



BOARD OF PAROLE HEARINGS



ADMINISTRATIVE DIRECTIVE NO: 2014-02

**SUBJECT: REQUIREMENTS FOR SUBSTITUTION OF COUNSEL AND FOR
WAIVER OF COUNSEL**

INTRODUCTION

This Administrative Directive discusses the requirements to replace a state appointed attorney with private counsel and the requirements to waive the assistance of counsel.

LEGAL AUTHORITY

The California Supreme Court has held that “the right to effective assistance of counsel encompasses the right to retain counsel of one’s own choosing.” (*People v. Courts*, (1985) 37 Cal.3d 784, 789, quoting *People v. Holland* (1978) 23 Cal.3d 77, 86.) “In view of the importance of these rights and the severe consequences which flow from their violation, the trial courts are required to ‘make all reasonable efforts to ensure that a defendant financially able to retain an attorney of his own choosing can be represented by that attorney.’” (*People v. Courts, supra*, at p. 789, quoting *People v. Crovedi* (1966) 65 Cal.2d 199, 207.)

However, the California Supreme Court has also held that after appointment of a state attorney a person may only substitute counsel when they have “engaged in a good faith, diligent effort to obtain the substitution of counsel before the scheduled trial date.” (*People v. Courts, supra*, at p. 790). If “there is no evidence defendant attempted to retain counsel, or had even taken steps to secure funds to hire private counsel . . . the court’s decision to deny the request for continuance to obtain counsel does not constitute an abuse of discretion or a denial of his Sixth Amendment right to counsel.” (*People v. Pigage* (2003) 112 Cal.App.4th 1359, 1367.)

California Code of Regulations, title 15, section 2256, subdivision (c), provides in part, “If a prisoner or parolee is entitled to be represented by an attorney at a hearing, an attorney will be provided at state expense if the prisoner or parolee cannot afford to retain private counsel.”

BACKGROUND

Approximately 180 days (six months) prior to every parole suitability hearing a correctional counselor meets with the inmate to review their hearing rights and complete BPH form 1003 (“Life Prisoner: Request for Attorney/Waiver of Attorney or Withdrawal of Request”). At that time the inmate must elect to retain private counsel, request the assistance of a state appointed attorney or waive their right to an attorney. (BPH form 1003 is attached to this administrative directive for reference.) If the inmate chooses to retain private counsel, written acceptance of the appointment must be received by the Board from private counsel within 60 days.

DIRECTIVE

After requesting the assistance of a state appointed attorney, if an inmate wishes to replace that attorney with private counsel he or she must submit a new BPH form 1003 (signed by the inmate and private counsel) at least 45 days prior to the hearing date. Private counsel shall note on the form whether they are ready to proceed with the hearing as scheduled or not.

- If private counsel is ready to proceed with the hearing as scheduled, the request for substitution of counsel shall be approved.
- If private counsel is not ready to proceed with the hearing as scheduled or the request for substitution of counsel is received less than 45 days prior to the hearing date, a hearing officer shall determine if the inmate “engaged in a good faith, diligent effort to obtain the substitution of counsel before the scheduled [hearing] date” and approve or deny the request accordingly; if received during the week of the hearing then the presiding hearing officer shall make the determination.

After requesting the assistance of a state appointed attorney or retaining private counsel, if an inmate wishes to withdraw their request for an attorney he or she must submit a new BPH form 1003 (signed by the inmate only) as early as possible.

- If the inmate is ready to proceed with the hearing as scheduled, the request shall be approved unless it is determined that legal representation is a required accommodation pursuant to the Americans with Disabilities Act (ADA).



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- If the inmate is not ready to proceed with the hearing as scheduled and legal representation is a required accommodation pursuant to the ADA, the request shall be denied.
- If the inmate is not ready to proceed with the hearing as scheduled and legal representation is not a required accommodation pursuant to the ADA, a hearing officer shall determine if good cause exists to postpone the hearing (see Administrative Directive 2013-03); if received during the week of the hearing then the presiding hearing officer shall make the determination.

