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# DISCRETIONARY PAROLE IN CALIFORNIA



Report for the Committee on  
Revision of the Penal Code

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## Contents

Overview.....	1
Parole Eligibility .....	3
The Parole Hearing Process .....	5
Changes in the Law Expanding Parole Eligibility for Long-Term Offenders .....	9
Parole Grant Trends for Long-Term Offenders.....	13
Parole Grant Rates .....	18
Recidivism.....	21
Training and Transparency.....	23
Improving the Quality of Attorney Representation at Parole Hearings .....	26
Determinately-Sentenced Nonviolent Offender Parole Review .....	28
Medical Parole .....	32
Conclusion and Looking Forward.....	34
Appendices.....	35

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# DISCRETIONARY PAROLE IN CALIFORNIA

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## OVERVIEW

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This document was prepared in response to a request from the Committee on Revision of the Penal Code for an overview of discretionary parole processes administered by the Board of Parole Hearings (Board). The Board is responsible for the following discretionary parole processes:

- **parole consideration hearings** for persons serving lengthy periods of incarceration;
- **parole reviews** for persons serving determinate sentences for nonviolent convictions; and,
- **medical parole hearings** for persons the California Department of Corrections and Rehabilitation (CDCR or Department) refers to the Board who suffer from a significant and permanent condition, disease, or syndrome resulting in the person being physically or cognitively debilitated or incapacitated.<sup>1</sup>

The Board's discretionary parole processes have expanded significantly since 2014, as has the number of persons approved for release through the Board's processes. For example, eligibility for parole consideration has expanded to include youth offenders, persons eligible for elderly parole, and to persons convicted of nonviolent offenses who are eligible for parole consideration under Proposition 57.

Over the past 10 years the Board has approved the discretionary release of over 16,000 persons, including more than 8,000 "long-term" inmates granted parole after a full parole hearing and another 8,000 determinately-

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<sup>1</sup> The Board performs a variety of additional functions for the adult inmate population, including hearings for offenders with mental health disorders, screenings for sexually violent predators, international prisoner transfers, and investigations for gubernatorial pardons and commutations of sentence. In addition, the Board determines when long-term offenders are discharged from parole and initiates extradition proceedings for certain persons who escape or abscond from parole and are apprehended outside of California.

sentenced nonviolent offenders approved for release under the Board's administrative parole review processes.<sup>2</sup>

The Board conducts parole hearings for persons who are serving lengthier sentences for the most violent offenses, including murder. Despite the increase in the number of persons granted parole through the parole hearing process, the recidivism rate for persons released after a parole hearing remains very low. Only two to four percent of persons released after a parole hearing recidivate, with less than one percent being convicted of a new felony crime involving harm to another person.<sup>3</sup>

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<sup>2</sup> There were 8,091 parole hearing grants 2010 through 2019; 3,680 approvals for release of determinately-sentenced nonviolent offenders under Proposition 57 (July 2017 through September 2020); 4,336 determinately-sentenced nonviolent second striker inmates approved for release under the parole consideration process ordered by the Three-Judge Panel in the *Plata/Coleman* class action litigation (January 2015 through June 2017).

<sup>3</sup> Recidivism is defined as any new misdemeanor or felony conviction for an offense committed during the three years following release. Recidivism rates are discussed in more detail later in this report.

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## PAROLE ELIGIBILITY

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There are two general classes of inmates in the California prison system: inmates sentenced to determinate terms, and inmates sentenced to indeterminate terms. Many inmates sentenced to determinate terms serve a fixed period of time and are released. Some who are serving determinate sentences, however, are eligible for parole consideration by the Board once they have served a specified portion of their sentence. Indeterminately-sentenced persons are serving “life” sentences, with or without the possibility of parole, such as 25 years-to-life or life without the possibility of parole, respectively.

Persons sentenced to state prison may be eligible for parole consideration or release based on one or more of the following parole eligible dates:

- **Earliest Possible Release Date (EPRD)** – the date determinately-sentenced offenders will be released based on the sentence imposed by the court, less any applicable credits;
- **Minimum Eligible Parole Date (MEPD)** – the date indeterminately-sentenced offenders (i.e., persons sentenced to life with the possibility of parole, or “lifers”) are eligible for parole consideration by the Board based on the sentence imposed by the court, less any applicable credits;
- **Nonviolent Parole Eligible Date (NPED)** – the date determinately or indeterminately-sentenced nonviolent offenders are eligible for parole consideration (administrative review for determinately-sentenced persons or parole hearing for indeterminately-sentenced persons) under Proposition 57, once they have served the full term of their primary offense; sex offenders are excluded;
- **Youth Parole Eligible Date (YPED)** – the date determinately or indeterminately-sentenced offenders who committed their controlling offense while under the age of 26 are eligible for a parole hearing, once they have served 15, 20, or 25 years, depending on the sentence imposed by the courts; persons sentenced under the Three Strikes Law are excluded; this is also the date persons sentenced to life without the possibility of parole for offenses they committed while under the age of 18 are eligible for a parole consideration hearing, once they have served 25 years; beginning January 2022, credits for educational milestones, such as high school diplomas and college degrees will be applied to YPEDs; and,

- **Elderly Parole Eligible Date (EPED)** – the date determinately and indeterminately-sentenced offenders are eligible for a parole hearing once they have served 25 years of incarceration and have reached the age of 60, based on the Three-Judge Panel's 2014 court order; offenders sentenced to life without the possibility of parole or condemned are excluded; effective January 1, 2021, determinately and indeterminately-sentenced offenders will be eligible for a parole hearing once they have served 20 years of incarceration and have reached the age of 50 under Chapter 334 of the Statutes of 2020; persons sentenced under the Three Strikes law, persons convicted of first degree murder of a peace officer, and persons sentenced to life without the possibility of parole or condemned will be excluded.

If more than one of the above parole eligible dates applies to an inmate, the inmate's "controlling parole eligible date" is the date that gives the person the earliest opportunity for parole consideration or release. Each inmate's controlling parole eligible date is provided to the inmate and publically available on CDCR's website via the Department's "Inmate Locator" search engine.

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## THE PAROLE HEARING PROCESS

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### Overview

The parole hearing process begins five years prior to an inmate's first scheduled parole hearing when a commissioner or deputy commissioner consults one-on-one with the person to explain the parole hearing process, legal factors relevant to the person's parole suitability, and to provide recommendations regarding work assignments, rehabilitative programs, and institutional behavior.<sup>4</sup> In 2019, the Board conducted 3,877 consultations.

The next step occurs when an inmate is scheduled for a parole hearing. In 2019, the Board scheduled more than 6,000 parole hearings. Parole hearings are conducted by a panel of one or two Board commissioners and a deputy commissioner. The Board is comprised of 17 commissioners appointed by the Governor to three-year terms.<sup>5</sup> Deputy commissioners are administrative law judges employed by the Board.

Inmates are entitled to legal counsel at parole hearings. The District Attorney from the prosecuting county may attend and ask clarifying questions and render an opinion regarding suitability.<sup>6</sup> Victims of the crime and their family members, as well as their representatives, may also attend and give a statement. Victims are also entitled to have support persons present.<sup>7</sup> Victims and their family members are notified of a hearing at least 90 days prior to the hearing if they request to be notified. Victims can request to be notified through CDCR's Office of Victim and Survivor Rights and Services.

At a parole hearing, the panel will determine whether the inmate is suitable for release. If an inmate is found to not be suitable for parole, statutory law requires that the inmate's next hearing be set 15, 10, 7, 5, or 3 years in the future.<sup>8</sup> An inmate who is denied parole may submit to the Board a petition to advance his or her next hearing date, based on a change of circumstances or new information that establishes a reasonable likelihood that public safety does not require the additional period of incarceration

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<sup>4</sup> Pen. Code, § 3041, subd. (a).

<sup>5</sup> Pen. Code, §§ 3041, subd. (c), 5075, subd. (b).

<sup>6</sup> Pen. Code, § 3041.7

<sup>7</sup> Pen. Code, §§ 3043 – 3043.3.

<sup>8</sup> Pen. Code, § 3041.5, subd. (a)(3).

imposed by the denial length previously issued.<sup>9</sup> The Board may also advance an inmate's next parole hearing date based on new information or a change in the inmate's circumstances through its administrative review process.<sup>10</sup>

Parole hearings are held to determine if an inmate currently poses an unreasonable risk of danger to society if released from prison.<sup>11</sup> The panel will consider "all relevant, reliable information available to the panel" in determining the inmate's suitability for parole.<sup>12</sup>

California Code of Regulations, title 15, section 2281 provides general guidelines the Board considers in determining suitability for parole. Factors tending to show an inmate's suitability include: (1) lack of a juvenile record, (2) stable social history, (3) signs of remorse, (4) motivation for the crime, (5) lack of criminal history, (6) age, (7) understanding and plans for the future, and (8) institutional behavior.<sup>13</sup> The panel will also consider whether the inmate suffered from Intimate Partner Battering, formerly referred to as Battered Woman Syndrome, at the time of the crime and whether the crime resulted from the inmate's victimization.<sup>14</sup>

The panel also considers evidence suggesting unsuitability. The factors tending to show unsuitability include the inmate's (1) commitment offense, (2) previous record of violence, (3) unstable social history, (4) prior sadistic sexual offenses, (5) psychological factors, including the prisoner's history of mental problems related to the crime, and (6) institutional misconduct in prison or jail.<sup>15</sup> Additionally, the California Supreme Court has held that an inmate's lack of insight into the causative factors of the inmate's crime is an

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<sup>9</sup> Pen. Code, § 3041.5, subd. (d).

<sup>10</sup> Pen. Code, § 3041.5, subd. (b)(4).

<sup>11</sup> Penal Code section 3041, subdivision (a) states the Board "shall normally grant parole." However, subdivision (b) of the same section states the Board "shall grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual." This language has been the subject of numerous published decisions, including *In re Lawrence* (2008) 44 Cal.4th 1181 and *In re Shaputis* (2008) 44 Cal.4th 1241 in which the Supreme Court clarified in 2008 that the central question for the Board when determining parole is whether the inmate poses a current unreasonable risk of danger to the public.

<sup>12</sup> 15 CCR § 2281, subd. (b).

<sup>13</sup> 15 CCR § 2281, subd. (d).

<sup>14</sup> Pen. Code, § 4801.

<sup>15</sup> 15 CCR § 2281, subd. (c).

appropriate factor to consider in determining whether the inmate is currently unsuitable.<sup>16</sup>

If an inmate is a qualified youth offender, the hearing panel must also give great weight to the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the inmate.<sup>17</sup> The Board will find a youth offender suitable for parole unless it determines, even after giving great weight to the youth offender factors, that the youth offender remains a current, unreasonable risk to public safety.<sup>18</sup>

If an inmate qualifies for elderly parole, the panel must give special consideration to the inmate's advanced age, long-term confinement, and diminished physical capacity, if any, when determining the inmate's suitability for parole.<sup>19</sup>

At all hearings the panel is aided in its decision-making by a comprehensive risk assessment prepared by a forensic psychologist with the Board's Forensic Assessment Division. The Board's forensic psychologists use the Historical Clinical Risk Management-20 (HCR-20), version 3, the Psychopathy Checklist - revised (PCL-R), and the Static 99-R (for sex offenders) to assess each inmate's potential risk for future violence.<sup>20</sup>

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<sup>16</sup> *In re Shaputis* (2011) 53 Cal.4th 192, 219.

