

BOARD OF PAROLE HEARINGS

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IMPLEMENTATION OF SENATE BILLS 261 AND 519

This sheet provides clarifications regarding the Board of Parole Hearings' (board's) implementation of Senate Bills (SB) 261 and 519 (2015-2016).

EXISTING LAW

Penal Code section 3051 established a process for the board to provide a parole consideration hearing for the purpose of reviewing the parole suitability of any life or determinately sentenced inmate who was under 18 years of age at the time of his or her controlling offense and who was not otherwise disqualified by any other provisions listed in section 3051. Penal Code section 3051(i) previously required the board to complete all parole consideration hearings by July 1, 2015, for youth offenders who became newly eligible to receive a hearing on January 1, 2014, the date on which that section became effective.

SUMMARY OF CHANGES

1. Expansion of Qualifying Offenses to Those Committed Prior to Age 23

SB 261 amended Penal Code sections 3051 and 4801(c) to redefine youth offenders as inmates who committed their "controlling offense" prior to the age of 23, and who are not disqualified by any other provisions listed in section 3051.

2. Timing Requirements

SB 519 amended the board's timing requirements originally proposed in SB 261 to conduct all parole consideration hearings for youth offenders who become newly eligible for hearings in accordance with Penal Code section 3051(i).

a. Indeterminate Life Term Inmates

SB 519 added Penal Code section 3051(i)(2)(A) to require the board to provide a parole consideration hearing by January 1, 2018, for all youth offenders sentenced to an indeterminate life term who become newly eligible for a hearing for the first time on January 1, 2016, as a result of the expansion of the youth offender definition in SB 261.

b. Determinate Term Inmates

SB 519 added Penal Code section 3051(i)(2)(B) to require the board to provide a parole consideration hearing by December 31, 2021, for all youth offenders sentenced to only determinate terms who become newly eligible for a hearing for the first time on January 1, 2016, as a result of the expansion of the youth offender definition in SB 261. The board is further required to provide consultations for all determinately sentenced youth offenders under this subparagraph before January 1, 2018.

ADDITIONAL PROCEDURES

1. Notification of Youth Offender Hearings

For hearings already scheduled to occur from January through June 2016, the board will publish monthly reports on the board's website indicating inmates who have been qualified or disqualified as youth offenders pursuant to the enactment of SB 261. These reports will also indicate whether the inmate's next scheduled hearing will be conducted as a youth offender hearing or a standard parole consideration hearing. Qualified youth offenders whose hearings are conducted as standard parole consideration hearings will receive a separate youth offender hearing on or before January 1, 2018.

2. Youth Offender Eligibility Reconsideration Form

The purpose of this form is to allow an inmate or inmate's legal representative to request reconsideration of an official determination published in the board's monthly report that the inmate does not qualify as a youth offender under Penal Code section 3051. In addition to completing the form, the inmate or representative should attach any supporting documentation. If a District Attorney's Office wishes to request reconsideration of a determination that an inmate does qualify as a youth offender, the office should send a letter to the board's legal division.

Please note that, generally speaking, the board considers court records controlling (compared to other official records) when determining an inmate's date of birth, date of offense, etc.

3. Postponements, Stipulations, and Waivers

a. Postponements

Generally, an inmate may request that the board postpone a parole consideration hearing to resolve matters relevant to his or her parole consideration. The board may grant a postponement only upon the affirmative showing of good cause on the part of the inmate and only if the inmate did not and could not have known about the need for the postponement earlier than when he or she made the postponement request. California Code of Regulations, title 15, section 2253(d)(2).

An inmate's belief that he or she will qualify as a youth offender upon the enactment of SB 261 on January 1, 2016, is not alone sufficient grounds on which to postpone a parole consideration hearing because the inmate's belief is speculative until Case Records Services of the California Department of Corrections and Rehabilitation has issued an official determination of the inmate's youth offender qualification.

b. Waivers

An inmate may request to voluntarily waive his or her parole consideration hearing for any reason. Requests made 45 calendar days or more prior to the hearing are presumed valid pursuant to California Code of Regulations, title 15, section 2253(b)(2). The board will grant all waivers based on the enactment of SB 261 submitted more than 45 days prior to a hearing because they are presumed valid.

A request for a voluntary waiver submitted less than 45 days prior to the scheduled hearing is presumed invalid unless good cause is shown and the reason(s) given were not and could not reasonably have been known to the inmate 45 days prior to the scheduled hearing pursuant to

California Code of Regulations, title 15, section 2253(b)(3). If the board receives a request for a waiver based on the enactment of SB 261 less than 45 days prior to the inmate's hearing, then the inmate must demonstrate good cause. An inmate's belief that he or she will qualify as a youth offender upon the enactment of SB 261 on January 1, 2016, is sufficient grounds to waive a parole consideration hearing so long as the inmate did not know and could not have known that SB 261 would be enacted.

c. Stipulations

An inmate may offer to stipulate to unsuitability for parole. An offer shall be submitted in writing to the board and shall state the reasons that support unsuitability pursuant to California Code of Regulations, title 15, section 2253(c)(1).

4. Petition to Advance (PTA)

Pursuant to Penal Code section 3041.5(d)(1), an inmate may request that the board exercise its discretion to advance a hearing to an earlier date by submitting a written request to the board following a denial of parole or stipulation of unsuitability. Each request shall set forth a change in circumstances or new information that establishes a reasonable likelihood that consideration of the public safety does not require the additional period of incarceration.

An inmate's qualification as a youth offender upon the enactment of SB 261 on January 1, 2016, constitutes a change in circumstances that may establish a reasonable likelihood that consideration of the public safety does not require the additional period of incarceration.

5. Release Dates

Pursuant to Penal Code section 3046(c), an inmate who is granted parole at a parole consideration hearing as a youth offender shall be immediately eligible for release, notwithstanding the board's regulations regarding base terms and adjusted base terms. The inmate's release remains subject to the board's decision review process under Penal Code section 3041(b), and the Governor's review process under Penal Code sections 3041.1 and 3041.2 as applicable.