After waiving their right to an attorney, if an inmate wishes to request the assistance of a state appointed attorney he or she must submit a new BPH form 1003 (signed by the inmate) at least 120 days (four months) prior to the hearing date. If, on the other hand, the inmate wishes to retain private counsel he or she must submit a new BPH form 1003 (signed by the inmate and private counsel) at least 45 days prior to the hearing date. Private counsel shall note on the form whether they are ready to proceed with the hearing as scheduled or not.

- If private counsel is ready to proceed with the hearing as scheduled, the request for substitution of counsel shall be approved.
- If private counsel is not ready to proceed with the hearing as scheduled or the request for substitution of counsel is received less than 45 days prior to the hearing date, a hearing officer shall determine if the inmate “engaged in a good faith, diligent effort to obtain . . . counsel before the scheduled [hearing] date” and approve or deny the request accordingly; if received during the week of the hearing then the presiding hearing officer shall make the determination.

This Administrative Directive shall take effect immediately. If you have any questions concerning the contents of this Administrative Directive please contact the Legal Division at (916) 324-7604.

APPROVED BY: _____

JENNIFER P. SHAFFER
Executive Officer, BPH

DATE: _____

LIFE PRISONER: REQUEST FOR ATTORNEY/WAIVER OF ATTORNEY OR WITHDRAWAL OF REQUEST

Date of Hearing	Time of Hearing	Type of Hearing
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Please complete and return as instructed by staff as soon as possible but no later than 5 days after receipt.

REQUEST FOR ATTORNEY

I request the assistance of an attorney at my hearing.

1. I have or can retain my own attorney. The attorney is:

Attorney's Name	Telephone
Attorney's Address	

Signature of Prisoner	CDC Number	Date
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2. I wish to have the state provide an attorney to assist me. I declare under penalty of perjury that I am indigent (I have less than \$1,500 in cash and/or accounts, Title 15 CCR §2256(c)) and cannot afford an attorney.

Signature of Prisoner	CDC Number	Date
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WAIVER OF ATTORNEY

I waive my right to have an attorney.

On _____ (Date), I was informed that I have been scheduled to appear before the BOARD OF PRISON TERMS for a hearing. I was also informed of my right to be represented by an attorney at my Board hearing. I know that if I am indigent and cannot afford to retain an attorney the state will appoint an attorney to represent me at state expense. Knowing this, I have decided that I DO NOT wish the assistance of an attorney at my Board hearing

Signature of Prisoner	CDC Number	Date
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WITHDRAWAL OF REQUEST FOR AN ATTORNEY

I withdraw my request for an attorney.

I have reconsidered my request for an attorney at my Board hearing and have decided that I DO NOT wish to have the assistance of an attorney at my Board hearing. This decision to withdraw my request for an attorney is not being made as a result of any promises or duress. I know that if I withdraw my request for an attorney, I will not be able to later request an attorney again for this hearing.

Signature of Prisoner	CDC Number	Date
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<u>NAME</u>	<u>CDC NUMBER</u>	<u>INSTITUTION</u>
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Title 15, Division 2, Board of Parole Hearings **Rules of Construction and Definitions**

Life Term Start Date (LTSD). The date, pursuant to Penal Code Section 2900, when the prisoner begins to serve the life sentence, following completion of all consecutive determinate sentences, if any.

Minimum Eligible Parole Date (MEPD). The earliest date on which an ISL or life prisoner may legally be released on parole. If a prisoner is serving both a life or ISL sentence and a determinate sentence, and the determinate sentence release date is later than the statutory MEPD for the life or ISL sentence, the determinate sentence release date is the MEPD.

Base Offense. The most serious of all life crimes, as determined by the hearing panel, for which the prisoner is committed to prison; in the case of an habitual offender sentenced to a life term under Penal Code Section 667.7, the most serious of the series of prior and current offenses which resulted in commitment as an habitual offender; and, in the case of a sex offender sentenced to a life term under Penal Code Section 667.51, the series of prior and current offenses which resulted in conviction as a sex offender, considered as a whole.