<sup>17</sup> Pen. Code, § 4801(c).

<sup>18</sup> 15 CCR § 2445(d).

<sup>19</sup> Pen. Code, § 3055.

<sup>20</sup> The HCR-20 was developed to help structure decisions about violence risk (based on static and dynamic risk factors) and it has become the most widely used and best validated violence risk assessment instrument in the world. It has been translated into 20 languages and adopted or evaluated in more than 35 countries. The PCL-R, although not a risk assessment instrument per se, is the most researched and most widely administered assessment of dissocial or psychopathic personality characteristics associated with violent and sexual offending. The Static-99R is the State Approved Risk Assessment Tool for Sex Offenders (SARATSO) in California. The Static-99R is administered to provide a baseline estimate of risk for violent and sexual reconviction among offenders who have committed sex crimes. It is the most researched and most widely administered assessment of sexual offending risk. All three instruments were developed to have widespread applicability in correctional and forensic settings, have been cross-validated across many types of offender samples, and have been in use for more than 25 years.

If the panel finds the inmate unsuitable for parole, the panel must articulate their decision with evidence supporting their findings. In finding an inmate unsuitable for parole the panel must support their decision by articulating facts that support the conclusion that the inmate continues to pose an unreasonable risk to public safety.

Following a parole hearing, the decision is considered a proposed decision and is subject to review by the Board's chief counsel. The panel's decision becomes final "unless the Board finds that the panel made an error of law, or that the panel's decision was based on an error of fact, or that new information should be presented to the Board, any of which when corrected or considered by the Board has a substantial likelihood of resulting in a substantially different decision upon a rehearing."<sup>21</sup> The Board has up to 120 days following the suitability hearing to conduct a review of the decision.<sup>22</sup>

California is one of only a handful of states where the Governor has the absolute right to review grants of parole to inmates sentenced to indeterminate sentences. Under Article V, section 8, subdivision (b) of the state constitution, the Governor has executive authority to affirm, reverse, or modify any Board decision to grant or deny parole to a convicted murderer. In all other life with the possibility of parole cases, the Governor is limited to referring the case for review by the Board's commissioners sitting *en banc*<sup>23</sup> to consider modifying the decision or referring the decision to a hearing panel to determine if the inmate's grant of parole should be rescinded. When a decision is referred to the Board's commissioners sitting *en banc*, it is placed on the Board's public meeting agenda and any member of the public has the opportunity to give a brief statement on whether the decision should be upheld.

### **Administrative Procedures**

The average length of a parole hearing is two and one-half hours, hearings are scheduled approximately six months in advance to allow for a variety of pre-hearing procedures established to ensure the hearing is complete, fair, and that the rights of everyone who participates are protected. A summary of pre-hearing procedures is included in [Appendix A](#).

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<sup>21</sup> Pen. Code, § 3041, subd. (b)(2).

<sup>22</sup> Pen. Code § 3041, subd. (b)(2).

<sup>23</sup> *En banc* review is a review conducted by a majority of the commissioners holding office on the date the matter is heard by the Board. (Pen. Code § 3041, subd. (e)).

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## CHANGES IN THE LAW EXPANDING PAROLE ELIGIBILITY FOR LONG-TERM OFFENDERS

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Prior to 2014, only persons sentenced to “life with the possibility of parole” were eligible for a parole hearing and they were required to serve the minimum sentence imposed by the court before they were eligible for a hearing (less any applicable credits).<sup>24</sup> There are 33,676 of these persons in prison today.<sup>25</sup>

However, despite being sentenced to life “with the possibility of parole,” many of these persons received sentences where their minimum eligible parole date exceeds their natural life. For example, there are 6,166 persons in prison today sentenced to life with the possibility of parole who, based on the sentence imposed by the court, would need to serve an additional 40 years before they would be eligible for a parole hearing. Approximately 1,528 of these persons would need to serve 100 to 600 years before they would be eligible for a parole hearing and 265 would need to serve more than 600 years before they would be eligible for a parole hearing.

There are also some determinately-sentenced persons in prison who are sentenced to lengthy terms of imprisonment. For example, there are 295 persons in prison today who, based on the sentence imposed by the court, would need to serve more than 40 years before reaching their release date. Forty of these inmates would need to serve an additional 100 to 600 years, and one would need to serve more than 600 years.

With the exception of persons sentenced to life without the possibility of parole or condemned, all inmates now have an opportunity for parole during their natural life under youth offender parole, elderly parole, or Proposition 57.

### **Youth Offender Parole, Elderly Parole, and Proposition 57 Parole Hearings**

As previously noted, prior to 2014, only persons sentenced to life with the possibility of parole were eligible for parole consideration by the Board and only after they served the minimum sentence imposed by the court. Since 2014, however, a series of legislative measures, ballot initiatives, and court

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<sup>24</sup> A sentence of 25 years-to-life is an example of an indeterminate sentence of “life with the possibility of parole” and the person would have to serve a minimum of 25 years, less any applicable credits, before the person was eligible for a parole hearing.

<sup>25</sup> As of October 12, 2020.

cases have both expanded the number of persons eligible for a parole hearing and made many persons eligible for a parole hearing earlier in their incarceration period.

For example, indeterminately and determinately-sentenced persons who committed their controlling offense<sup>26</sup> while under the age of 26 are now eligible for a **youth offender parole hearing** after serving 15, 20, or 25 years (depending on the length of the sentence imposed by the court).<sup>27</sup> Exclusions apply.<sup>28</sup> Persons who were under the age of 18 and who were sentenced to life without the possibility of parole are eligible for a youth offender parole hearing after serving 25 years.<sup>29</sup>

In addition, effective January 1, 2021, inmates who are both age 50 and who have served at least 20 years will be eligible for an **elderly parole hearing** under Penal Code section 3055.<sup>30</sup> Exclusions apply.<sup>31</sup> Inmates who are age 60 and who have served at least 25 years are also eligible for an elderly parole hearing under a court order issued by the Three Judge Panel

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<sup>26</sup> “Controlling offense” is defined as an offense or enhancement for which any sentencing court imposed the longest term of imprisonment. (Pen. Code, § 3051, subd. (a)(2)(B)).

<sup>27</sup> Pen. Code, § 3051, subd. (b); 15 CCR §§ 3492-3497. In 2014, persons who were under the age of 18 when they committed their controlling offense were eligible for a youth offender parole hearing. (Ch. 312, Statutes of 2014). In 2016, eligibility was extended to persons who were under the age of 23 when they committed their controlling offense. (Ch. 471, Statutes of 2016). In 2018 eligibility was extended to persons who were under the age of 26 at the time of their controlling offense. (Ch. 675, Statutes of 2018).

<sup>28</sup> The following persons are excluded: persons sentenced under the Three Strikes Law (with the exception of one-strike offenders due to *People v. Edwards* (2019) 34 Cal.App.5th 183), persons sentenced to life without the possibility of parole for crimes they committed while over the age of 18, and persons who, after turning age 26, commit an additional crime for which malice aforethought is a necessary element of the crime or for which the individual is sentenced to life in prison. (Pen. Code, § 3051, subd. (h)).

<sup>29</sup> Ch. 684, Statutes of 2018; Pen. Code, § 3051, subd. (b)(4).

<sup>30</sup> Currently, Penal Code section 3055 applies to inmates who are age 60 and who have served 25 years. Effective January 1, 2021, Penal Code section 3055 will be amended and persons age 50 and who have served 20 years of incarceration will be eligible for parole hearing by December 31, 2022. (Ch. 334, Statutes of 2020).

<sup>31</sup> The following persons are excluded: persons sentenced under the Three Strikes Law, persons convicted of first degree murder of a peace officer, and persons sentenced to life without the possibility of parole or condemned. (Pen. Code § 3055(g), (h).)

in the *Plata/Coleman* class action litigation.<sup>32</sup> Under the court order, only persons sentenced to life without the possibility of parole or condemned are excluded.

Lastly, indeterminately-sentenced nonviolent offenders (i.e., “nonviolent third strikers”) are eligible for a parole hearing under Proposition 57 once they have served the full term of their primary offense.<sup>33</sup>

As shown in [Figure 1](#) below, the result of these changes is that there are now 41,464 determinately and indeterminately-sentenced persons who are eligible for a parole hearing, which means 7,788 long-term inmates are eligible for a parole hearing today who would not have been eligible for one in 2013.<sup>34</sup> In addition, 38,523 (93 %) of the 41,464 long-term inmates who are now eligible for a parole hearing have either already had a parole hearing or will have one in the next 20 years.

Figure 1

	Initial Parole Hearing this year or in 2021	Initial Parole Hearing in Next 20 Years (2022-2040)	Initial Parole Hearing in 20- 40 Years (2041-2060)	Initial Parole Hearing 40+ Years (2061+)	Total
<b>Without Changes in the Law</b>	9,205	12,049	6,256	6,166	33,676
<b>With Changes in the Law**</b>	14,715	23,808	2,928	13	41,464

As shown in [Figure 2](#) below, changes in the law and increases in parole grants have shifted the balance between the number of life-term-inmates admitted to CDCR annually and the number of life-term inmates released

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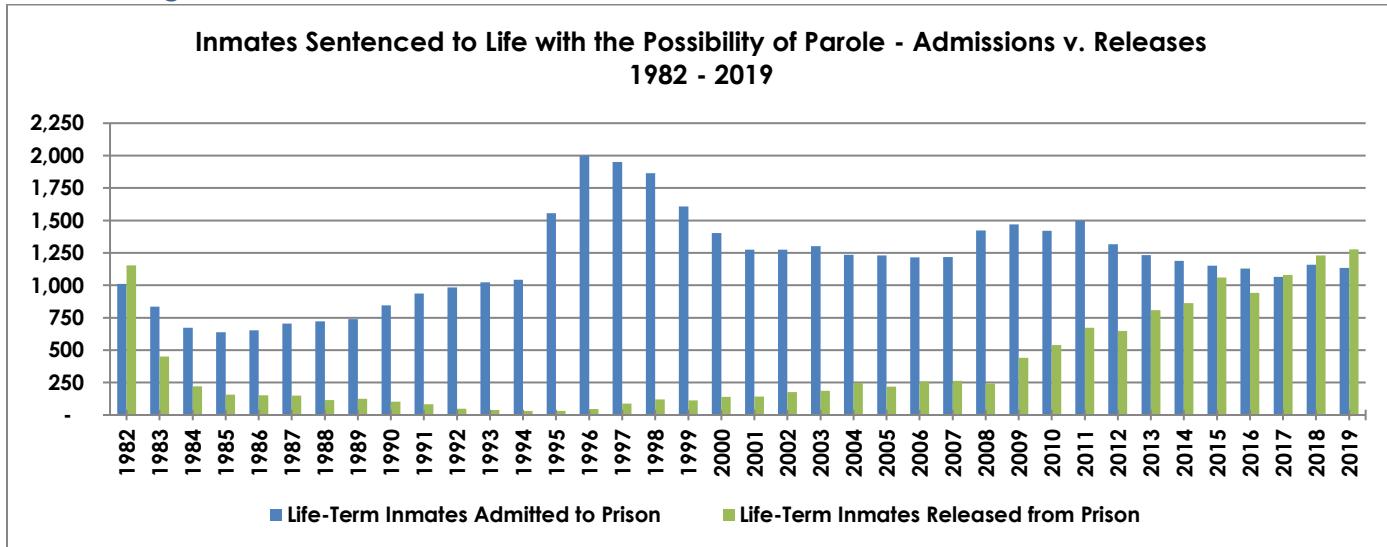
<sup>32</sup> Persons who are condemned, sentenced to life without the possibility of parole, sentenced under the Three Strikes Law, or convicted of first degree murder of a peace officer killed in the performance of their duties are not eligible for an elderly parole hearing under Penal Code section 3055. If the court order is dismissed, elderly parole will be governed by Penal Code section 3055 and elderly parole will no longer apply to inmates sentenced under the Three Strikes Law or who are convicted of murdering a peace officer. (*Plata v. Brown*, USDC ND Cal. No. 01-1351 TEH, Order Granting in Part and Denying in Part Defendant's Request for Extension of December 31, 2013 Deadline (ECF No. 2766); Ch. 676, Statutes of 2017; Ch. 334, Statutes of 2020.

