

## **PROPOSED REGULATORY TEXT**

Proposed additions are indicated by underline and deletions are indicated by ~~strikethrough~~.

### BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS TITLE 15. CRIME PREVENTION AND CORRECTIONS DIVISION 2. BOARD OF PAROLE HEARINGS

#### **CHAPTER 3. PAROLE RELEASE**

Article 14. Parole Consideration Hearings for Youth Offenders is *added* to read as follows:

#### **ARTICLE 14. PAROLE CONSIDERATION HEARINGS FOR YOUTH OFFENDERS**

##### **§ 2440. Youth Offender Defined.**

(a) A youth offender is an inmate who meets all of the following criteria:

- (1) The inmate committed his or her controlling offense prior to reaching age 23;
- (2) The inmate was sentenced to a determinate term or a life term with the possibility of parole;
- (3) The inmate is currently incarcerated for the offense or group of offenses that includes the controlling offense; and
- (4) The inmate is not ineligible based on any factors listed in subdivision (c) of this section.

(b) For purposes of determining whether an inmate qualifies as a youth offender, the “controlling offense” is the single crime or enhancement for which any sentencing court imposed the longest term of imprisonment.

(c) Inmates who committed their controlling offense prior to reaching age 23 are ineligible for parole under this article if one or more of the following factors exist:

- (1) The inmate is serving a sentence of death or life without the possibility of parole;
- (2) The inmate was sentenced on the controlling offense for a prior felony conviction under Penal Code sections 1170.12 or 667(b)-(i);
- (3) The inmate was sentenced on the controlling offense for a one-strike sex offense under Penal Code section 667.61;
- (4) The inmate was convicted of any offense after reaching age 23 for which “malice aforethought” is a necessary element of the offense; or
- (5) The inmate was convicted of any offense after reaching age 23 for which the inmate was sentenced to a life term of any length.

(d) If two or more offenses carry identical sentence lengths and are the inmate’s longest terms of imprisonment, the controlling offense shall be determined as follows:

- (1) If none of the sentences were imposed pursuant to Penal Code section 1170.12, subdivisions (b) through (i) of section 667(b)-(i), or section 667.61, the controlling offense is whichever offense the inmate committed first in time.
- (2) If one sentence was imposed pursuant to Penal Code section 1170.12, subdivisions (b) through (i) of section 667(b)-(i), or section 667.61, the controlling offense is that offense.

(3) If more than one sentence was imposed pursuant to Penal Code section 1170.12, subdivisions (b) through (i) of section 667(b)-(i), or section 667.61, the controlling offense is whichever of those offenses the inmate committed first in time.

(e) If a sentence on an offense is imposed pursuant to Penal Code section 1170.12, subdivisions (b) through (i) of section 667, or section 667.61, but the offense is not the controlling offense, this shall not be the basis for ineligibility under subdivision (c) of this section.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Sections 667, 667.61, 1170.12, 3051(a), and 3051(h), Penal Code.

### **§ 2441. Youth Offender Determinations.**

(a) Youth offender determinations by the department are subject to the appeal process found in California Code of Regulations, Title 15, sections 3084-3084.9. Inmates contesting a youth offender determination by the department must submit a CDCR Form 602 Inmate Appeal to Correctional Case Records Services of the department under that appeal process.

(b) Youth Offender Determinations Defined. Correctional Case Records Services of the department determines whether an inmate qualifies as a youth offender as defined in section 2440 of these regulations, and calculates the Youth Parole Eligibility Date (YPED) as defined in subdivision (c) of this section for all inmates who qualify as youth offenders. For purposes of this article, both determinations are referred to as “youth offender determinations.”

(c)(1) A YPED is the earliest date on which a youth offender is eligible for a parole consideration hearing pursuant to Penal Code section 3051, subdivision (b). A youth offender’s YPED is set according to the following criteria:

(A) If the controlling offense is a determinate term of any length, the YPED is the first day after the youth offender has completed 14 continuous years of incarceration;

(B) If the controlling offense is a life term of less than 25 years to life, the YPED is the first day after the youth offender has completed 19 continuous years of incarceration; or

(C) If the controlling offense is a life term of 25 years to life, the YPED is the first day after the youth offender has completed 24 continuous years of incarceration.

(2) For purposes of subdivision (c), “incarceration” means detention in any city or county jail, local juvenile facility, state mental health facility, Division of Juvenile Justice facility, or department facility.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Section 3051, Penal Code.

**§ 2442. Youth Offender Determination Review by the Board.**

(a)(1) If an inmate is not eligible as a youth offender under section 2440, subdivision (c), as determined by Correctional Case Records Services, and the inmate has received a Third Level Response from the department to his or her Form 602 Inmate Appeal challenging the determination, the inmate may submit a one-time request for review by the board.

(2) If an inmate has been deemed eligible as a youth offender by Correctional Case Records Services but disagrees with the department's calculation of his or her YPED, and the inmate has received a Third Level Response from the department to his or her Form 602 Inmate Appeal challenging the calculation of the YPED, the inmate may submit a one-time request for review by the board.

(b) A request under subdivision (a) of this section for review by the board of a youth offender determination shall be submitted in writing by the inmate.

(c) In submitting a request for review by the board of a youth offender determination, the inmate shall submit a copy of the Third Level Response from the department to his or her Form 602 Inmate Appeal, the absence of which shall result in the automatic return of the request.