Base Term. The term (mitigated, middle, or aggravated) selected by the hearing panel from the appropriate matrix for the base offense, based solely on the circumstances existing at the time of the base offense, including the gravity of the base offense and individual culpability, taking into account all of the circumstances of the crime.

Mitigated Base Term. The lower of the three possible terms for the category selected by the hearing panel from the appropriate matrix upon a finding of one or more circumstances in mitigation.

Aggravated Base Term. The upper of the three possible terms for the category selected by the hearing panel from the appropriate matrix upon a finding of one or more circumstances in aggravation.

Adjusted Base Term. The term set for the base offense, any enhancements, and any other crimes, added together.

Post-conviction Credit. Credit awarded for each full year served from the life term start date (LTSD) to the date of the hearing which resulted in a grant of parole; including credit awarded at progress hearings for each full year served thereafter.

Proposed Life-Term. The total term calculated by the hearing panel at a suitability hearing, or adjusted by the hearing panel at a progress hearing, consisting of the adjusted base term reduced by any post-conviction credit.

Pre-prison Credit. Credit for time in custody as certified by the court and provided for in Penal Code Section 2900.5.

Verified Life-Term. The total term calculated by the Board's Legal Division during Decision Review, which shall take into consideration any pre-prison credit and be affirmed by a hearing panel if modified in a manner that would require a longer period of confinement than the proposed life-term.

DRAFT

§ 2000. Rules of Construction and Definitions.

Adjusted Base Term. The term set for the base offense, any enhancements, and any other crimes, added together.

Aggravated Base Term. The upper of the three possible terms for the category selected by the hearing panel from the appropriate matrix upon a finding of one or more circumstances in aggravation.

Base Offense. The most serious of all life crimes, as determined by the hearing panel, for which the prisoner is committed to prison; in the case of an habitual offender sentenced to a life term under Penal Code Section 667.7, the most serious of the series of prior and current offenses which resulted in commitment as an habitual offender; and, in the case of a sex offender sentenced to a life term under Penal Code Section 667.51, the series of prior and current offenses which resulted in conviction as a sex offender, considered as a whole.

Base Term. The term (mitigated, middle, or aggravated) selected by the hearing panel from the appropriate matrix for the base offense, based solely on the circumstances existing at the time of the base offense, including the gravity of the base offense and individual culpability, taking into account all of the circumstances of the crime.

Life Term Start Date (LTSD). The date, pursuant to Penal Code Section 2900, when the prisoner begins to serve the life sentence, following completion of all consecutive determinate sentences, if any.

Minimum Eligible Parole Date (MEPD). The earliest date on which an ISL or life prisoner may legally be released on parole. If a prisoner is serving both a life or ISL sentence and a determinate sentence, and the determinate sentence release date is later than the statutory MEPD for the life or ISL sentence, the determinate sentence release date is the MEPD.

Mitigated Base Term. The lower of the three possible terms for the category selected by the hearing panel from the appropriate matrix upon a finding of one or more circumstances in mitigation.

Post-conviction Credit. Credit awarded for each full year served from the life term start date (LTSD) to the date of the hearing which resulted in a grant of parole; including credit awarded at progress hearings for each full year served thereafter.

Pre-prison Credit. Credit for time in custody as certified by the court and provided for in Penal Code Section 2900.5.

Proposed Life-Term. The total term calculated by the hearing panel at a suitability hearing, or adjusted by the hearing panel at a progress hearing, consisting of the adjusted base term reduced by any post-conviction credit.

Verified Life-Term. The total term calculated by the Board's Legal Division during Decision Review, which shall take into consideration any pre-prison credit and be affirmed by a hearing panel if modified in a manner that would require a longer period of confinement than the proposed life-term.

DRAFT

PAROLE CONSIDERATION CRITERIA AND GUIDELINES FOR LIFE PRISONERS AND NON-LIFE 1168 PRISONERS

§ 2268. Initial Parole Hearing.

(a) General. A prisoner shall first be considered for parole at an initial parole hearing. A base term and an adjusted base term shall be established at this hearing.