<sup>33</sup> *In re Edwards*, (2019) 26 Cal.App.5th 2081; holding nonviolent parole includes indeterminately-sentenced persons and their primary offense shall be calculated by taking the maximum term applicable by statute to the underlying nonviolent offense. (15 CCR § 3495, subd. (d); 15 CCR §§ 3492-3497, 2449.30-2449.34.)

<sup>34</sup> As of October 12, 2020.

from state prison. This culminated in 2017 being the first time in 34 years that more life-term inmates were released from state prison than were admitted to state prison in California. Please see [Appendix B](#) for a summary of select changes in the law governing sentencing and parole over the past 10 years.

Figure 2



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## Parole Grant Trends for Long-Term Offenders

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California is one of only a few states in which persons have a liberty interest in parole, which means parole decisions are subject to judicial review. Changes in statutes and published case law along with improved training, expanded rehabilitative programming, and increased hope among inmates has significantly increased the number of long-term inmates granted parole and safely released annually by the Board.

For example, in 2008, the California Supreme Court published decisions in the cases of *In re Lawrence* and *In re Shaputis* (*Shaputis I*).<sup>35</sup> The *Lawrence* and *Shaputis* decisions clarified the judicial standard for reviewing the Board's decisions. The court held that a denial of parole must be supported by evidence that the person poses a current, unreasonable risk of dangerousness. Prior to these decisions, the Board could routinely deny a person's parole based solely on the severity of the commitment offense. As a result of the *Lawrence* and *Shaputis* decisions, only persons who are found to pose a current, unreasonable risk of dangerousness are denied parole today.

Also in 2008, the voters approved Proposition 9, known as Marsy's Law. Marsy's Law is a victims' rights initiative that expanded the rights of crime victims throughout the criminal justice system, including the parole hearing process. The following are examples of a few of the changes in the law governing parole hearings enacted by Marsy's Law:

- the definition of victim was expanded for purposes of determining who may attend a parole hearing and victims may have support persons and a representative at parole hearings; victims are entitled to notice of a parole hearings at least 90 days in advance of the hearing<sup>36</sup>;
- victims have the right to express their views at a parole hearing concerning the inmate, the case, the inmate's suitability for parole, and to provide a recommendation concerning the granting of parole; the Board is required to consider the entire and uninterrupted statements of the victim when deciding whether to grant parole;<sup>37</sup>
- when denying parole, the Board must set the inmate's next hearing in 15 years absent clear and convincing evidence that consideration of the public and victim's safety does not require that the inmate be

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<sup>35</sup> *In re Lawrence* (2008) 44 Cal.4th 1181; *In re Shaputis* (2008) 44 Cal.4th 1241.

<sup>36</sup> Pen. Code, §§ 3043, 3043.1, 3043.3.

<sup>37</sup> Pen. Code, § 3043, subd. (d).

incarcerated for more than 10 years; the Board must defer the inmate's next hearing for 10 years absent clear and convincing evidence that consideration of the public and victim's safety does not require the inmate be incarcerated for an additional seven years; the Board must set the inmate's next hearing in three years, five years, or seven years if the Board finds that consideration of the public and victim's safety does not require that the inmate serve more than seven years of additional incarceration;<sup>38</sup>

- the Board may advance an inmate's next parole hearing to an earlier date if there is new information or a change in circumstances that establishes a reasonable likelihood that consideration of the public and victim's safety does not require the inmate to serve the period of incarceration imposed by the hearing panel at the inmate's last hearing;<sup>39</sup> and,
- an inmate may request that the Board advance the inmate's next parole hearing to an earlier date based on new information or a change in circumstances that establishes a reasonable likelihood that consideration of the public safety does not require the additional period of incarceration.<sup>40</sup>

The Board's consideration of the victim's views when determining an inmate's suitability for parole was addressed by the California Supreme Court in 2013. (*In re Vicks* (2013) 56 Cal.4th 274.) The court's decision in *In re Vicks* states "to the extent victims provide information or argument relevant to the express issue of safety and thus suitability for parole, their participation simply provides another source of information for the Board to consider."

The court went on to state that to the extent the Board may be required to consider statements that are not relevant to the express issue of the inmate's suitability for parole, the receipt of such statements serves an important purpose.

The court explained that one principle purpose of Marsy's Law is to provide victims "due process" by affording them an opportunity to be heard. The court likened a victim's "due process" to an individual's due process liberty

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<sup>38</sup> Pen. Code, §§ 3043, 3043.1, 3043.3.

<sup>39</sup> The California Supreme Court has held that "the passage of time, during which the Board may expect positive changes in the prisoner's maturity, understanding, and mental state, is a changed circumstance." (*In re Vicks* (2013) 56 Cal.4th 274, 305.)

<sup>40</sup> Pen. Code, §§ 3041.5, subd. (d)(1); 3043.

interest in being free from arbitrary adjudicative procedures. Specifically, the court recognized:

the important due process interest in recognizing the dignity and worth of the individual by treating him as an equal, fully participating and responsible member of society. For government to dispose of a person's significant interests without offering him a chance to be heard is to risk treating him as a nonperson, an object, rather than a respected, participating citizen. Thus, even in cases in which the decision-making procedure will not alter the outcome of governmental action, due process may nevertheless require that certain procedural protections be granted the individual in order to protect important dignitary values, or, in other words, to ensure that the method of interaction itself is fair in terms of what are perceived as minimum standards of political accountability — of modes of interaction which express a collective judgment that human beings are important in their own right, and that they must be treated with understanding, respect, and even compassion." (internal citations omitted).

(*In re Vicks, supra*, 56 Cal.4th at p. 310.) The court found the same sentiments evident in the provisions of Marsy's Law that seek to ensure that crime victims are treated with dignity. The court went on to state, "as in the context of adjudication of liberty interests, it is not critical that a victim's participation be relevant to the ultimate decision; rather, what is important is that the victim be acknowledged and respected. In doing so, the scheme does not authorize the Board to base its decisions on victims' opinions or public outcry." (*In re Vicks, supra*, 56 Cal.4th at p. 310.)

With respect to parole denial lengths, prior to Marsy's Law a non-murderer could be denied parole for one or two years and a murderer could be denied parole for one to five years. After Marsy's Law, all denials of parole are for a period of 15, 10, 7, 5, or 3 years; the minimum denial period was lengthened from one year to three years and the maximum denial period was lengthened to 15 years.

However, as noted above, Marsy's Law also created a process by which the Board can advance an inmate's next parole hearing date on its own or in response to an inmate's request. The Board's authority to advance an inmate's next parole hearing date was also addressed by the court in *Vicks*. (*In re Vicks, supra*, 56 Cal.4th at pp. 302-303.) Soon after the *Vicks* decision

was published, the Board implemented a robust process for inmates to submit a petition to the Board requesting that their next parole hearing be advanced to an earlier date. The Board also implemented a meaningful process to independently identify inmates whose next parole hearing date should be advanced based on new evidence or a change in circumstances.<sup>41</sup>

Today the Board advances parole hearing dates for over 1,000 inmates annually and hearings held after a hearing date has been advanced are more likely to result in a grant of parole. In 2019, the Board reviewed 479 petitions from inmates asking that their next parole hearing be advanced to an earlier date and 323 (67%) were approved. Thirty-seven percent of the hearings held after a petition was approved resulted in a grant of parole.

The Board's process for independently identifying inmates whose next parole hearing date should be advanced is based on the premise that the Board should focus its resources on those who are most likely to be found suitable for parole.<sup>42</sup> As a result, the Board reviews all persons who receive a three-year denial, have a low or moderate risk rating, and who have not incurred a serious rules violation or new conviction since their last hearing. The Board reviews persons 11 months after their hearing and if approved, the person's next parole hearing occurs approximately 18 months after the person's prior hearing.<sup>43</sup> This process is commonly referred to as the Board's **Administrative Review Process** for advancing parole hearing dates.<sup>44</sup>

In 2019, the Board reviewed 925 inmates to determine if their next parole hearing date should be advanced. The Board approved 694 (75%). Fifty-one percent of hearings held after the Board advanced the inmate's hearing date under Administrative Review Process resulted in a grant of parole.

As show in [Figure 3](#) below, the Board's processes for advancing parole hearing dates appear to have contributed to the overall increase in the number of grants issued annually by the Board since 2013. The total annual number of grants has nearly doubled from 592 in 2013 to 1,184 in 2019.

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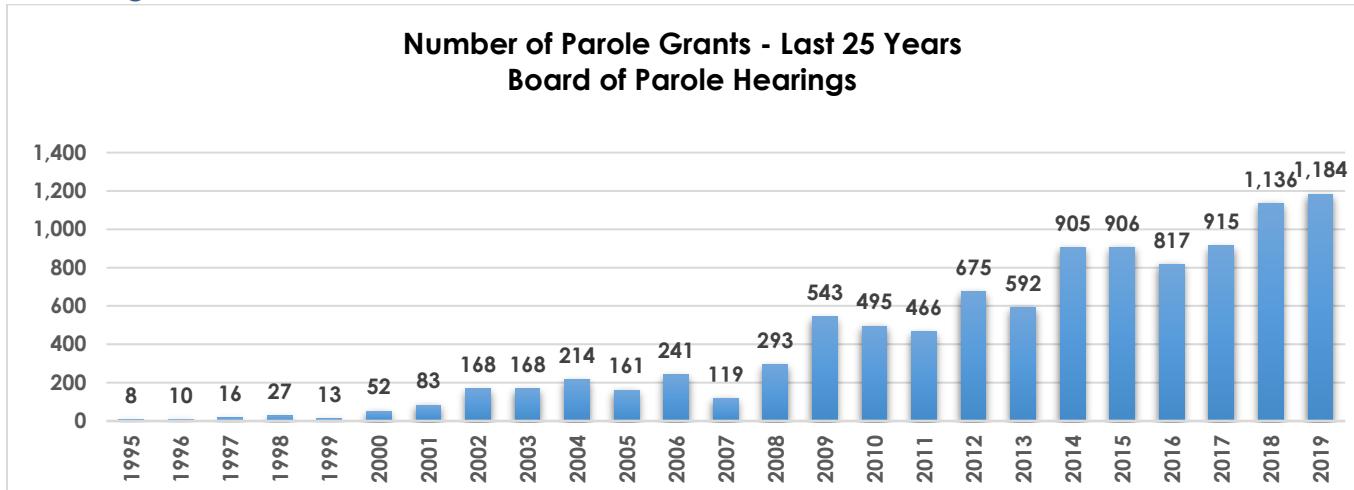
<sup>41</sup> 15 CCR §§ 2150-2157.

