



# Sacramento County District Attorney's Office

ANNE MARIE SCHUBERT  
District Attorney

Rod Norgaard  
Chief Deputy

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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>

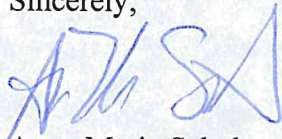
<sup>2</sup> Recently adopted department regulations on CDCR’s website show a notice of posting or public hearing including those adopted on an emergency basis; <https://www.cdcr.ca.gov/regulations/cdcr-regulations/new-rules-page/> In fact, in a previous Notice of Change of Regulations related to resentencing 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.

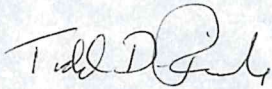
Sincerely,



Anne Marie Schubert  
District Attorney  
Sacramento County



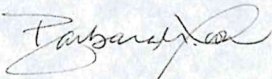
Michael Atwell  
District Attorney  
Alpine County



Todd Riebe  
District Attorney  
Amador County



Mike Ramsey  
District Attorney  
Butte County



Barbara Yook  
District Attorney  
Calaveras County



Matt Beauchamp  
District Attorney  
Colusa County



Katherine Micks  
District Attorney  
Del Norte County



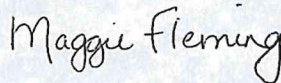
Vern Pierson  
District Attorney  
El Dorado County



Lisa Smittcamp  
District Attorney  
Fresno County



Dwayne Stewart  
District Attorney  
Glenn County



Maggie Fleming  
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  
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District Attorney  
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Morgan Gire  
District Attorney  
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Lori Frugoli  
District Attorney  
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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  
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Summer Stephan  
District Attorney  
San Diego County

Tim Ward  
District Attorney  
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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

Clinton Curry\*  
Clint Curry  
District Attorney  
Yuba County

Cc: Josh Jugum, CDCR Regulation and Policy Management Branch