

# Appendix A

**Three-Judge Court: List of Governing California Constitutional and Statutory Provisions**

**NOTE:** The State does not believe that further population reductions or prisoner releases are necessary. *See* 18 U.S.C. § 3626(a)(1)(B). The State does not endorse any of the potential options to further reduce the prison population. The following constitutional and statutory provisions govern the areas of the potential options. These provisions restrict Defendants' ability to implement the options. And it would be inappropriate for the federal court to waive or rewrite any provision of California state law. However, the further reductions required by the Court's population order can only be accomplished if the Court waives or rewrites the following State constitutional provisions and laws.

| <b><u>Court-Ordered Population Reduction Measure</u></b>  | <b><u>Governing Laws</u></b>   |
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| <p>Court-ordered expansion of credits. Includes:</p> <ul style="list-style-type: none"> <li>• Minimum custody inmates receive 2 for 1 credit earning;</li> <li>• Expand milestone completion credit to violent &amp; 2nd strike inmates;</li> <li>• Expand milestone credits for participation instead of only upon completion of the milestone</li> <li>• Expand credit earning for 2nd strike inmates (excluding sex offenses) from 20% to 34%;</li> </ul> <p>Expand credit earning for violent offenders (excluding sex offenses) from 15% to 34%.</p> | <p>Cal. Const. art. I, § 28(f)(5) (“sentences imposed upon convicted criminal wrongdoers . . . shall not be substantially diminished by early release policies intended to alleviate overcrowding in custodial facilities.”)</p> <p>Cal. Const. art. I, § 28(a)(5) (“the punitive and deterrent effect of custodial sentences imposed by the courts will not be undercut or diminished by the granting of rights and privileges to prisoners that are not required by any provision of the United States Constitution or by the laws of this State to be granted to any person incarcerated in a penal or other custodial facility in this State as a punishment or correction for the commission of a crime.”)</p> <p>Cal. Penal Code § 290(e) (“A person sentenced pursuant to this section shall not be released on parole prior to serving the minimum term of confinement prescribed by this section.”)</p> <p>Cal. Penal Code § 667(c)(5) (for second strike inmates, “The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.”)</p> <p>Cal. Penal Code § 2933 (addressing credit earning).</p> <p>Cal. Penal Code § 2933.05(a) (requiring completion of milestones to earn credit rather</p> |

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|   | <p>than mere participation in the program).</p> <p>Cal. Penal Code § 2933.05(e) (bars offenders sentenced under the Three Strikes law, violent offenders and those required to register under § 290 from earning milestone credit.)</p> <p>Cal. Penal Code § 2933.1 (violent offenders “shall accrue no more than 15 percent of worktime credit.”)</p> <p>Cal. Penal Code § 2933.2 (felons convicted of murder “shall not accrue any credit”).</p> <p>Cal Penal Code 2933.3 (only felons assigned to or trained for fire camps and eligible for day-for-day credit receive two-for-one credit instead).</p> <p>Cal. Code Regs. tit. 15, art. 3.5, §§ 3042 <i>et seq.</i> (addressing credit earning); 3044(b)(1) (allowing only those in a fire camp or a firefighter in a CDCR institution to earn two-for-one credit).</p> |
| <p>Court-ordered sentencing law change to require prison-bound inmates in county jail with 9 months or less left to serve to remain in county jail.</p> | <p>Cal. Penal Code § 1170(a) (requiring terms of imprisonment to be served in state prison).</p> <p>Cal. Penal Code § 1170(h)(3) (requiring felonies under this section to be served in state prison).</p> <p>Cal. Penal Code § 1216 (requiring a sheriff to deliver felons sentenced to state prison to a CDCR institution).</p> <p>Cal. Penal Code § 2901 (requiring CDCR to incarcerate an inmate until the sentence is completed).</p>   |
| <p>Court-ordered sentencing changes (<i>i.e.</i>, converting specified offenses from felony to misdemeanor).</p>  | <p>Cal. Health &amp; Safety Code § 11350(a) (conviction for possession of a controlled substance, including cocaine sentenced to state prison).</p> <p>Cal. Health &amp; Safety Code § 11377(a) (conviction of possession of a controlled substance, including methamphetamine sentenced to state prison).</p>   |