(b) Decision. At the conclusion of the hearing, the prisoner shall receive a copy of the proposed decision. ~~If the panel's decision is to grant parole, the proposed decision shall state the period of confinement~~ base term and adjusted base term established. ~~If the panel's decision is to grant parole, the proposed decision shall also state the conditions which the prisoner must be met~~ meet in order to be released after serving that period of confinement, and the consequences of a failure to meet such those conditions. If the panel's decision is to deny parole, the proposed decision shall state ~~that parole~~ the reason or reasons parole has been denied, set a date to reconsider whether the prisoner should be released, and suggest activities in which the prisoner might participate that will benefit him or her while he or she is incarcerated.

(b) Multiple Year Denials. ~~In cases in which the panel may deny a subsequent parole hearing for more than one year, it shall utilize the criteria specified in sections 2281 or 2402 as applicable. It shall make specific written findings stating the bases for the decision to defer the subsequent suitability hearing for two, three, four, or five years. If the board defers a hearing for five years, the prisoner's central file shall be reviewed by a deputy commissioner within three years, at which time the deputy commissioner may direct that a hearing be held within one year if the inmate has been disciplinary free and programming in accordance with board direction since the last hearing. The board shall notify the prisoner in writing of the deputy commissioner's decision.~~

(c) Review. All proposed decisions shall be reviewed as provided in ~~Section~~ § 2041. If the proposed decision is ~~approved or~~ modified without a new hearing, the board shall send a copy of the modified decision to the prisoner within ~~20~~30 days and to all of the other parties in attendance at the hearing. ~~of the hearing.~~ If a decision to deny parole is approved, the approved decision shall include the panel's reasons for the denial of parole, activities which might be of benefit during imprisonment, and when the prisoner can expect to have another parole consideration hearing. If the proposed decision is ~~disapproved and vacated~~ and a new hearing is ordered, a copy of the ~~disapproved decision and the reasons for ordering a new hearing~~ decision shall be sent to the prisoner within 30 days.

§ 2280. General.

~~A life prisoner shall be considered for parole for the first time at the initial parole consideration hearing. At this hearing, a parole date shall be denied if the prisoner is found to be unsuitable for parole under s 2281(c). A parole date shall be set if the prisoner is found to be suitable for parole under s 2281(d). A parole date set under this article shall be set in a manner that provides uniform terms for offenses of similar gravity and magnitude in respect to the threat to the public. In setting the parole date, the panel shall consider the Sentencing Rules for the Superior Courts as they specifically relate to life prisoners. The panel shall also consider the criteria and guidelines set forth in this article for determining the suitability for parole and the setting of parole dates, considering the number of victims of the crime for which the prisoner was sentenced and any other circumstances in mitigation or aggravation.~~

The criteria and guidelines set forth in this article shall be applied to determine suitability for parole and the setting of parole terms, considering the number of victims or the base offense and any other circumstances in mitigation or aggravation.

A parole term set under this article shall be set in a manner that provides uniform terms for offenses of similar gravity and magnitude with respect to their threat to the public, and that comply with the sentencing rules that the Judicial Council may issue and any sentencing information relevant to the setting of parole release terms.

§ 2282. Base Term.

(a) General. ~~The panel shall set a base term for each life prisoner who is found suitable for parole. The base term shall be established based solely on the gravity of the base offense, taking into account all of the circumstances of that crime. The base offense is the most serious of all life offenses for which the prisoner has been committed to prison.~~

The base term shall be established by utilizing the ~~appropriate matrix of base terms~~ provided in this section ~~for the base offense of which the prisoner was convicted~~. The panel shall determine the category most closely related to the circumstances of the ~~crime~~ base offense. ~~The panel and~~ shall impose the middle base term ~~reflected in the matrix~~, unless ~~the panel~~ it finds circumstances in aggravation or mitigation.

If the panel finds circumstances in aggravation or ~~in~~ mitigation, as provided in § 2283 or § 2284, the panel may impose the upper or lower base term ~~provided in the matrix~~, ~~stating the specific reason for imposing such a term~~. A base term other than the upper, middle, or lower base term ~~provided in the matrix~~ may be imposed by the panel if justified by the particular facts of the

individual case. The reason or reasons for imposing a term other than the base term must be stated on the record.

