

NOTICE PUBLICATION/REGULATIONS SUBMISSION

REGULAR

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2019-1009-025	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

2019 OCT -9 P 3: 35
OFFICE OF ADMINISTRATIVE LAW

NOTICE	REGULATIONS
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ENDORSED - FILED
In the office of the Secretary of State of the State of California

NOV 20 2019
2:28 PM

AGENCY WITH RULEMAKING AUTHORITY
Board of Parole Hearings

AGENCY FILE NUMBER (if any)
BPH RN 18-02

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2019, 01-Z	PUBLICATION DATE 1/4/2019

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Youth Offender Parole Consideration & Application of Youth Factors	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448
	AMEND
	REPEAL

TITLE(S)
15

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
July 19, 2019, through August 8, 2019

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Christopher J. Hoeft	TELEPHONE NUMBER (916) 322-6729	FAX NUMBER (Optional) (916) 322-3475	E-MAIL ADDRESS (Optional) BPH.Regulations@cdcr.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 10/9/2019
TYPED NAME AND TITLE OF SIGNATORY Jennifer P. Shaffer, Executive Officer	

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ENDORSED APPROVED

NOV 20 2019

Office of Administrative Law

BPH RN 18-02: FINAL REGULATORY TEXT FOR PUBLICATION

Proposed additions are indicated by single underline and deletions are indicated by single ~~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 and Article 14.1. Application of Youth Offender Factors to Inmates Who Committed a Controlling Offense Before Attaining 26 Years of Age are *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 was convicted of a controlling offense that was committed before he or she attained 26 years of age;

(2) The inmate was sentenced to a determinate term or a term of life with the possibility of parole for his or her controlling offense; and

(3) The inmate is currently incarcerated for the controlling offense or group of offenses that includes the controlling offense.

(b) Notwithstanding (a), a youth offender is also an inmate who meets all of the following criteria:

(1) The inmate was convicted of a controlling offense that was committed before he or she attained 18 years of age;

(2) The inmate was sentenced to a term of life without the possibility of parole for his or her controlling offense; and

(3) The inmate is currently incarcerated for his or her controlling offense or group of offenses that includes the controlling offense.

(c) 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.

(d) Notwithstanding subdivisions (a) and (b), inmates who meet one or more of the following criteria are excluded from the definition of a youth offender:

(1) The inmate is sentenced to death;

(2) The inmate is sentenced to a term of life without the possibility of parole for an offense committed after he or she attained 18 years of age;

(3) The inmate was sentenced on the controlling offense for a prior felony conviction under Penal Code section 1170.12 or 667, subdivisions (b) through (i);

(4) The inmate was sentenced on the controlling offense for a one-strike sex offense under Penal Code section 667.61;

(5) The inmate was convicted of any offense after attaining 26 years of age for which “malice aforethought” is a necessary element of the offense; or

(6) The inmate, after attaining 26 years of age, committed an additional crime for which the inmate is sentenced to a term of life in prison.

(e) If two or more crimes or enhancements 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 under Penal Code section 1170.12, section 667, subdivisions (b) through (i), or section 667.61, the controlling offense is whichever offense the inmate committed first in time.

(2) If one sentence was imposed under Penal Code section 1170.12, section 667, subdivisions (b) through (i), or section 667.61, the controlling offense is that offense.

(f) If a sentence is imposed on a crime under Penal Code sections 1170.12, section 667, subdivisions (b) through (i), or section 667.61, but the crime is not the controlling offense, the inmate is a youth offender notwithstanding subdivision (d) 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) The department’s Correctional Case Records Services determines whether an inmate qualifies as a youth offender as defined in section 2440 of this article, and calculates Youth Parole Eligible Dates (YPED) for all inmates who qualify as youth offenders. For purposes of this article, both determinations are referred to as “youth offender determinations.”

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

(1) 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;

(2) If the controlling offense is an indeterminate 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;

(3) If the controlling offense is an indeterminate term of 25 years or more to life, the YPED is the first day after the youth offender has completed 24 continuous years of incarceration; or

(4) If the controlling offense is a term of life without the possibility of parole for a crime committed prior to reaching the age of 18, the YPED is the first day after the youth offender has completed 24 continuous years of incarceration.

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

(d) Youth offender determinations are subject to the department’s Inmate Appeal Process under article 8 of chapter 1 of division 3 of this title and may be reviewed by the board under section 2442 of this article.

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) If an inmate is not eligible as a youth offender under section 2440 of this article as determined by the department’s Correctional Case Records Services, and the inmate has exhausted his or her administrative remedies with the department under article 8 of chapter 1 of division 3 of this title challenging the determination, the inmate may submit a one-time request for review, in writing, to the board.

(b) If an inmate has been deemed eligible as a youth offender by the department’s Correctional Case Records Services but disagrees with the department’s calculation of his or her YPED, and the inmate has exhausted his or her administrative remedies with the department under article 8 of chapter 1 of division 3 of this title challenging the calculation of the YPED, the inmate may submit a one-time request for review, in writing, to the board.

(c) When 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 if the inmate is challenging the date of birth used by the department’s Correctional Case Records Services to disqualify the inmate as a youth offender; and

(3) A copy of any relevant sentencing documents.

(d) The Chief Counsel shall review the inmate’s request and send a written response to the inmate no later than 60 calendar days after receipt of the request.

(e) 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 its decision to the department’s Correctional Case Records Services.