<sup>42</sup> *Garner v. Jones* (2000) 529 U.S. 244, p. 254.

<sup>43</sup> State and federal courts have held that Marsy's Law does not impose an ex post facto punishment on inmates, on its face or as applied. (*In re Vicks*, *supra* 56 Cal.4th 274, 317; *Gilman v. Brown* (2016) 814 F.3d 1007.)

<sup>44</sup> 15 CCR §§ 2150-2157.

Figure 3



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## Parole Grant Rates

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Historically, the Board's official parole hearing grant rates were calculated as the percentage of *scheduled* parole hearings that result in a grant of parole. However, this number is often misunderstood because a scheduled parole hearing can result in a grant, denial, stipulation, voluntary waiver, postponement, cancellation, or continuance.

For example, in 2019 the Board scheduled 6,061 hearings resulting in the following outcomes:

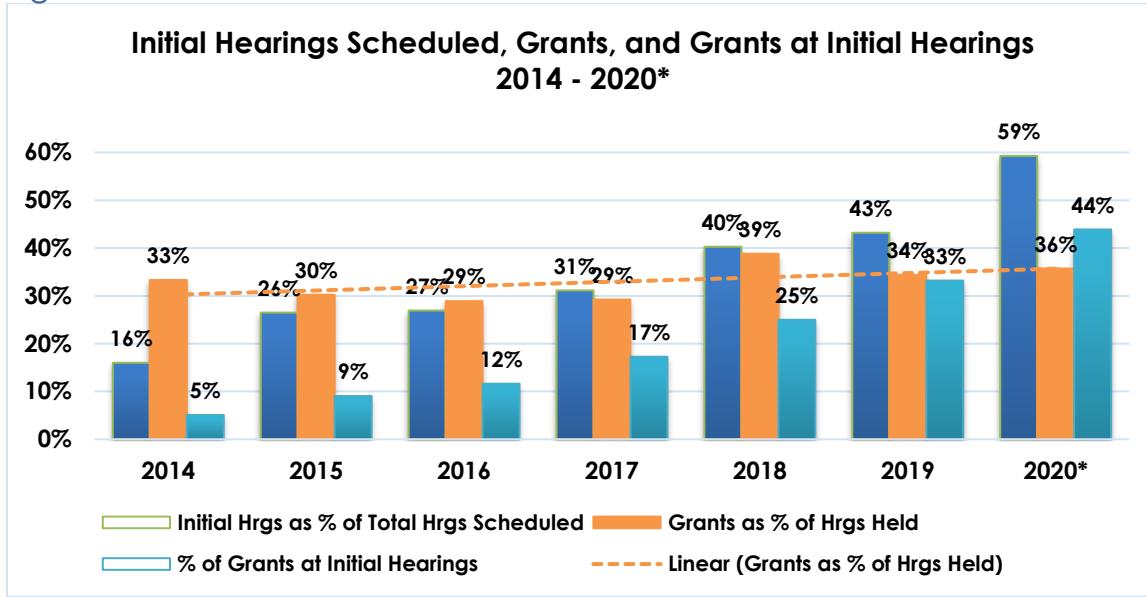
Figure 4

2019 Scheduled Hearing Outcomes		
Outcome	Number	Percentage
Grant	1,184	20%
Denial	2,257	37%
Stipulation	660	11%
Voluntary waiver	517	9%
Postponement	1,222	20%
Cancelled/Continued	221	4%
<b>Total</b>	<b>6,061</b>	<b>100%</b>

One might assume that if 20% of scheduled hearings resulted in a grant in 2019, it stands to reason that the remaining 80% resulted in a denial of parole. As you can see from the [Figure 4](#) above, that is not true. There was no decision rendered concerning the person's parole suitability in 1,960 scheduled hearings because the person voluntarily waived his or her hearing or the hearing was postponed, continued, or cancelled.

For this reason, it is often more illuminating to review grants as a percentage of hearings *held*. As shown in [Figure 5](#) below, the percentage of hearings held resulting in a grant has generally increased over the past seven years, ranging from 29 to 39 percent of all hearings held. This has occurred despite the dramatic increase in the percentage of hearings scheduled each year for persons who have never before had a parole hearing (from 16% of scheduled hearings in 2014 to 59% in 2020). This means more persons are being found suitable for parole at their first hearing (5% of grants were at initial hearings in 2014 versus 44% in 2020).

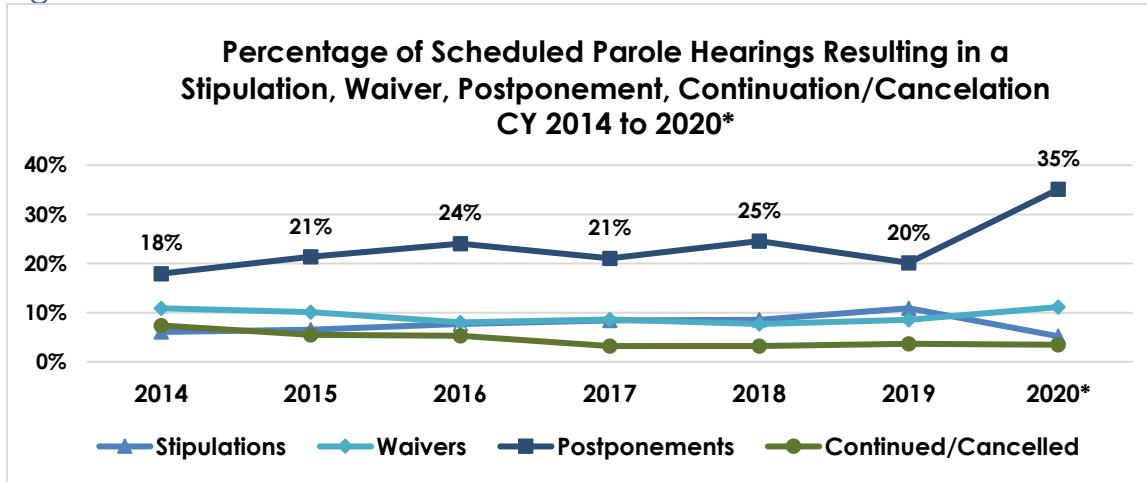
Figure 5



\*2020 represents a partial year (January through September)

While the grant rate for hearings held has generally increased, the percentage of scheduled hearings resulting in a waiver, stipulation, postponement, continuation or cancelation have remained relatively unchanged, as shown below in Figure 6. One anomaly is the rate of postponements in 2020, which increased as a result of the COVID-19 pandemic. The Board postponed 650 hearings in March and April 2020 as it transitioned from conducting hearings in person to conducting hearings by videoconference.

Figure 6

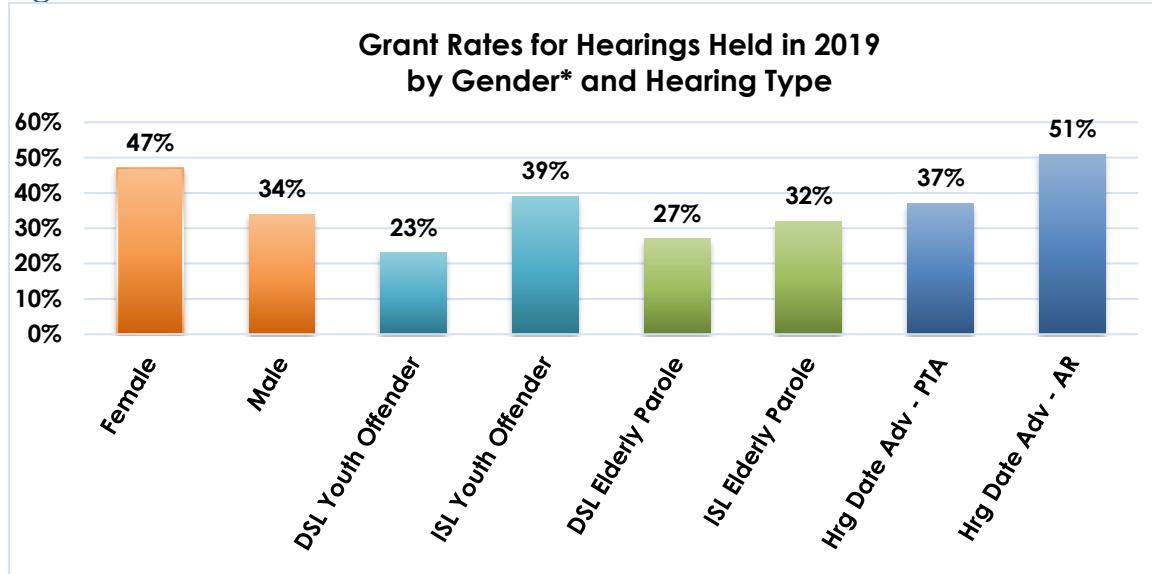


\*2020 represents a partial year (January through September)

In addition, as shown in Figure 7 below, grant rates vary considerably depending on a variety factors. For example, although the overall grant rate for hearings held in 2019 was 34 percent (as shown above in Figure 5),

grant rates varied from 23 percent for determinately-sentenced youth offenders to 51 percent for hearings held as a result of the Board advancing the inmate's parole hearing date.

Figure 7

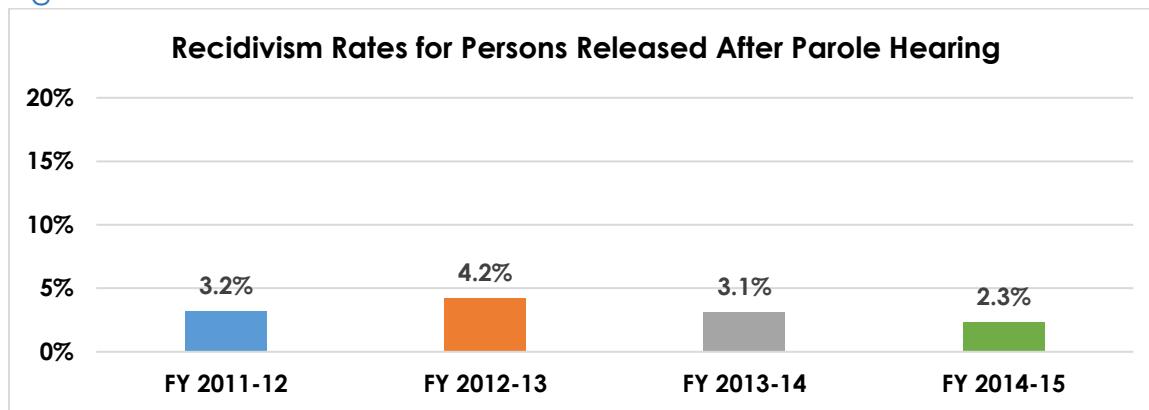


\*Available CDCR data currently classifies persons according to gender assigned at birth; beginning in 2021, CDCR will classify persons by their gender identity.