In considering crimes for which no matrix is provided, the panel shall compare the offense to others for which there is a matrix of similar gravity and magnitude in respect to the threat to the public and apply the corresponding matrix.

(b) . . .

(c) . . .

(d) Matrix for Other Life Crimes.

~~In considering crimes for which no matrix is provided, the panel shall impose a base term by comparison to offenses of similar gravity and magnitude in respect to the threat to the public, and shall consider any relevant Judicial Council rules and sentencing information as well as any circumstances in aggravation or mitigation of the crime.~~

PAROLE CONSIDERATION CRITERIA AND GUIDELINES FOR ISL PRISONERS

§ 2304. Initial Parole Hearing.

(a) General. ~~At this hearing the~~ A prisoner shall be considered for parole for the first time at an initial parole hearing. ~~The hearing panel shall first determine whether the prisoner is unsuitable for parole under the criteria in Section 2316. If the prisoner is found unsuitable, parole shall be denied, and a written statement of the specific factual reasons for the denial shall be given to the prisoner. The hearing panel may recommend to the prisoner what steps may be undertaken to enhance the possibility of a grant of parole at a future hearing.~~ A base term and an adjusted base term shall be established at this hearing.

~~If a prisoner is found suitable for parole, a tentative parole date shall be set as provided in Sections 2318-2328 utilizing the factors of Section 2317 and the ranges of Section 2329.~~

(b) Decision. At the conclusion of the hearing, the prisoner shall receive a copy of the proposed decision. The proposed decision shall state the base term and adjusted base term established by the panel. If the panel's decision is to deny parole, the proposed decision shall state the reason or reasons parole has been denied, set a date to reconsider whether the prisoner should be released, and suggest activities in which the prisoner might participate that will benefit him or her while he or she is incarcerated.

(b) Scheduling. ~~The initial parole hearing shall be scheduled as follows:~~

(1) ~~MEPD within 120 days.~~

~~A prisoner whose MEPD is within 120 days of reception shall be scheduled within 120 days of reception.~~

(2) ~~MEPD over 120 Days.~~

~~A prisoner whose MEPD is more than 120 days after reception shall be scheduled one month before the MEPD.~~

(c) Review. All proposed decisions shall be reviewed as provided in § 2041. If the proposed decision is modified without a new hearing, the board shall send a copy of the modified decision to the prisoner within 30 days. If the proposed decision is vacated and a new hearing is ordered, a copy of the order shall be sent to the prisoner within 30 days.

§ 2315. General.

~~In considering an ISL prisoner for parole, the hearing panel shall consider the criteria and be guided by the ranges suggested in this article in setting a parole date.~~

~~Applying the criteria in 2316, the hearing panel shall first determine whether the prisoner is unsuitable for parole. If the prisoner is found unsuitable, parole shall be denied.~~

~~If the prisoner is found suitable for parole, the hearing panel shall consider the criteria in 2317 to determine the total period of confinement. The hearing panel shall determine the period of confinement following the procedures in 2318 2328.~~

The criteria and guidelines set forth in this article shall be applied to determine the suitability for parole and the setting of parole terms, considering the number of victims of the base offense and any other circumstances in mitigation or aggravation.

A parole term set under this article shall be set in a manner that provides uniform terms for offenses of similar gravity and magnitude with respect to their threat to the public, and that comply with the sentencing rules that the Judicial Council may issue and any sentencing information relevant to the setting of parole release terms.

§ 2317. Fixing a Parole Term: Criteria.

~~(a) General. If the prisoner is found suitable for parole, in setting a parole date the hearing panel shall consider the seriousness of the offense and any relevant criteria described in the sentencing rules the Judicial Council may issue.~~

~~(b)(a) . . .~~

~~(e)(b) . . .~~

PAROLE CONSIDERATION CRITERIA AND GUIDELINES FOR MURDERS COMMITTED ON OR AFTER NOVEMBER 8, 1978, AND SPECIFIED ATTEMPTED MURDERS

§ 2401. General.