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) A youth offender shall be scheduled for a youth offender parole hearing within six months following the youth offender's YPED unless the youth offender is entitled to an earlier parole hearing under another provision of law.

(b) Notwithstanding (a), the following shall apply:

(1) A youth offender sentenced to a determinate term shall not be scheduled for an initial youth offender parole hearing if the youth offender will be released as a result of his or her Earliest Possible Release Date within one year of his or her YPED.

(2) A youth offender sentenced to a term of life with the possibility of parole who first became eligible for a youth offender parole hearing on January 1, 2018, under Assembly Bill 1308 (Chapter 675 of the Statutes of 2017) and whose YPED is before January 1, 2018, shall be scheduled for his or her initial youth offender parole hearing by January 1, 2020.

(3) A youth offender sentenced to a determinate term who first became eligible for a youth offender parole hearing on January 1, 2016, under Senate Bill 261 (Chapter 471 of the Statutes of 2015) and whose YPED is before January 1, 2016, or who first became eligible for a youth offender parole hearing on January 1, 2018, under Assembly Bill 1308 (Chapter 675 of the Statutes of 2017) and whose YPED is before January 1, 2018, shall be scheduled for his or her initial youth offender parole hearing by December 31, 2021. A youth offender shall not be scheduled for an initial youth offender parole hearing under this paragraph if he or she is scheduled to be released pursuant to his or her Earliest Possible Release Date on or before December 31, 2021.

(4) A youth offender sentenced to a term of life without the possibility of parole who first became eligible for a youth offender parole hearing on January 1, 2018, under Senate Bill 394 (Chapter 684 of the Statutes of 2017) and whose YPED is before July 1, 2020, shall be scheduled for his or her initial youth offender parole hearing within six months of his or her YPED or by July 1, 2020, whichever is later.

(c) Subsequent youth offender parole hearings shall be scheduled for youth offenders in accordance with Penal Code section 3041.5, subdivision (b), paragraph (3), except as provided in (d).

(d) A youth offender sentenced to a determinate term shall not be scheduled for a subsequent youth offender parole hearing if, on the date of the hearing, he or she will be within one year of being released pursuant to his or her Earliest Possible Release Date.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Sections 3041.5, 3051, and 3051.1, Penal Code.

§ 2444. 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 2446 of this article 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: Section 3051, Penal Code.

§ 2445. Youth Offender Parole Hearings.

(a) A panel shall conduct a youth offender parole hearing in compliance with the requirements for initial and subsequent parole consideration hearings described in this chapter and Penal Code sections 3040, 3041, 3041.5, 3041.7, 3042, 3043, 3043.1, 3043.2, 3043.25, 3043.3, 3043.5, 3043.6, 3044, 3046, 3051, 3051.1, and 3055.

(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 2446 of this article: (1) the diminished culpability of youth 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 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 a current, unreasonable risk to public safety. If a hearing panel finds a youth offender unsuitable for parole, the hearing panel shall articulate in its decision the youth offender factors present and how such factors are outweighed by relevant and reliable evidence that the youth offender remains a current, 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, including youth offender parole hearings.

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

§ 2446. 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; and
- (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 3051 and 4801(c), 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; and *Montgomery v. Louisiana* (2016) 136 S.Ct. 718.

**ARTICLE 14.1. APPLICATION OF YOUTH OFFENDER FACTORS TO INMATES
WHO COMMITTED A CONTROLLING OFFENSE BEFORE ATTAINING 26 YEARS
OF AGE**

§ 2447. Parole Consideration Hearings.

(a) In considering the suitability for parole of an inmate who is not a youth offender under section 2440 of article 14 of this chapter, but who committed the single crime or enhancement for which any sentencing court imposed the longest term of imprisonment before he or she attained 26 years of age, a hearing panel shall give great weight to the youth offender factors described in section 2446 of article 14 of this chapter: (1) the diminished culpability of youth as compared to adults; (2) the hallmark features of youth; and (3) any subsequent growth and increased maturity of the inmate.

(b) A hearing panel shall conduct a parole consideration hearing for an inmate described in subdivision (a) in compliance with the requirements for initial and subsequent parole consideration hearings described in this chapter and Penal Code sections 3040, 3041, 3041.5, 3041.7, 3042, 3043, 3043.1, 3043.2, 3043.25, 3043.3, 3043.5, 3043.6, 3044, 3046, and 3055.

(c) A hearing panel shall find an inmate described in subdivision (a) suitable for parole unless the panel determines, even after giving great weight to the youth offender factors, that the inmate remains a current, unreasonable risk to public safety. If a hearing panel finds an inmate described in subdivision (a) unsuitable for parole, the hearing panel shall articulate in its decision the youth offender factors present and how such factors are outweighed by relevant and reliable evidence that the inmate remains a current, unreasonable risk to public safety.

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

(e) 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 3052 and 5076.2, Penal Code. Reference: Section 3041, 3041.5, and 4801(c), Penal Code; and *In re Lawrence (2008) 44 Cal.4th 1181, 1214.*

§ 2448. Comprehensive Risk Assessments.

(a) When preparing a risk assessment in accordance with section 2240 of article 2 of this chapter for an inmate described in subdivision (a) of section 2447, a psychologist shall also take into consideration the youth factors described in section 2446 of article 14 of this chapter 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.

(b) The requirements of this section shall only apply to a risk assessment that becomes final under subdivision (c) of section 2240 of article 2 of this chapter after December 31, 2019.

Note: Authority Cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Section 3041, 3041.5, and 4801(c), Penal Code.