

BPH RN 21-04 FINAL REGULATORY TEXT FOR PUBLICATION

FINAL changes are indicated by underline for additions and ~~striketrough~~ for deletions.

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 Inmates is *added* to read as follows:

ARTICLE 17. PAROLE CONSIDERATION HEARINGS FOR ELDERLY INMATES

§ 2449.40. Elderly Inmate Defined.

(a) An elderly inmate is an inmate who meets all of the following criteria for Statutory Elderly Parole:

(1) is fifty years of age or older;

(2) has served a minimum of 20 years of continuous incarceration on the inmate's current sentence;

(3) is currently serving a determinate or indeterminate sentence with the possibility of parole;

(4) was not sentenced pursuant to Penal Code sections 1170.12 or 667, subdivisions (b) through (i);

(5) was not convicted of first-degree murder of a peace officer, as defined in Penal Code section 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 official duties.

(b)(1) For purposes of this section, "continuous incarceration" means an uninterrupted period of detention in one or more facilities described in Penal Code section 3055, subdivision (b).

(2) The department's Correctional Case Records Services determines the date detention begins and what constitutes a break in detention for purposes of calculating when an inmate qualifies as an elderly inmate, which will be their Elderly Parole Eligible Date (EPED).

Note: Authority cited: Section 12838.4, Government Code; and Sections 3052, 3055 and 5076.2, Penal Code. Reference: Sections 667, 1170.12 and 3055, Penal Code; *Coleman v. Brown* (E.D. Cal. February 10, 2014) No. 2:90-cv-0520, Doc. 2766; and *Plata v. Brown* (N.D. Cal. February 10, 2014) No. C01-1351, Doc. 2766.

§ 2449.41. Scheduling of Hearings.

(a) The board shall meet with an elderly inmate during the sixth year before the inmate's EPED for a consultation unless the inmate is entitled to an earlier consultation under another provision of law. 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 inmate shall be scheduled for an elderly parole hearing within six months following the EPED unless the elderly inmate is entitled to an earlier parole hearing under another provision of law.

(c) If parole is not granted, subsequent elderly 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 inmate is released pursuant to other statutory provisions prior to the date of the subsequent hearing.

(e) An elderly inmate 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 3052, 3055 and 5076.2, Penal Code. Reference: Sections 3041.5 and 3055, Penal Code.

§ 2449.42. Elderly Parole Hearings.

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

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

(d) Nothing in this article is intended to alter the rights of victims at parole consideration hearings, including elderly parole hearings.

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

§ 2449.43. Elderly Inmate Factors.

(a) Age. Consideration of an elderly inmate's age includes the following:

- (1) Cognitive decline and its impact on an elderly inmate'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; and
- (2) Physiological changes that decrease the motivation to commit crime or be violent.

(b) Time Served. The impact of long-term confinement of elderly inmates includes consideration of the following:

- (1) Reduced criminal propensity;
- (2) Alteration of attitudes and beliefs over time;
- (3) Evidence of prosocial routines;
- (4) Social conformity; and
- (5) Detachment from crime-producing environments and peers.

(c) Diminished Physical Condition. The diminished physical condition of elderly inmates includes consideration of the following:

- (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) Diminished mental capacity;
- (7) Assistance with daily living activities that includes but is not limited to, feeding, bathing, dressing, grooming, work, homemaking, or communication;
- (8) Permanent incapacitation due to medical, physical, or mental health condition, or any other condition that results in permanent incapacitation; and
- (9) Other evidence of diminished physical condition.

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