(a) The criteria and guidelines set forth in this article shall be applied to determine the suitability for parole and the setting of parole terms, considering the number of victims of the base offense and any other circumstances in mitigation or aggravation.

A parole term set under this article shall be set in a manner that provides uniform terms for offenses of similar gravity and magnitude with respect to their threat to the public, and that comply with the sentencing rules that the Judicial Council may issue and any sentencing information relevant to the setting of parole release terms.

(b) Initial Parole Hearing. A life prisoner shall be considered for parole for the first time at the an initial parole consideration hearing scheduled as provided in Section 2268. A parole date shall be denied if the prisoner is found unsuitable for parole under Section 2402(e). A parole date shall be set if the prisoner is found suitable for parole under Section 2402(d). A parole date set under this article shall be set in a manner that provides uniform terms for offenses of similar gravity and magnitude with respect to the threat to the public. A base term and an adjusted base term shall be established at this hearing.

In setting the parole date the panel shall consider the Sentencing Rules for the Superior Courts. The panel shall also consider the criteria and guidelines set forth in this article for determining the suitability for parole and the setting of parole dates, considering the number of victims of the crime for which the prisoner was sentenced and any other circumstances in mitigation or aggravation.

(c) Decision. At the conclusion of the hearing, the prisoner shall receive a copy of the proposed decision. The proposed decision shall state the base term and adjusted base term established by the panel. If the panel's decision is to deny parole, the proposed decision shall state the reason or reasons parole has been denied, set a date to reconsider whether the prisoner should be released, and suggest activities in which the prisoner might participate that will benefit him or her while he or she is incarcerated.

(d) Review. All proposed decisions shall be reviewed as provided in § 2041. If the proposed decision is modified without a new hearing, the board shall send a copy of the modified decision to the prisoner within 30 days. If the proposed decision is vacated and a new hearing is ordered, a copy of the order shall be sent to the prisoner within 30 days.

~~The terms in this article are guidelines only. The suggested terms serve as the starting point for the board's consideration of each case on an individual basis. The board may establish a term above or below the guidelines when warranted and reasons are stated on the record. A prisoner shall not be released before the minimum eligible parole date.~~

§ 2403. Base Term.

(a) General. ~~The panel shall set a base term for each life prisoner who is found suitable for parole.~~ The base term shall be ~~established~~ based solely on the gravity of the base ~~crime offense~~, taking into account all of the circumstances of that crime. If the prisoner has been received in prison for more than one murder committed on or after November 8, 1978, the base ~~crime offense~~ offense is the most serious of the murders, considering the facts and circumstances of the crime. If the prisoner has been sentenced to prison for murders committed before November 8, 1978, and for murders committed on or after November 8, 1978, the base offense shall be the most serious of the murders committed on or after November 8, 1978.

The base term shall be established by utilizing the ~~appropriate~~ matrix of ~~base terms~~ provided in this section. The panel shall determine the category most closely related to the circumstances of the ~~crime base offense~~. ~~The panel and~~ shall impose the middle base term, ~~reflected in the matrix unless the panel it~~ finds circumstances in aggravation or mitigation.

If the panel finds circumstances in aggravation or ~~in~~ mitigation, as provided in §§ 2404 or § 2405, the panel may impose the upper or lower base term ~~provided in the matrix by stating the specific reason for imposing such a term~~. A base term other than the upper, middle, or lower base term ~~provided in the matrix~~ may be imposed by the panel if justified by the particular facts of the individual case ~~and if the facts supporting the term imposed are stated~~. The reason or reasons for imposing a term other than the base term must be stated on the record.

(b) . . .

(c) . . .

(d) . . .

(e) . . .

(f) . . .

(g) Base Terms of Other Life Crimes.