## Recidivism

Despite the significant increase in the number of parole grants to inmates serving long sentences (8,000 parole grants in the last 10 years) the recidivism rates for these formerly incarcerated persons remains very low, at two to four percent for general recidivism and less than one percent for recidivism involving felony crimes against persons.<sup>45</sup> See [Figure 9](#) below.

[Figure 9](#)



Specifically, the *Recidivism Report for Offenders Released from the California Department of Corrections and Rehabilitation in Fiscal Year 2014-15* found that of the 682 life-term inmates released in fiscal year 2014-15 as a result of a grant of parole by the Board, 16 offenders (2.3%) were convicted of a new misdemeanor or felony crime during a three-year follow-up period. Less than one percent (0.4%) or three persons were convicted of felony crimes against persons.

The CDCR's 2018 *Recidivism Report* found that of the 510 life-term inmates released in fiscal year 2013-14 as a result of a grant of parole by the Board, 16 offenders (3.1%) were convicted of a new misdemeanor or felony crime during a three-year follow-up period. Less than one percent (0.6%) or three persons were convicted of felony crimes against persons.

The CDCR's 2017 *Outcome Evaluation Report* found that of the 478 life-term inmates released in fiscal year 2012-13, 20 offenders (4.2%) were convicted of a new misdemeanor or felony crime during a three-year follow-up period. Less than one percent (0.4%) or two persons were convicted of felony crimes against persons.

<sup>45</sup> CDCR classifies felony as property crimes, drug/alcohol crimes, crimes against persons, and “other” felony crimes.

The CDCR's 2016 *Outcome Evaluation Report* found that of the 349 life-term inmates released by the Board in fiscal year 2011-12, 11 offenders (3.2%) were convicted of a new misdemeanor or felony crime during a three-year follow-up period. Less than one percent (0.3%) or one person was convicted of felony crimes against persons.

Although persons released from prison after a grant of parole present a low risk of recidivism, the same cannot be said for all persons serving long sentences in prison. In 2019, the Board administered 3,386 Comprehensive Risk Assessments and found that 47 percent presented a moderate risk for future violence and 28 percent presented a high risk.<sup>46</sup>

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<sup>46</sup> Persons who present as a moderate risk pose an elevated risk relative to long-term parolees and non-elevated or below average to average risk relative to shorter-term parolees released without discretion; persons who present as a high risk pose an elevated risk relative to long-term parolees and average to above average risk relative to shorter-term parolees released without discretion.

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## Training and Transparency

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As mentioned above, some of the increase in parole grants can be attributed to the Board's training program, as well as its increased transparency, which has improved the general understanding of the Board's decision-making processes.

### Training

Prior to 2011, new commissioners received 40 hours of training, followed by an additional 40 hours of training annually, as required by Penal Code section 5075.6, subdivision (b). Since 2011, new commissioners receive six weeks of initial training followed by two weeks of annual training, in addition to training provided at the Board's monthly executive board meetings. New commissioners also attend a two-week judicial training course on *Fair Administrative Hearings* at the National Judicial College after which they are certified administrative law judges. In addition, for the past few years, commissioners have attended the Association of Paroling Authorities International's Annual Training Conference. Please see [Appendix C](#) for an example of annual training provided to commissioners.

### Transparency

Policies at the Board and CDCR have also increased the Board's transparency. For example, the majority of the Board's training sessions are routinely conducted in public session, hearing transcripts can be requested by the public through the Board's website, and the public is routinely approved to observe a parole hearing for educational and informational purposes.

In addition, the Board's hearing schedule and hearing outcomes are posted on the Board's website, as is information concerning the parole hearing process. The Board also collaborated with CDCR to post parole eligibility dates, hearing dates, and parole hearing outcomes for each inmate on CDCR's "Inmate Locator" web-based search engine. In addition, since 2013 the Board has produced an annual report entitled "Report of Significant Events," providing an overview of statistics, training, litigation, and policy initiatives. The reports are available on the Board's website. In 2017, the Board also worked with CDCR to create a dedicated unit of experienced correctional counselors to review and provide a comprehensive summary of confidential information contained in an inmate's central file for purposes of disclosing that information to the inmate in advance of their parole hearing.

The Board also implemented use of a structured decision-making framework (SDMF) in 2019, which provides the Board with a structured and evidence-based approach to guide parole decisions. The SDMF was a collaborative effort with the National Institute of Corrections (NIC) and Dr. Ralph Serin, Ph.D., Professor, Department of Psychology, and Director of the Criminal Justice Decision Making Laboratory at Carleton University in Ottawa, Canada. With their assistance, the model SDMF was successfully adapted to reflect California's unique parole hearing process for persons serving longer sentences.

The SDMF is a structured professional judgement model; it is a systematic compilation of key factors reflecting best practice in risk assessment and parole release decision-making. It combines both research-supported factors and relevant legal considerations, providing an analytical framework for hearing panel members to follow that is consistent with the law governing parole decisions in California. The SDMF is intended to produce parole decisions that are structured, transparent, and focused on an offender's current risk. Additionally, it is intended to increase consistency among hearing panels and to result in more efficient parole hearings and decisions.

The SDMF was initially developed for the National Parole Board of Canada over a period of several years and has since been implemented in seven states in the United States. In 2018, the NIC chose California as one of three states to receive technical assistance in evaluating the prospects of successfully implementing the SDMF. The NIC sent teams of experts to California multiple times to evaluate its existing parole processes, including governing law, information technology systems, access to offender information, risk assessment tools, and available support systems for implementing the SDMF. In addition, members of the Board's executive team travelled to Connecticut to observe parole hearings and to gather information about implementing the SDMF.

Each paroling authority that implements the SDMF modifies the tool as necessary to account for variations in governing law and policy. The Board worked with Dr. Serin, the NIC, and the Board's litigation counsel to modify the SDMF to account for inmates who have served long sentences and to reflect relevant legal considerations in California, such as those applicable to youth offender hearings and elderly parole hearings.

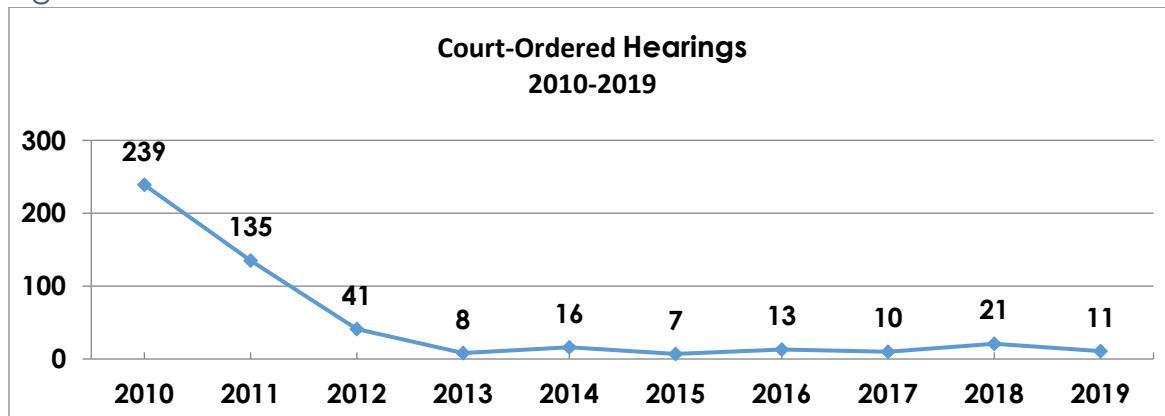
In April 2019, experts from NIC, Dr. Serin, the Board's litigation counsel, the Board's Senior Forensic Psychologists, commissioners, deputy commissioners, and attorneys met for three days of SDMF training and practical application of the framework to California cases. The SDMF was

subsequently implemented in California's parole hearing process over a period of several months.

Since the Board implemented the SDMF, the average length of a parole hearing has decreased by more than 30 minutes and the overall grant rate for hearings held has increased slightly from 34% in 2019 to 36% thus far in 2020. Please see [Appendix D](#) for a copy of the Board's SDMF.

The Board's increased focus on training and the law governing parole hearings has resulted in a significant decrease in the number of court-ordered hearings. Historically, the judicial remedy for a successful challenge to a parole denial is a court order requiring the Board to vacate its decision and conduct a new hearing. As shown below in [Figure 8](#), the number of "court-ordered hearings" has decreased significantly in the last 10 years.

[Figure 8](#)



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## Improving the Quality of Attorney Representation at Parole Hearings

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In 2019 the Board began implementing a new program for recruiting, training, and compensating attorneys who represent indigent inmates through the parole hearing process. The program was loosely modeled after the California Appellate Project, which provides counsel for indigent persons during the criminal appeal process. The intent of the Board's new program is to improve the quality of attorney representation and to allow inmate counsel to focus more time on preparing an inmate for a parole hearing.

Under the new program, the Board actively recruits attorneys, reviews qualifications, and interviews each candidate. Each attorney is required to observe parole hearings and participate in several hours of legal and advocacy training conducted by Parole Justice Works, a nonprofit entity with whom the Board has contracted to provide a variety of services. Parole Justice Works is an entity comprised of experience parole attorneys, educators, advocates, formerly incarcerated persons, and victims/survivors.

The Board's prior program educated Board-appointed attorneys on the process and legal framework governing parole hearings. But the Board, as the government agency overseeing parole, refrained from offering advocacy-based guidance to counsel who represented inmates appearing before it.

By contracting with a third-party nonprofit organization, the new approach enlists a separate group of people who are experienced inmate counsel to offer more advocacy-based training to inmate counsel. In contrast to the prior program, this advocacy-based training allows Board-appointed attorneys to learn best practices on how to effectively prepare and represent their clients for their parole hearings.

The new training is multi-faceted, and when fully implemented, it will consist of mandated training annually both in person and online. Further, experienced inmate counsel will mentor and critique Board-appointed attorneys by observing them at parole hearings while representing their inmate-clients and reviewing parole hearing transcripts.

In addition, the Legislature approved an increased pay structure for Board-appointed counsel in Fiscal Year 2019-20. The fee for representing an inmate for a scheduled parole hearing was increased from \$400 to \$750

per appointment.<sup>47</sup> Counsel are appointed to represent 10 to 13 clients scheduled for their parole hearings at one location during the same week. Counsel are appointed four to five months prior to the week of scheduled hearings and are required to review each client's central file and consult with their client for at least one hour within 30 days of being appointed.

In addition to producing training videos for inmate counsel, Parole Justice Works will also film informational videos about the parole hearing process for the inmate population and for victims and survivors who participate in the hearing process. The informational videos will be produced in conjunction with the Board, CDCR's Office of Victim and Survivor Rights and Services, and a variety of stakeholders. It is anticipated that the video for the inmate population will be played on the Department's inmate television system and that the video for victims and survivors will be available on the Department's website.

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<sup>47</sup> The fee of \$750 per assignment was based on an average reimbursement rate from 12 county criminal defender's fee schedules applicable in cases when the Public Defender has a conflict and the level of representation is similar to that expected of counsel in a parole hearing.

