity for public input and comment on these far reaching regulations.

Because there is no operational need for the proposed emergency regulations contained in regulatory action number 2021-0408-04EON, the department must comply with the regular (Gov. Code, §11346) or emergency (Gov. Code, §11346.1, subd. (b)) rulemaking process contained in the California Administrative Procedure Act (APA) (Gov. Code, §11340 et seq.). Furthermore, CDCR has the authority to repeal these emergency regulations pursuant to Government Code sections 11346, 11340.6, and 11340.7.

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<sup>1</sup> The Governor’s May 2020 Budget Summary was issued on *May 14, 2020*, wherein the Governor recommended increased Good Conduct credits stating, “CDCR will pursue changes to good conduct credits that will be applied prospectively. While the changes are still being developed, they will be informed by preliminary recidivism data associated with existing good conduct credits.” See <http://www.ebudget.ca.gov/2020-21/pdf/Revised/BudgetSummary/FullBudgetSummary.pdf>

<sup>2</sup> Recently adopted department regulations on CDCR’s website show a notice of posting or public hearing including those adopted on an emergency basis; <https://www.cdcr.ca.gov/regulations/cdcr-regulations/new-rules-page/>. In fact, in a previous Notice of Change of Regulations related to resentencing of inmates pursuant to Penal Code section 1170(d)(1), CDCR posted the notice and authorized public comment for 45 days. See [https://www.cdcr.ca.gov/regulations/wp-content/uploads/sites/171/2021/03/NCR\\_21-04\\_Master\\_File\\_for\\_posting\\_ADA.pdf?label=Notice%20of%20Change%20to%20Regulations%2021-04%20noticed%20to%20the%20public%20on%20March%2019,%202021&from=https://www.cdcr.ca.gov/regulations/cdcr-regulations/new-rules-page/](https://www.cdcr.ca.gov/regulations/wp-content/uploads/sites/171/2021/03/NCR_21-04_Master_File_for_posting_ADA.pdf?label=Notice%20of%20Change%20to%20Regulations%2021-04%20noticed%20to%20the%20public%20on%20March%2019,%202021&from=https://www.cdcr.ca.gov/regulations/cdcr-regulations/new-rules-page/)

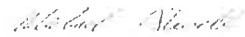
The regulations at issue here have no such notice of posting or public hearing on CDCR’s website.

Based upon the foregoing, we petition you to repeal these emergency regulations contained in the Minimum Security Credit and Inmate Credit Earning rulemaking action filed with the Office of Administrative Law (OLA) on April 8, 2021.

Sincerely,



Anne Marie Schubert  
District Attorney  
Sacramento County



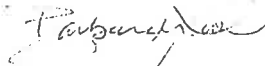
Michael Atwell  
District Attorney  
Alpine County



Todd Riebe  
District Attorney  
Amador County



Mike Ramsey  
District Attorney  
Butte County



Barbara Yook  
District Attorney  
Calaveras County

*Matthew Beauchamp\**

Matt Beauchamp  
District Attorney  
Colusa County



Katherine Micks  
District Attorney  
Del Norte County



Vern Pierson  
District Attorney  
El Dorado County



Lisa Smittcamp  
District Attorney  
Fresno County



Dwayne Stewart  
District Attorney  
Glenn County

*Maggie Fleming*

Maggie Fleming  
District Attorney  
Humboldt County



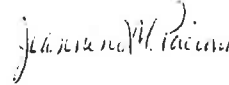
Gilbert G. Otero  
District Attorney  
Imperial County



Tim Kendall  
District Attorney  
Mono County



Cynthia Zimmer  
District Attorney  
Kern County



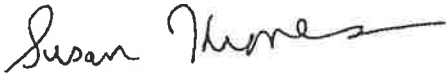
Jeannine Pacioni  
District Attorney  
Monterey County



Keith Fagundes  
District Attorney  
Kings County



Allison Haley  
District Attorney  
Napa County



Susan Krones  
District Attorney  
Lake County



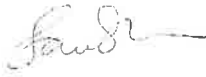
Cliff Newell  
District Attorney  
Nevada County



Melyssah Rios  
District Attorney  
Lassen County



Todd Spitzer  
District Attorney  
Orange County



Sally Moreno  
District Attorney  
Madera County



Morgan Gire  
District Attorney  
Placer County



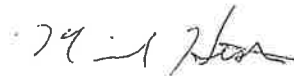
Lori Frugoli  
District Attorney  
Marin County



David Hollister  
District Attorney  
Plumas County



Walter Wall  
District Attorney  
Mariposa County



Michael Hestrin  
District Attorney  
Riverside County



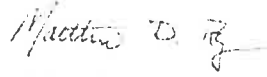
Candice Hooper  
District Attorney  
San Benito County



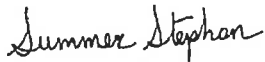
Krishna Abrams  
District Attorney  
Solano County



Jason Anderson  
District Attorney  
San Bernardino County




Matt Rogers  
District Attorney  
Tehama County



Summer Stephan  
District Attorney  
San Diego County



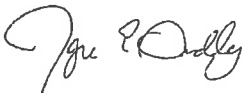
Tim Ward  
District Attorney  
Tulare County



Dan Dow  
District Attorney  
San Luis Obispo County



Cassandra Janecke  
District Attorney  
Tuolumne County



Joyce Dudley  
District Attorney  
Santa Barbara County



Erik Nasarenko  
District Attorney  
Ventura County



Stephanie Bridgett  
District Attorney  
Shasta County



Jeff Reisig  
District Attorney  
Yolo County



Kirk Andrus  
District Attorney  
Siskiyou County



Clint Curry  
District Attorney  
Yuba County

Cc: Josh Jugum, CDCR Regulation and Policy Management Branch