In considering life crimes for which no matrix is provided, the panel shall ~~impose~~ apply a matrix from this Division for a base term by comparison to offenses of similar gravity and magnitude in respect to the threat to the public, ~~and shall consider any relevant Judicial Council rules and sentencing information as well as any circumstances in aggravation or mitigation of the crime.~~

DRAFT

PAROLE CONSIDERATION CRITERIA AND GUIDELINES FOR HABITUAL OFFENDERS SENTENCED TO LIFE TERMS UNDER PENAL CODE SECTION 667.7

§ 2421. General.

(a) The criteria and guidelines set forth in this article shall be applied to determine the suitability for parole and the setting of parole terms for habitual offenders sentenced to life terms under Penal Code Section 667.7, considering the number of victims of the base offense and any other circumstances in mitigation or aggravation.

A parole term set under this article shall be set in a manner that provides uniform terms for offenses of similar gravity and magnitude with respect to their threat to the public, and that comply with the sentencing rules that the Judicial Council may issue and any sentencing information relevant to the setting of parole release terms.

(b) Initial Parole Hearing. A habitual offender shall be considered for parole for the first time at the an initial parole consideration hearing. ~~A parole date shall be denied if the prisoner is found unsuitable for parole under Section 2422(c). A parole date shall be set if the prisoner is found suitable for parole under Section 2422(d). A parole date set under this article shall be set in a manner that provides uniform terms for offenses of similar gravity and magnitude with respect to the threat to the public. A base term and an adjusted base term shall be established at this hearing.~~

~~In setting the parole date the panel shall consider the Sentencing Rules for the Superior Courts. The panel shall also consider the criteria and guidelines set forth in this article for determining suitability for parole and the setting of parole dates, the circumstances of the crimes for which the prisoner was sentenced, and any circumstances in aggravation or mitigation.~~

In setting the base period of confinement, the panel shall consider the circumstances of the current and prior offenses resulting in the conviction as a habitual offender, including the number of prior prison terms for specified crimes and the extent of injury to the victim of the current offense. The panel may then make adjustments to the base period of confinement for other factors.

(c) Decision. At the conclusion of the hearing, the prisoner shall receive a copy of the proposed decision. The proposed decision shall state the base term and adjusted base term established by the panel. If the panel's decision is to deny parole, the proposed decision shall state the reason or reasons parole has been denied, set a date to reconsider whether the prisoner should be released, and suggest activities in which the prisoner might participate that will benefit him or her while he or she is incarcerated.

(d) Review. All proposed decisions shall be reviewed as provided in § 2041. If the proposed decision is modified without a new hearing, the board shall send a copy of the modified decision to the prisoner within 30 days. If the proposed decision is vacated and a new hearing is ordered, a copy of the order shall be sent to the prisoner within 30 days.

~~The circumstances tending to show suitability and unsuitability, and the circumstances in aggravation and mitigation contained in this article shall be construed as guidelines only. The panel may make findings outside the guidelines when warranted in the individual case and reasons are stated on the record.~~

§ 2423. Base Term.

(a) General. ~~The panel shall set a base term for each habitual offender who is found suitable for parole. The base term shall be established based on the circumstances of the series of prior and current offenses which resulted in conviction as an habitual offender, considered as a whole.~~

The base term shall be established by utilizing the ~~appropriate~~ matrix of base terms provided in this section. The panel shall determine the category most closely related to the circumstances of the most serious of the series of prior and current offenses which resulted in commitment as an habitual offender, and. ~~The panel shall impose the middle base term, reflected in the matrix unless the panel it finds circumstances in aggravation or mitigation.~~

If the panel finds circumstances in aggravation or ~~in~~ mitigation, as provided in ~~Sections § 2424 or § 2425~~, the panel may impose the upper or lower base term ~~provided in the matrix by stating the specific reason for imposing such a term~~. A base term other than the upper, middle, or lower base term ~~provided in the matrix~~ may be imposed by the panel if justified by the particular facts of the individual case ~~and if the facts supporting the term imposed are stated~~. The reason or reasons for imposing a term other than the upper, middle, or lower base term for the category selected must be stated on the record.

(b) Matrix . . .