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## Determinately-Sentenced Nonviolent Offender Parole Review

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Determinately-sentenced nonviolent offenders are also eligible for parole consideration by the Board. In 2015, the Board began reviewing nonviolent “second strikers” for parole once they had served 50 percent of their full sentence pursuant to an order of the Three-Judge Panel in the *Plata/Coleman* class action litigation. This program was replaced in 2017 by the parole review process for determinately-sentenced nonviolent offenders under Proposition 57.<sup>48</sup>

Under Proposition 57, CDCR refers certain determinately-sentenced nonviolent offenders to the Board for review and possible release, once they have served the full term of their primary offense<sup>49</sup>. Persons are reviewed for release based on their criminal history, a review of their institutional records, and after consideration of input received from the inmate, victims, victims’ families, and the district attorney’s office that prosecuted the person.<sup>50</sup> Unlike the parole hearing process for long-term inmates, parole reviews for determinately-sentenced nonviolent inmates are administrative or “paper” reviews; not in-person hearings.<sup>51</sup>

As mentioned above, the nonviolent offender parole review process replaced an almost identical parole review process that had been in place since January 2015 as a result of a federal court order issued in February of 2014. As a result of that court order, the state implemented the nonviolent, second-strike parole review process. The majority of determinately-sentenced inmates eligible for the nonviolent offender parole review process under Proposition 57 are the same inmates who were eligible for parole review under the nonviolent, second-strike parole review process ordered by the court.

### Inmates Eligible for Nonviolent Offender Parole Review

Inmates sentenced to a determinate term of imprisonment are eligible for the nonviolent parole review process.<sup>52</sup> The inmate must have completed the full term of his or her primary offense, which is the single crime for which a court imposed the longest term of imprisonment.<sup>53</sup> Additionally, the

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<sup>48</sup> 15 CCR §§ 3490-3491; 15 CCR §§ 2449.1-2449.7.

<sup>49</sup> 15 CCR §§ 3490-3491.

<sup>50</sup> 15 CCR §§ 2449.4, 2449.5.

<sup>51</sup> 15 CCR § 2449.4.

<sup>52</sup> 15 CCR §§ 3490, 3491.

<sup>53</sup> Cal. Const., art. I, § 32, subd. (a)(1)(A); 15 CCR § 3490, subd. (d).

inmate must not be serving a term of incarceration for a violent felony as defined in Penal Code section 667.5, subdivision (c).<sup>54</sup> Inmates who are required to register as a sexual offender under Penal Code section 290 are also not eligible for the nonviolent offender parole review process.<sup>55</sup>

Inmates convicted of nonviolent offenses will be reviewed for eligibility by CDCR.<sup>56</sup> Once an inmate is determined to be eligible for the process, the Department will determine when the inmate will have served the full term of his or her primary offense. This date is called the inmate's nonviolent parole eligible date.<sup>57</sup> Inmates are provided written notice of their eligibility and their nonviolent parole eligible date.<sup>58</sup> Eligibility determinations are subject to appeal through the Department's inmate appeal process.<sup>59</sup>

### **When Eligible Determinately-Sentenced Nonviolent Offenders Are Referred to the Board of Parole Hearings for Review**

Inmates are referred to the Board for a parole review 35 days before their nonviolent parole eligible date so long as they have at least 180 days remaining to serve.<sup>60</sup> Inmates are provided written notice of the outcome of the referral decision by CDCR.<sup>61</sup> Referral decisions are subject to appeal through the Department's inmate appeal process.<sup>62</sup> Inmates who are referred to the Board will be provided a written explanation of the Board's nonviolent offender parole review process, including notification that they have an opportunity to submit a written statement for the Board's consideration when determining whether the inmate should be released.<sup>63</sup> Written statements should be submitted to the Board by the inmate within 30 days of the date the inmate is referred to the Board.

### **Parole Consideration for Determinately-Sentenced Nonviolent Offenders**

If the Board confirms the inmate is eligible for parole consideration, the Board will send notices within five business days to victims and their family members who are registered with CDCR's Office of Victim & Survivor Rights & Services.<sup>64</sup> The Board will also send a notice to the district attorney's office

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<sup>54</sup> 15 CCR § 3490, subds. (a), (c).

<sup>55</sup> 15 CCR § 3491, subd. (b)(3).

<sup>56</sup> 15 CCR § 3491, subds. (c), (d).

<sup>57</sup> 15 CCR § 3490, subd. (f).

<sup>58</sup> 15 CCR § 3491, subd. (f).

<sup>59</sup> 15 CCR § 3491, subd. (g).

<sup>60</sup> 15 CCR § 3492, subd. (a).

<sup>61</sup> 15 CCR § 3492, subd. (c).

<sup>62</sup> 15 CCR § 3492, subd. (d).

<sup>63</sup> 15 CCR § 3492, subd. (c).

<sup>64</sup> 15 CCR § 2449.3, subd. (a).

that prosecuted the inmate.<sup>65</sup> The notices alert the victim, victim's family, and the district attorney's office that the inmate has been referred to the Board for review and possible release. The notices also explain that victims, their families, and the district attorney's office have an opportunity to submit a written statement to the Board for its consideration when determining whether the inmate should be released. Written statements should be submitted to the Board by the victim, victims' family, and the district attorney's office within 30 days from the date of the Board's notice.<sup>66</sup>

Once the 30 days has passed, the Board will assign the case to a deputy commissioner. The first thing the deputy commissioner will do is review the case to confirm the inmate is eligible for the nonviolent offender parole review process.<sup>67</sup>

If the deputy commissioner finds the inmate is not eligible, the deputy commissioner will issue a written decision with a statement of reasons explaining why the inmate will not be considered for release. The inmate will receive a copy of the decision and any victims, victims' family members, and the district attorney's office that received notice of the inmate's referral to the Board will be notified.<sup>68</sup>

If the deputy commissioner confirms the inmate is eligible for parole review, he or she will review the case to determine if the inmate would pose a current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity if released. This is referred to as a review on the merits. The review is patterned after a risk-based, structured decision-making model for determining whether the inmate poses a current, unreasonable risk of violence or an unreasonable risk of significant criminal activity.<sup>69</sup>

Accordingly, the deputy commissioner will weigh a variety of factors and the person will be released if factors aggravating the person's risk do not exist or if they are outweighed by factors mitigating the inmate's risk. The deputy commissioner will consider factors such as the circumstances surrounding the inmate's current conviction(s), the inmate's criminal history and institutional behavior including rehabilitative programming and

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<sup>65</sup> 15 CCR § 2449.3, subd. (a).

<sup>66</sup> 15 CCR § 2449.3, subd. (b).

<sup>67</sup> 15 CCR § 2449.4, subd. (a).

<sup>68</sup> 15 CCR § 2449.4, subd. (a).

<sup>69</sup> 15 CCR §§ 2449.4, subds. (b), (c), 2449.5.

institutional misconduct, as well as any input from the inmate, victims, victims' family members, and the district attorney's office.<sup>70</sup>

The deputy commissioner will issue a written decision with a statement of reasons supporting the decision.<sup>71</sup> Inmates who have more than two years left to serve on their sentence at the time of the Board's review must be reviewed and approved by a supervising deputy commissioner.<sup>72</sup> Inmates approved for release by the Board will be processed for release 60 days from the date of the Board's decision.<sup>73</sup> Inmates who are denied release will be eligible for possible referral to the Board again one year later.<sup>74</sup> The inmate will receive a copy of the Board's decision and victims, victims' family members, and the district attorney's office that received notice of the inmate's referral to the Board will be notified of the Board's decision.<sup>75</sup>

### **Review of the Board's Decision**

Within 30 days of being served with the decision concerning jurisdiction or a review on the merits, the inmate may request review of the decision. A hearing officer who was not involved in the original decision shall complete review of the decision within 30 calendar days of receipt of the request and will document the decision in writing. The inmate will receive a copy of the Board's decision and victims, victims' family members, and the district attorney's office that received notice of the inmate's referral to the Board will be notified of the Board's decision.<sup>76</sup>

### **Referrals and Approvals**

More than 8,000 determinately-sentenced persons convicted of nonviolent offenses have been approved for release since 2015. The Board has approved 3,680 persons for release under Proposition 57 (July 2017 through September 2020) and 4,336 persons under the parole consideration process ordered by the Three-Judge Panel in the *Plata/Coleman* class action litigation (January 2015 through June 2017).

Between July 1, 2017 and August 31, 2020, the Board received 21,943 referrals for nonviolent offender parole review. In fiscal year 2021-22, the Board projects 5,881 nonviolent offenders will be referred to the Board for parole review under this program.

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<sup>70</sup> 15 CCR § 2449.5.

<sup>71</sup> 15 CCR § 2449.4, subd. (d).

<sup>72</sup> 15 CCR § 2449.4, subd. (f).

<sup>73</sup> 15 CCR § 3493.

<sup>74</sup> 15 CCR § 2449.4, subd. (h).

<sup>75</sup> 15 CCR § 2449.4, subd. (d).

<sup>76</sup> 15 CCR § 2449.7.

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## Medical Parole

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The Board also conducts medical parole hearings for inmates who suffer from a significant and permanent condition, disease, or syndrome, resulting in the inmate being physically or cognitively debilitated or incapacitated. Eligibility under this program was initially established in 2011 by Penal Code section 3550 and later expanded in 2014 under an order from the Three-Judge Panel in the *Plata/Coleman* class action litigation. The resulting medical parole hearing process is commonly referred to as expanded medical parole.

A medical parole hearing is a hearing to determine if an inmate who is permanently medically incapacitated should be placed in a licensed health care facility in the community. The Department and the California Correctional Health Care Services determine who is referred to the Board for an expanded medical parole hearing.

### **Inmates Eligible for an Expanded Medical Parole Hearing**

Inmates who meet certain criteria to be eligible for referral to the Board for an expanded medical parole hearing. First, the head physician of the institution where the inmate is housed determines whether the inmate suffers from a significant and permanent medical condition resulting in the inmate being permanently medically incapacitated. Additionally, the inmate must be unable to perform one or more activities of basic daily living such that the inmate qualifies for placement in a licensed health care facility in the community. Inmates serving a sentence of life without the possibility of parole or serving a death sentence are not eligible for expanded medical parole.

### **When Inmates Are Considered for Expanded Medical Parole**

Medical personnel at the prison where the inmate is housed, the inmate, or the inmate's family or attorney may request that the inmate's primary care physician in prison consider the person for expanded medical parole at any time. The primary care physician's assessment will be considered by both the chief medical executive and the classification and parole representative at the institution where the person is housed when determining if the person should be referred to the Board.

### **Expanded Medical Parole Hearing**

Expanded medical parole hearings are conducted like parole suitability hearings, with a few exceptions. First, expanded medical parole hearings can be conducted without the person present. The person may attend, but

the Board may conduct the hearing without the person present. Second, the standard the Board applies is whether the person will pose an unreasonable risk to public safety if placed in a licensed health care facility in the community.

If a person is denied medical parole, he or she will not automatically be scheduled for another medical parole hearing in the future. However, the person, his or her family or attorney, or a prison health care staff member may refer the person to the Board again after six months.

