



FOR INFORMATIONAL PURPOSES
JULY 2019

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Proposition 57 Parole Consideration for Nonviolent Offenders Implementation Plan for the *McGhee* Decision

Background

On July 1, 2019, the First Appellate Court's decision in the case of *In re McGhee* became final. The decision invalidates the department's use of behavior-based public safety screening criteria to exclude inmates from parole consideration under Proposition 57. As a result, effective July 9, 2019, the department will no longer apply the behavior-based public safety screening criteria to eligible nonviolent offenders.

Public Safety Screening Criteria will No Longer be Applied

Effective, July 9, 2019, all **determinately-sentenced nonviolent offenders** who are eligible for parole consideration under Proposition 57 will be referred to the Board of Parole Hearings (Board) for parole consideration 35 days prior to their Nonviolent Parole Eligible Date (NPED) unless they are within 180 days of their Earliest Possible Release Date or are eligible for a parole hearing within a year as a youth offender or under the elderly parole program. This remains a "paper review" process; no parole hearing will be conducted. Inmates, prosecutors, victims and the public may continue to submit written statements for the Board's consideration.

Effective July 9, 2019, all **indeterminately-sentenced nonviolent offenders** who are eligible for parole consideration under Proposition 57 will be referred to the Board for a parole hearing 180 days prior to their NPED unless they have previously been scheduled for a parole hearing or will be eligible for a parole hearing within the next 12 months under any other provision of law [i.e., based on their Minimum Parole Eligible Date (MEPD), Youth Parole Eligible Date (YPED), or Elderly Parole Eligible Date (EPED)]. Inmates will be scheduled for a full parole hearing by a panel of one or more commissioners and a deputy commissioner by December 31, 2020, December 31, 2021, or within 60 days of their NPED, whichever date applies under subsections (a) and (b) of section 2449.32 of title 15 of the California Code of Regulations.

Referral of Inmates Previously Screened Out

All inmates previously screened out based on the public safety screening criteria will be referred to the Board on one of the following dates, whichever occurs first:

- 12 months from the date they were last screened out as provided in subsection (c) of section 3492 and subsection (f) of section 3497 of title 15 of the California Code of Regulations, or
- By the end of 2019, based on proposed regulations that will be submitted to the Office of Administrative Law by the end of July 2019.

Parole Processes Have Not Changed

The same information currently used to screen out inmates from the nonviolent parole review processes will be considered by the Board when determining whether inmates should be released, along with all other relevant and reliable information concerning the inmate's risk, such as the inmates' current conviction, prior criminal history, rehabilitative programming, behavior in prison, and present age. In addition, the legal standards for both nonviolent parole review processes remain unchanged. For **determinately-sentenced nonviolent offenders**, inmates will be approved for release unless they pose a current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity. **Indeterminately-sentenced nonviolent offenders**, such as nonviolent Third Strikers, will be scheduled for a full parole suitability hearing and the Board will grant parole if they no longer poses a current, unreasonable risk to public safety.

Regulations

The department plans to submit proposed regulations implementing the *McGhee* decision to the Office of Administrative Law by July 31, 2019. The public will have an opportunity to review and comment on the proposed regulations before they are final.

Victims who would like to request notice and an opportunity to attend an inmate's youth offender parole hearing or who would like to request notice of an inmate's release must register with the department's Office of Victim and Survivor Rights and Services. For further information, or to inquire about court ordered restitution, please visit the Office of Victim and Survivor Rights and Services website or call toll-free 1-877-256-6877.

For additional information concerning the Board of Parole Hearings, please visit <https://www.cdcr.ca.gov/bph/> or call (916) 445-4072.