PAROLE CONSIDERATION CRITERIA AND GUIDELINES FOR SEX OFFENDERS SENTENCED TO LIFE TERMS UNDER PENAL CODE SECTION 667.51

§ 2430. Scope of Article.

The criteria and guidelines in this article shall apply to prisoners sentenced to a term of 15 years to life under Penal Code Section 667.51. The guidelines in this article shall be construed as based on the public's expressed intent in adding Section 667.51 to the Penal Code that a person convicted of lewd or lascivious acts committed against a child under the age of 14, and who has served two or more prior prison terms for specified sex crimes should be incarcerated for an extended period of time.

The general statement in Section 2400 regarding the differences between the minimum eligible parole date and the parole release date shall be construed as if incorporated herein.

A person committed under Penal Code Section 667.51 shall have his initial parole consideration hearing in the thirteenth month prior to the minimum eligible parole date. The prisoner shall have documentation hearings as provided in Section 2269.1, but no specific amount of credit shall be granted until the board has established a period of confinement.

§ 2431. General.

(a) The criteria and guidelines set forth in this article shall be applied to determine the suitability for parole and the setting of parole terms for prisoners sentenced to a term of 15 years to life under Penal Code Section 667.51, considering the number of victims of the base offense and any other circumstances in mitigation or aggravation. The guidelines in this article shall be construed as based on the public's expressed intent in adding Section 667.51 to the Penal Code that a person convicted of lewd or lascivious acts committed against a child under the age of 14, and who has served two or more prior prison terms for specified sex crimes should be incarcerated for an extended period of time.

A parole term set under this article shall be set in a manner that provides uniform terms for offenses of similar gravity and magnitude with respect to their threat to the public, and that comply with the sentencing rules that the Judicial Council may issue and any sentencing information relevant to the setting of parole release terms.

(b) Initial Parole Hearing. A sex offender shall be considered for parole for the first time at ~~the~~ an initial parole consideration hearing. ~~A parole date shall be denied if the prisoner is found unsuitable for parole under Section 2432(e). A parole date shall be set if the prisoner is found suitable for parole under Section 2432(d). A parole date set under this article shall be set in a~~

~~manner that provides uniform terms for offenses of similar gravity and magnitude with respect to the threat to the public. A base term and an adjusted base term shall be set at this hearing.~~

~~In setting a parole date the panel shall consider the Sentencing Rules for the Superior Courts. The panel shall also consider the criteria and guidelines set forth in this article for determining suitability for parole and the setting of parole dates, the circumstances of the crimes for which the prisoner was sentenced and any circumstances in aggravation or mitigation.~~

In setting a base period of confinement, the panel shall consider the circumstances of the current and prior offenses resulting in conviction under Penal Code Section 667.51.

~~The circumstances tending to show suitability and unsuitability, and the circumstances in aggravation and mitigation contained in this article shall be construed as guidelines only. The panel may make findings outside the guidelines when warranted in the individual case and reasons are stated on the record.~~

(c) Decision. At the conclusion of the hearing, the prisoner shall receive a copy of the proposed decision. The proposed decision shall state the base term and adjusted base term established by the panel. If the panel's decision is to deny parole, the proposed decision shall state the reason or reasons parole has been denied, set a date to reconsider whether the prisoner should be released, and suggest activities in which the prisoner might participate that will benefit him or her while he or she is incarcerated.

(d) Review. All proposed decisions shall be reviewed as provided in § 2041. If the proposed decision is modified without a new hearing, the board shall send a copy of the modified decision to the prisoner within 30 days. If the proposed decision is vacated and a new hearing is ordered, a copy of the order shall be sent to the prisoner within 30 days.

§ 2433. Base Term.

~~(a) General. The panel shall set a base term for each sex offender who is found suitable for parole. The base term shall be established based on the circumstances of the series of prior and current offenses which resulted in conviction as a sex offender, considered as a whole. The panel shall set a base term which it finds to be appropriate in an individual case after consideration of the Ccircumstances in Aaggravation listed in Section § 2434 and the Ccircumstances in Mmitigation listed in Section § 2435, and any other circumstances which appear to be important in the judgment of the panel.~~