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|  | <p>Cal. Penal Code §§ 484 et seq. (conviction for some thefts results in state prison sentence.)</p> <p>Cal. Penal Code §§ 458 et seq. (conviction for second degree burglary sentenced to state prison).</p> <p>Cal. Veh. Code § 10851 (conviction for vehicle theft sentenced to state prison).</p> <p>Cal. Penal Code § 473 (conviction for forgery sentenced to state prison).</p> |
| Court-ordered expansion of Fire Camp Eligibility   | Cal. Code Regs. tit. 15, art. 10, § 3375.2 (any inmate with an administrative determinant is ineligible for fire camp placement).  |
| Court-ordered additional alternative custody measures (work furlough, restitution centers, etc.) | <p>Cal. Penal Code § 6228 (serious or violent offenders are ineligible for placement in a restitution center).</p> <p>Cal. Penal Code §6260 (Work furloughs are “. . . appropriate only for specified types of inmates for a limited period of time prior to release back to society.”)</p> <p>Cal. Penal Code §6263 (eligibility criteria for work furlough programs).</p>            |
| Court-ordered expansion of Alternative Custody Program for female inmates                        | <p>Cal. Penal Code § 1170.05(a) (provisions that make the program voluntary)</p> <p>Cal. Penal Code § 1170(a) (requiring terms of imprisonment to be served in state prison).</p> <p>California Constitution, art. I, §§ 28(a)(5) &amp; 28(f)(5).</p>  |
| Court-ordered expansion of Alternative Custody Program to male inmates                           | Cal. Penal Code § 1170.05 (limiting program to only female inmates).   |

| <b><u>Court-Ordered Population Reduction Measure</u></b>                  | <b><u>Governing Laws</u></b>  |
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| Court-ordered maintenance or expansion of out-of-state contract beds      | <p>Cal. Const., art. VII: Civil service hiring requirements.<sup>1</sup></p> <p>Cal. Gov't Code § 8550 <i>et seq.</i> (“Emergency Services Act”).</p> <p>Cal. Gov't Code § 8625 (circumstances under which the Governor may declare a state of emergency).</p> <p>State Civil Service Act (Cal. Gov't Code §§ 18500 <i>et seq.</i>)</p> <p>Cal. Gov't Code § 19130 (establishing standards for the use of personal services contracts. For example subsection (a)(3) prohibits contracts which “cause the displacement of civil service employees.”)</p> <p>Cal. Penal Code § 11191 (requiring written consent by inmate to transfer &amp; requiring consultation with attorney).</p> <p>Cal. Code Regs. tit. 15, art. 10, § 3379(a)(9) (eligibility criteria for California Out-of-State Correctional Facility program).</p> |
| Court-ordered expansion of in-state contract beds and/or leased jail beds | <p>Cal. Const., art. VII: Civil service hiring requirements.</p> <p>Cal. Gov't Code §§ 4525-4529.20, 4530-4535.3, 7070-7086, 7105-7118, 14835-14837.</p> <p>Cal. Gov't Code §§ 13332.10, 14660, 14669, 15853 (governing acquisition and leasing of real property).</p> <p>Cal. Gov't Code §§ 13332.19, 15815 (governing plans, specifications and procedures for major capital projects).</p> <p>Cal. Gov't Code §§ 14616 (governing approval of contracts by the Department of General Services (DGS) and exemption from and consequences for failure to obtain DGS approval).</p>   |

<sup>1</sup> All Constitutional provisions and Penal Code Section 667(c)(5) (which was enacted by voter initiative) would require a two-thirds vote of the Legislature or voter approval through the initiative process to amend or repeal. *See* Cal. Const. art. 2, § 10 & art. 18.

| <b><u>Court-Ordered Population Reduction Measure</u></b> | <b><u>Governing Laws</u></b>  |
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|  | <p>Cal. Gov't Code §§ 14825-14828 (governing advertisement of state contracts).</p> <p>Cal. Mil. &amp; Veterans Code §§ 999-999.13.</p> <p>Cal. Public Contracts Code §§ 6106, 10109-10126, 10129, 10140, 10141, 10180-10185, 10220, 10290-10295, 10297, 10301-10306, 10333, 10335, 10351, 10367, 10369, 10420-10425.</p> <p>Cal. Public Contracts Code §§ 10314, 10346 (progress payment limitations).</p> <p>Cal. Public Contracts Code §§ 10365.5, 10371; SCM § 3.02.4 (governing restrictions on and approval for multiple contracts with same contractor).</p> |
| Court-ordered outright early releases                    | <p>Cal. Const. art. I, § 28, (a)(5), (f)(5)</p> <p>Cal. Penal Code § 2901;</p> <p>Cal. Penal Code § 1170(a) (requiring terms of imprisonment to be served in state prison).</p> <p>Cal. Penal Code § 1170(h)(3) (requiring felonies under this section to be served in state prison).</p> <p>Cal. Penal Code § 290(e)</p>   |