(d) In submitting a request for review by the board of a youth offender determination, the inmate is encouraged to submit the following documents:

(1) A brief explanation of the reason for requesting review;

(2) A copy of the inmate's birth certificate; and

(3) A copy of all the inmate's sentencing documents, in particular all the abstracts of judgment issued by all courts that have sentenced the inmate.

(e) The Chief Counsel shall review the inmate's request and send its written response to the inmate no later than six months after receipt of the request.

(f) If the Chief Counsel determines that a change in youth offender status or YPED is warranted, the board shall issue a miscellaneous decision explaining the reasons for its determination. The board shall forward a copy of this decision to Correctional Case Records Services of the department.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Section 3051, Penal Code.

**§ 2443. Scheduling of Hearings.**

(a) Youth offenders shall be scheduled for their initial parole consideration hearings within six months following their YPED unless the youth offender is entitled to an earlier parole consideration hearing pursuant to any other provision of law.

(b) Subsequent parole consideration hearings shall be scheduled for youth offenders in accordance with Penal Code 3041.5(b)(3).

(c) Notwithstanding subdivisions (a) or (b), when a youth offender's earliest possible release date (EPRD) is calculated to occur prior to the date on which the youth offender will complete his or her 15th year of incarceration, the board shall not schedule a hearing.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Sections 3041.5 and 3051, Penal Code.

### **§ 2444. Youth Offender Factors.**

(a) Diminished Culpability of Youths as Compared to Adults. The diminished culpability of youths as compared to adults includes, but is not limited to, consideration of the following factors:

- (1) The ongoing development in a youth's psychology and brain function;
- (2) The impact of a youth's negative, abusive, or neglectful environment or circumstances;
- (3) A youth's limited control over his or her own environment;
- (4) The limited capacity of youths to extricate themselves from dysfunctional or crime-producing environments;
- (5) A youth's diminished susceptibility to deterrence; and
- (6) The disadvantages to youths in criminal proceedings.

(b) Hallmark Features of Youth. The hallmark features of youth include, but are not limited to, consideration of the following factors:

- (1) Immaturity;
- (2) An underdeveloped sense of responsibility;
- (3) Impulsivity or impetuosity;
- (4) Increased vulnerability or susceptibility to negative influences and outside pressures, particularly from family members or peers;
- (5) Recklessness or heedless risk-taking;
- (6) Limited ability to assess or appreciate the risks and consequences of behavior.
- (7) Transient characteristics and heightened capacity for change;

(c) Subsequent Growth and Increased Maturity of the Inmate While Incarcerated. The subsequent growth and increased maturity of the inmate while incarcerated includes, but is not limited to, consideration of the following factors:

- (1) Considered reflection;
- (2) Maturity of judgment including, but not limited to, improved impulse control, the development of pro-social relationships, or independence from negative influences;
- (3) Self-recognition of human worth and potential;
- (4) Remorse;
- (5) Positive institutional conduct; and
- (6) Other evidence of rehabilitation.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Sections 667, 667.61, 1170.12, 3051, Penal Code; *Graham v.*

Florida (2010) 560 U.S. 48, 130 S.Ct. 2011; Miller v. Alabama (2012) 132 S.Ct. 2455; People v. Caballero (2012) 55 Cal.4th 262, 282 P.3d 291, 145 Cal.Rptr.3d 286; Moore v. Biter (2013) 725 F.3d 1184; Roper v. Simmons (2005) 543 U.S. 551; People v. Franklin (2016) 63 Cal. 4th 261; Montgomery v. Louisiana (2016) 136 S. Ct. 718.

#### **§ 2445. Comprehensive Risk Assessments**

When preparing a risk assessment under this section for a youth offender, the psychologist shall also take into consideration the youth factors described in section 2444 and their mitigating effects. The psychologist's consideration of these factors shall be documented within the risk assessment under a unique heading from the remainder of the report.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Sections 3041.5 and 3051.

#### **§ 2446. Parole Consideration Hearings.**

(a) Panels shall conduct parole consideration hearings for youth offenders in compliance with the requirements for initial and subsequent parole consideration hearings described in this chapter and Penal Code sections 3040, et seq.

(b) In considering a youth offender's suitability for parole, the hearing panel shall give great weight to the youth offender factors described in section 2444: (1) the diminished culpability of youths as compared to adults; (2) the hallmark features of youth; and (3) any subsequent growth and increased maturity of the inmate.

(c) The panel shall review and consider any written submissions that provide information about the youth offender at the time of his or her controlling offense, or the youth offender's growth and maturity while incarcerated, from a youth offender's family members, friends, school personnel, faith leaders, or representatives from community-based organizations.

(d) A hearing panel shall find a youth offender suitable for parole unless the panel determines, even after giving great weight to the youth offender factors, that the youth offender remains an unreasonable risk to public safety.

(e) If a hearing panel finds a youth offender unsuitable for parole, the panel shall impose a denial period in accordance with Penal Code section 3041.5, subdivision (b), paragraph (3).

(f) Nothing in this article is intended to alter the rights of victims at parole consideration hearings.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Sections 3041, 3041.5, 3046(c), 3051, and 4801(c), Penal Code; In re Lawrence (2008) 44 Cal.4th 1181, 1214.