



COUNTY OF FRESNO

Lisa A. Smittcamp
District Attorney

NEWS RELEASE

FOR IMMEDIATE RELEASE

May 13, 2021

Fresno County District Attorney Lisa Smittcamp Joins Effort to Stop Early Release of Over 76,000 State Prisoners

Fresno County District Attorney Lisa Smittcamp announced today that she has joined with Sacramento District Attorney Anne Marie Schubert, and 39 other elected District Attorneys across California, in filing a petition with the Secretary of the Department of Corrections and Rehabilitation (CDCR) 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 3:00 PM. These regulations would result in the early release of some of California's most violent criminals.

In adopting these regulations, and claiming an emergency, 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, the traditional regulatory scheme and transparent public comment period was bypassed.

The administrative law petition is often the first step in seeking a formal court order declaring the regulations unlawful. 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 Smittcamp stated, "By shortening sentences by as much as 50%, CDCR's use of emergency regulations to reduce sentences will result in the early release of some of our state's most dangerous criminals. The impact of such a reckless action on crime victims and public safety is obvious and must be challenged. The petition submitted asks CDCR to repeal these regulations, begin the process anew and allow for transparency and public input. All Californians, and especially victims of crime and their families, deserve an open and honest debate about the wisdom and potential consequences of such a drastic use of the regulations."

The petition submitted to the Secretary of the Department of Corrections and Rehabilitation is attached to this release.

Please direct any inquiries to FCDAMedia@fresnocountyca.gov.



Sacramento County District Attorney's Office

ANNE MARIE SCHUBERT
District Attorney

Rod Norgaard
Chief Deputy

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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*.”¹ 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.² 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.

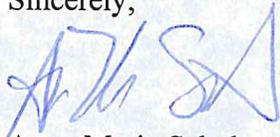
¹ The Governor’s May 2020 Budget Summary was issued on *May 14, 2020*, wherein the Governor recommended increased Good Conduct credits stating, “CDCR will pursue changes to good conduct credits that will be applied prospectively. While the changes are still being developed, they will be informed by preliminary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

² 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/

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.

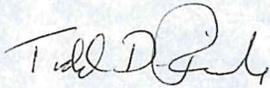
Sincerely,



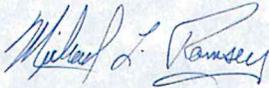
Anne Marie Schubert
District Attorney
Sacramento County



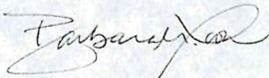
Michael Atwell
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Todd Riebe
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Amador County



Mike Ramsey
District Attorney
Butte County



Barbara Yook
District Attorney
Calaveras County



Matt Beauchamp
District Attorney
Colusa County



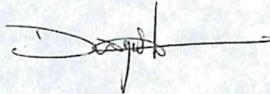
Katherine Micks
District Attorney
Del Norte County



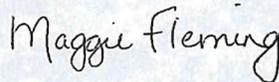
Vern Pierson
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El Dorado County



Lisa Smittcamp
District Attorney
Fresno County



Dwayne Stewart
District Attorney
Glenn County



Maggie Fleming
District Attorney
Humboldt County

Gilbert G. Otero
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Tim Kendall
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Jeannine Pacioni
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Candice Hooper
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Krishna Abrams
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Solano County

Jason Anderson
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Dan Dow
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Cassandra Janecke
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Jeff Reisig
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Siskiyou County

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Yuba County

Cc: Josh Jugum, CDCR Regulation and Policy Management Branch