

BPH RN XX-XX 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 17. Parole Consideration Hearings for Elderly Offenders is ***added*** to read as follows:

ARTICLE 17. PAROLE CONSIDERATION HEARINGS FOR ELDERLY OFFENDERS

§ 2449.40. Elderly Offender Defined.

(a) An elderly offender is an inmate who meets all of the following criteria for Statutory Elderly Parole:
(1) fifty years of age or older;
(2) has served a minimum of 20 years of continuous incarceration on the inmate's current sentence; and
(3) currently serving a determinate or indeterminate sentence with the possibility of parole;
(4) not sentenced pursuant to Penal Code sections 1170.12 or 667, subdivisions (b) through (i);
(5) not convicted of first-degree murder of a peace officer, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who was killed while engaged in the performance of their duties, and the individual knew, or reasonably should have known, that the victim was a peace officer, engaged in the performance of their duties; and
(6) was not convicted of first-degree murder of a peace officer or former peace officer under any of the above-enumerated Penal Code sections listed in subsection (a)(5), who was intentionally killed in retaliation for the performance of their duties.

(b)(1) For purposes of this section, "continuous incarceration" means a period of incarceration in a facility as described in Penal Code section 3055, subdivision (b), paragraph 2, that is uninterrupted by a break in custody.

(2) The department's Correctional Case Records Services determines the date incarceration begins and what constitutes a break in custody for purposes of calculating when an inmate qualifies as an elderly offender.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3055, 3052, and 5076.2, Penal Code. Reference: Sections 667, 1170.12, 3055(g), and 3055(h), Penal Code; *Coleman v. Brown et al.*, No. S 90-0520 LKK-JFM (E.D. Cal.); *Plata v. Brown*, No. 01-cv-01351 THE (N.D. Cal); (*People v. Culp* (2002) 100 Cal.App.4th 1278.)

§ 2449.41. Scheduling of Hearings.

(a) The board shall meet with an elderly offender during the sixth year before the inmate's EPED for a consultation. During this consultation, the board shall provide information about the parole hearing process, legal factors relevant to their suitability or unsuitability for parole, and individualized recommendations regarding their work assignments, rehabilitative programs, and institutional behavior.

(b) An elderly offender shall be scheduled for an elderly parole hearing within six months following the EPED unless the elderly offender is entitled to an earlier parole hearing under another provision of law.

(c) If parole is not granted, subsequent elderly offender parole hearings shall be scheduled in accordance with Penal Code section 3041.5, subdivision (b), paragraph (3).

(d) No subsequent elderly parole hearing shall be necessary if the offender is released pursuant to other statutory provisions prior to the date of the subsequent hearing.

(e) An elderly offender sentenced to a determinate term shall not be scheduled for a subsequent parole hearing if, on the date of the hearing, they will be within one year of being released pursuant to their Earliest Possible Release Date.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3055 (e), 3055(f), 3041 (a), 3041.5 (b)(3), 3052, and 5076.2 Penal Code. Reference: Sections 3041.5 and 3055, Penal Code.

§ 2449.42. Elderly Offender Parole Hearings.

(a) A panel shall conduct an elderly offender parole hearing 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 an elderly offender's suitability for parole, the hearing panel shall give special consideration to whether the elderly offender factors described in section 2449.43 of this article have reduced the inmate's risk of future violence. The elderly offender factors are: (1) age; (2) time served; and (3) diminished physical condition, if any.

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

(d) If a hearing panel finds an elderly offender 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, including elderly offender parole hearings.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3055, 3052, and 5076.2, Penal Code. Reference: Sections 3041, 3041.5 (b)(3), 3046(c), 3051, 3055 (c), 3055 (f), 3055 (i), 3055 (j), Penal Code; and *In re Lawrence* (2008) 44 Cal.4th 1181, 1213.

§ 2449.43. Elderly Offender Factors.

(a) Age. Criteria for consideration when assessing an elderly offender's age includes, but is not limited to, the following factors:

- (1) Cognitive decline and its impact on an elderly offender's ability to process information, convert thought to action, the ability to learn, the ability to plan, recall or reorganize information, organize information, control impulses, execute a task, incorporate feedback, alter a strategy, sustain complex attention, or to calm down when emotionally aroused;
- (2) Physiological changes that decrease the motivation to commit crime or be violent.

(b) Time Served. The impact of long term confinement of elderly offenders includes, but is not limited to, consideration of the following factors:

- (1) Reduced criminal propensity;
- (2) Alteration of attitudes and beliefs over time;
- (3) Evidence of prosocial routines;
- (4) Social conformity;
- (5) Detachment from crime producing environments and peers;
- (6) Detachment from family, friends, or other prosocial relationships that increase the feeling of hopelessness or depression;
- (7) Unwillingness to develop parole plans;
- (8) Diminished mental capacity; and
- (9) Assistance with daily living activities that includes but is not limited to, feeding, bathing, dressing, grooming, work, homemaking, or communication.

(c) Diminished Physical Condition. The diminished physical condition of elderly offenders includes, but is not limited to, consideration of the following factors:

- (1) The capability of an inmate to physically commit crimes and violence;
- (2) Chronic or terminal illness;
- (3) Evidence of sensory impairment due to visual, hearing or speech impairment;
- (4) Inability to ambulate or difficulty in ambulating without an ambulation assistive device;
- (5) Nursing Care Acuity;
- (6) Permanent incapacitation due to medical, physical, or mental health condition, or any other condition that results in permanent incapacitation; and
- (7) Other evidence of diminished physical condition.

Note: Authority cited: Section 12838.4, Government Code; and 3052, and 5076.2, Penal Code.
Reference: Section 3055, Penal Code.