If a hearing panel approves a person's release to medical parole, the panel's approval is conditioned upon California Correctional Health Care Services identifying a licensed health care facility that meets the requirements identified by the hearing panel. The hearing panel will specify facility requirements it finds necessary for the person to be safely placed in the community. The panel may also condition the person's placement on his or her compliance with a variety of other requirements such as medical evaluations, compliance with nursing facility rules, and restrictions on communication with specified persons.

All other parole suitability hearing procedures established by the Board not impacted by the provisions outlined above are applied to expanded medical parole hearings, including appointment of counsel, and all applicable hearing notifications, including notice to law enforcement, the district attorney's office that prosecuted the inmate, and notice to victims and victims' family members who have registered with the Office of Victim and Survivor Rights and Services.

If a person is approved for expanded medical parole and is placed in a licensed health care facility in the community, the CDCR and California Correctional Health Care Services will monitor the person's medical condition and behavior while he or she is placed in a licensed health care facility. In the event the person shows significant improvements in his or her medical condition, such that he or she is no longer eligible for expanded medical parole, the person will be removed from expanded medical parole and returned to prison.

### **Referrals and Approvals**

Between January 1, 2011 and September 9, 2020, the Board conducted 271 medical parole hearings, 208 of which were conducted under the expanded medical parole program. The Board has approved 183 inmates for medical parole and denied 88.

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## Conclusion and Looking Forward

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The Board continues to look for ways to improve and streamline its processes, adapt to any new and expanded parole processes, and meaningfully carry out its responsibilities. The Board remains committed to protecting and preserving public safety while ensuring transparency and satisfying the due process rights of all persons who come under the Board's jurisdiction.

The Board will also continue to adapt to judicial interpretations of the law governing discretionary parole. There are a variety of significant court cases pending in state and federal courts. Please see [Appendix E](#) for a summary of some of the more significant legal issues pending resolution in the courts.

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## Appendices

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### Appendix A

#### Pre-Hearing Procedures

The procedures below are completed prior to a parole hearing. These procedures are intended to ensure the hearing is complete, fair, and that the rights of everyone who participates in the process are protected.

1. CDCR's Case Records Staff review all inmates for parole eligibility upon admission to state prison and calculate all applicable parole eligible dates for each inmate; the results are provided to the inmate and can be appealed through the Department's inmate appeal process.
2. Six months before an inmate's initial parole hearing is scheduled, Case Records Staff conduct an audit to verify the inmate's parole eligible date(s), shortly thereafter the Board schedule's the inmate's hearing.
3. The inmate's assigned counselor creates a summary of the inmate's historical institutional behavior and programming; when CDCR converted all inmate central files from paper to digital/electronic files in 2013, all pre-existing paper files were scanned into one voluminous electronic document; the counselor reviews this information and identifies relevant information from the inmate's admission date to 2013 and compiles the information for the parole hearing.
4. The inmate's assigned counselor produces and serves on the inmate a Notice of Rights, outlining the inmate's rights during the parole hearing process; the counselor also documents whether the inmate will be using a private attorney or would like an attorney appointed by the Board, any reasonable accommodations the inmate may need under the Americans with Disabilities Act, and whether the inmate would like to review the inmate's central file prior to the hearing.
5. Four to five months before the hearing the inmate is assigned an attorney (if the inmates does not have private counsel); Board staff create an electronic copy of the inmate's Central File, upload it to a secure, cloud-based file-sharing application, and send a link to the inmate's attorney and the district attorney; within 30 days, appointed counsel is required to consult with the inmate for at least an hour.
6. Four months before the hearing the inmate is assigned to a forensic psychologist; the psychologists reviews the inmate's central file, interviews the inmate for approximately two hours, administers the HCR-20, version 3, PCL-R, and the Static 99 (if applicable), drafts a 10 to 20 page Comprehensive Risk Assessment indicating the inmate's risk

for future violence; the report is required to be reviewed and approved by a senior psychologist; also four months prior to the hearing, a supervising correctional counselor reviews the confidential portion of an inmate's central file, summarizes the information, which is then provided to the inmate, the inmate's attorney, the district attorney, and the panel.

7. Three months prior to the parole hearing Board staff provide notice of the hearing to registered victims, district attorneys, the sentencing judge, the inmate's counsel at sentencing, and the law enforcement agency that investigated the commitment offense(s); Board staff also electronically pull relevant documents from the Department's main computer system and the inmate's central file, upload them into a secure, cloud-based file-sharing application and make them available to the inmate's attorney, the district attorney, and the panel assigned to the hearing.
8. Two months prior to the hearing the inmate's counselor serves the inmate with the Comprehensive Risk Assessment and Board staff provide it to the inmate's attorney, the district attorney, and the hearing panel; the inmate's attorney is required to consult with the inmate again for an hour.
9. One month prior to the hearing an interpreter is hired for the hearing, if needed.
10. Any written objections to alleged factual errors in the Comprehensive Risk Assessment are reviewed and addressed by the Board's Chief Counsel and Chief Psychologist.
11. Any pre-hearing motions, requests to postpone or waive the hearing, or requests for substitution of counsel are addressed by a deputy commissioner.
12. Ten days prior to the hearing Board staff compile any information added to the inmate's central file and documents regarding the hearing received since the electronic documents were initially distributed and provides them to the inmate's attorney, the district attorney, and the hearing panel.
13. If an inmate has a physical or cognitive disability, a staff assistant may be assigned to assist the inmate throughout the hearing process.

## Appendix B

### Summary of Select Criminal Justice Initiatives Impacting the Prison Population and Discretionary Parole in California from 2011 to 2020

#### 2011

- **Criminal Justice Realignment:** Realigned the threshold for who is sent to state prison, resulting in offenders convicted of lesser crimes serving their time in local jails rather than state prison; also moved responsibility for adjudicating parole violations from the Board of Parole Hearings (Board) to the courts and mandated that parolees who violate the terms of their parole serve time for their parole violations in local jails rather than being returned to state prison

#### 2012

- **Proposition 36, "A Change in the 'Three Strikes Law'"**: Modified the Three Strikes Law to limit third strikes to serious or violent offenses; inmates sentenced to a third strike for a nonviolent offense could petition the court for resentencing

#### 2014

- **Elderly Parole:** Created elderly parole; persons are eligible for a parole hearing after both reaching age 60 and having served 25 years of continuous incarceration; the Board must give special consideration to the impact of advanced age and long term incarceration on the person's risk to recidivate; implemented by order of the Three Judge Panel in the *Plata/Coleman* class action law suit
- **Proposition 47, "The Safe Neighborhoods and Schools Act"**: Reduced certain drug and theft-related offenses from felonies to misdemeanors; permits persons serving sentences for felony offenses that were reduced to misdemeanors to petition courts for resentencing, and authorizes persons who had completed their sentences for felony convictions that were reduced to misdemeanors to apply to have those convictions reclassified
- **Youth Offender Parole Hearings**: Created youth offender hearings; all persons who were under the age of 18 when they committed their controlling offense are eligible for a parole hearing after serving 15, 20, or 25 years, depending on the sentence imposed by the court (i.e., 15 years if determinately sentenced, 20 years if sentenced to less than 20 to life; 25 years if sentenced to more than 25 to life); persons sentenced under the Three Strikes Law or to life without the possibility of parole are excluded; the Board must give great weight to the factors of youth as detailed in United States and California Supreme Court case law; enacted by Senate Bill 260, Ch. 312, Statutes of 2014

## 2015

- [Term Calculations](#): Eliminated the need for the Board to calculate release dates and instead requires persons who are granted parole to be released once the Board's decision is final, or once the person has served the minimum sentence imposed by the court, whichever is later; the Board is no longer required to calculate the person's release date based on a variety of factors such as the number of victims and other factors in mitigation or aggravation of the crime; enacted by Senate Bill 230, Ch. 470, Statutes of 2015

## 2016

- [Youth Offender Parole Hearings](#): Extends eligibility for a youth offender parole hearing to persons who committed their controlling offense while under the age of 23; enacted by Senate Bill 261, Ch. 471, Statutes of 2016

## 2017

- [Proposition 57, "The Public Safety and Rehabilitation Act of 2016"](#): Requires judges (rather than prosecutors) to determine whether juvenile offenders charged with certain crimes should be tried as adults; gives the Secretary of Corrections the authority to determine credit earning for all inmates except condemned inmates and inmates sentenced to life without the possibility of parole; creates a process for persons convicted of nonviolent offenses to be considered for parole once they have served the full term of their primary offense, defined as the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence
- [Elderly Parole](#): Codified elderly parole hearings in Penal Code section 3055; persons age 60 and who have served 25 years of continuous incarceration are eligible for parole consideration; persons sentenced under the Three Strikes Law, convicted of first degree murder of a peace officer, sentenced to life without the possibility of parole, or condemned are not eligible; enacted by Assembly Bill 1448, Ch. 676, Statutes of 2017

## 2018

- [Youth Offender Parole Hearings](#): Extended eligibility for a youth offender parole hearing to persons who committed their controlling offense while under the age of 26; enacted by Assembly Bill 1308, Ch. 675, Statutes of 2018; also extended eligibility for a youth offender parole hearing to persons sentenced to life without the possibility of parole for a crime they committed while under the age of 18, once

they have served 25 years of incarceration; enacted by Senate Bill 394, Ch. 684, Statutes of 2018

- [Felony-Murder Redefined](#): Limited application of the felony murder rule to cases where a person directly kills a person in the commission of a felony or an attempted felony, aids and abets the killing, is a major participant in the killing, or when the victim was a peace officer engaged in the performance of his or her duties; inmates previously sentenced under the more expansive prior felony murder rule can petition the court for resentencing; enacted by Senate Bill 1437, Ch. 1015, Statutes of 2018

## 2020

- [Elderly Parole](#): Extended eligibility for elderly parole to persons who are age 50 and who have served 20 years of continuous incarceration; persons sentenced under the Three Strikes Law, convicted of first degree murder of a peace officer, sentenced to life without the possibility of parole, or condemned are not eligible; enacted by Assembly Bill 3234, Ch. 334, Statutes of 2020
- [Compassionate Release](#): Establishes the Secretary of Corrections as the sole authority to refer inmates who are terminally ill or permanently incapacitated to the sentencing court for recall of sentence and resentencing; removed the Board's authority to refer inmates for compassionate release; expanded eligibility for terminally ill inmates from those who have less than six months to live to those who have less than 12 months to live; enacted by Senate Bill 118, Ch. 29, Statutes of 2020
- [Parole Terms](#): Reduces the length of parole terms for persons released from state prison who are subject to parole supervision by CDCR to two years for determinately-sentenced persons and three years for indeterminately-sentenced persons; requires persons released to parole to be reviewed for discharge from parole after 12 months; discharge is mandatory for determinately-sentenced persons if they have had no parole violations; does not apply to sex offenders; enacted by Senate Bill 118, Ch. 29, Statutes of 2020

## Appendix C

### Training Provided to Commissioners and Deputy Commissioners in 2019

Commissioners and deputy commissioners receive training throughout the year during monthly Board meetings, the majority of which are open to the public. In addition to routine training required for all CDCR employees, the following training was provided to commissioners and deputy commissioners in 2019:

- ◆ *Accommodations Available for Hearing-Impaired Inmates at Parole Hearings*, presented by Daniel Moeller, Associate Chief Deputy Commissioner, BPH
- ◆ *Lifer Housing in San Diego*, presented by Ryan Youtsey, Parole Administrator (A), Division of Adult Parole Operations, CDCR
- ◆ *Recommendations Regarding Inmate Housing on Non-Designated Yards*, presented by Connie Gipson, Deputy Director, Facility Operations, Division of Adult Institutions, CDCR & Jennifer Neill, Chief Counsel, BPH
- ◆ *Articulating Decisions Involving Youth Offenders*, presented by Jennifer Neill, Chief Counsel & Heather McCray, Assistant Chief Counsel, BPH
- ◆ *Legal Analysis of Structured Decision-Making Framework*, presented by Jennifer Shaffer, Executive Officer & Jennifer Neill, Chief Counsel, BPH
- ◆ *Look into My Eyes: The Impact of Bias on the Accuracy of Assessing Accountability and Remorse*, presented by Dr. Brandon Mathews, Colorado Parole Board Member & Alexandra Walker, Vice Chair, Colorado Parole Board
- ◆ *Transgender 101*, presented by Adrien Lawyer, Co-Director/Co-Founder, Transgender Resource Center of New Mexico
- ◆ *Legal Implications of Applying the Structured Decision-Making Framework*, presented by Jennifer Shaffer, Executive Officer & Jennifer Neill, Chief Counsel, BPH
- ◆ *The Anti-Recidivism Coalition's Hope and Redemption Team*, presented by Sam Lewis, Director of Inside Program, Anti-Recidivism Coalition
- ◆ *Articulating a Decision Under the Structured Decision-Making Framework*, presented by Jennifer Shaffer, Executive Officer & Jennifer Neill, Chief Counsel, BPH

- ◆ *Legal Implications of Applying the Structured Decision-Making Framework*, presented by Jennifer Neill, Chief Counsel, BPH & Phillip Lindsay, Senior Assistant Attorney General, Jessica Blonien and Sara Romano, Supervising Deputy Attorneys General, Attorney General's Office
- ◆ *Applying the Structured Decision-Making Framework Using CDCR Inmate Central Files, the Strategic Offender Management System, and the Board's Information Technology System*, presented by Ralph Serin, Ph.D., C.Psych., Professor in Department of Psychology and Director of the Criminal Justice Decision Making Laboratory at Carleton University, Ottawa, Canada & Jennifer Shaffer, Executive Officer, BPH & Robbye Braxton, Correctional Program Specialist, Dr. David Rentler & Richard Sparaco & Jonathan Ogletree, Subject Matter Experts, United States Department of Justice, National Institute of Corrections
- ◆ *Legal Standard for Cases Referred En Banc*, presented by Jennifer Shaffer, Executive Officer & Jennifer Neill, Chief Counsel, BPH
- ◆ *Risk Assessment and Parole Considerations of Long-Term Incarcerated Sex Offenders*, presented by Dr. James Rokop, Chief Psychologist, Department of State Hospitals
- ◆ *Hearing Structure and Articulating a Decision Under the Structured Decision-Making Framework*, presented by Jennifer Shaffer, Executive Officer & Tiffany Shultz, Chief Counsel (A), BPH
- ◆ *Nonviolent Parole Processes Under *In re McGhee* (2019) 34 Cal.App.5<sup>th</sup> 902*, presented by Jennifer Shaffer, Executive Officer, BPH
- ◆ *Current Safety and Security Issues in the Institutions*, presented by Ralph Diaz, Secretary & Kathleen Allison, Undersecretary, CDCR & Tiffany Shultz, Assistant Chief Counsel, BPH
- ◆ *Hearing Structure and Articulating a Decision Under the Structured Decision-Making Framework*, presented by Jennifer Shaffer, Executive Officer & Jessica Blonien, Chief Counsel & Tiffany Shultz, Assistant Chief Counsel, BPH
- ◆ *Youth Consideration Under *In re Palmer* (2018) 27 Cal.App.5<sup>th</sup> 120, review granted January 16, 2019, S25214*, presented by Jennifer Shaffer, Executive Officer & Tiffany Shultz, Assistant Chief Counsel, BPH
- ◆ *Articulating a Decision Under the Structured Decision-Making Framework*, presented by Jennifer Shaffer, Executive Officer & Jessica Blonien, Chief Counsel, BPH

- ◆ *Applying the Legal Standards Under California Code of Regulations, Title 15, Section 2253*, presented by Jennifer Shaffer, Executive Officer & Jessica Blonien, Chief Counsel, BPH
- ◆ *Addressing Mental Health and Substance Use Disorders in the Criminal Justice System: Programs, Policies, and Treatment Interventions*, presented by Allison G. Robertson, Ph.D., MPH, Associate Professor in Psychiatry and Behavioral Sciences, Duke University School of Medicine
- ◆ *Overview of the Office of Victim and Survivor Rights and Services*, presented by Katie James, Staff Services Manager II, CDCR
- ◆ *Overview of En Banc Referrals*, presented by Jessica Blonien, Chief Counsel, BPH
- ◆ *Waivers, Stipulations, and Postponements*, presented by Jessica Blonien, Chief Counsel & Sara Puricelli, Staff Attorney, BPH
- ◆ *You Can't Read the Label from Inside the Jar: Disruptive Truth Bombs about Criminology, Implementation Science, and Real-World Organizational Change*, presented by Alexandra Walker, ABD, Director of Community Relations and Strategy, Alliance for Criminal Justice Innovation
- ◆ *Recall and Resentencing Recommendation Program*, presented by Mike Masters, Correctional Captain, CDCR
- ◆ *Vicarious Trauma*, presented by Brenda Crowding, Deputy Director of the Office of Internal Affairs and the Office of Civil Rights, CDCR
- ◆ *Parole Rescission*, presented by Heather McCray, Assistant Chief Counsel & Chris Hoeft, Staff Attorney, BPH
- ◆ *Expanded Medical Parole*, presented by George Bakerjian, Staff Attorney, BPH
- ◆ *Changes to the Panel Attorney Appointment Program*, presented by Sandra Maciel, Chief Deputy of Program Operations, BPH
- ◆ *Transitional Housing: Past, Present, and Future*, presented by Ryan Souza, Deputy Director, Division of Rehabilitative Programs & Ryan Youtsey, Division of Adult Parole Operations, CDCR & Tiffany Shultz, Assistant Chief Counsel, BPH
- ◆ *Analysis of Comprehensive Risk Assessments Administered in 2018*, presented by Dr. Cliff Kusaj, Chief Psychologist, BPH

- ◆ *Institutional Misconduct: Theoretical and Empirical Perspectives*, presented by Dr. Lisa Tobin, Psychologist, BPH
- ◆ *Overview of the Substance Use Disorder Treatment Program*, presented by Diana Toche, Undersecretary, Health Care Services, CDCR
- ◆ *Structured Decision-Making Framework*, presented by Jennifer Shaffer, Executive Officer & Jessica Blonien, Chief Counsel, BPH
- ◆ *An Introduction to California Sex Offender Management Board (CASOMB)*, presented by Dr. Lea Chankin, Consulting Psychologist /CASOMB Coordinator
- ◆ *Articulating a Decision Involving Implausible Denials*, presented by Jennifer Shaffer, Executive Officer & Jessica Blonien, Chief Counsel, BPH
- ◆ *Applying the Legal Standards Under California Code of Regulations, Title 15, Section 2253*, presented by Jennifer Shaffer, Executive Officer & Jessica Blonien, Chief Counsel, BPH
- ◆ *Implementing Penal Code Sections 4802 et. Seq. Regarding Pardons and Commutations*, presented by Jennifer Shaffer, Executive Officer & Jessica Blonien, Chief Counsel, BPH
- ◆ *Rehabilitative Programming at California Prison Industry Authority*, presented by Randy Fisher, Assistant General Manager over Workforce Development, California Prison Industry Authority

Commissioners, associate chief deputy commissioners, and members of the Board's executive team attended the 2019 Association of Paroling Authorities' Annual Training Conference. Presentations and workshops were provided on the following topics:

- ◆ *Ethics*, presented by Marie Ragghianti, Parole Board Administrator
- ◆ *Essential Principles of Implementation Leadership*, presented by Brandon Mathews, D.M., Colorado State Board of Parole
- ◆ *Interstate Compact*, presented by Ashley Lippert, Executive Director, Interstate Commission for Adult Offender Supervision
- ◆ *High Stakes and Missed Opportunities*, presented by Sandy Jones, Executive Director, Idaho Parole Commission & Julie Micek, Director of Parole Supervision, Nebraska Board of Parole & Sheryl M. Ranatza, Chairman, Louisiana Board of Pardons and Parole & Connie Utada,

Associate Manager & Tracy Velazquez, Manager, Public Safety Performance Project, Pew Charitable Trusts

- ◆ *Victims Handbook*, presented by Dr. Najah Burton, Supervisory Victims Coordinator, United States Parole Commission, Department of Justice
- ◆ *The Value of Structured Decision-Making in Parole*, presented by Richard Stoker, Director, National Parole Resource Center
- ◆ *Understanding Criminal Desistance Theory and Offender Change*, presented by Michael Hsu, Chair & Dr. Sid Thompson, former Chair, Oregon Board of Parole
- ◆ *Victims' Rights – How to Accord Victims Their Rights and Stay Ahead of Constitutional and Statutory Changes*, presented by Russell Butler, Executive Director, Maryland Crime Victims' Resource Center & Roberta Roper, Victims' Rights Advocate
- ◆ *Implementing a Gender Responsive Approach to Women in Parole Decision-Making: Conducting a Self-Assessment*, presented by Becki Ney, Principal, Center for Effective Public Policy & Director, National Resource Center on Justice Involved Women, National Parole Resource Center
- ◆ *What the Members Said – Parole Board Decision Making in England and Wales*, presented by Joanne Lackenby, Parole Board Member, England and Wales
- ◆ *Examining Risk Assessment and Clinical Judgement in Parole Release Decision-Making*, presented by Dr. Erin Harbinson & Dr. Julia Laskorunsky, Scholars, Robina Institute of Criminal Law and Criminal Justice
- ◆ *Taking Parole to the Next Level: Applying What Works and Ensuring Transparency and Fairness in Montana*, presented by Annette Carter, Chair, Montana Board of Probation and Pardons and Bree Derrick, Deputy Director, Idaho Department of Corrections
- ◆ *Beyond the Headlines*, presented by Daryl Churney, Executive Director General, Parole Board of Canada
- ◆ *ICE Detainers and Deportation*, presented by Joseph Suazo, Detention & Deportation Officer, National Fugitive Operation Program
- ◆ *60,481 to 0: Pennsylvania Stands OnBase*, presented by Leo Dunn, Chair, Pennsylvania Board of Probation and Parole

- ◆ *A Second Chance: Iowa's Process of Review and Release of Juvenile Lifers*, presented by Jeff Wright and Norman Granger, Vice Chair, New Jersey Board of Parole
- ◆ *Life After Life: Adjustment to LIFE in the Community After Being Released from Serving LIFE Sentences in Prison*, presented by Olinda Moyd, Chief, Parole Division of Public Defender Service for the District of Columbia
- ◆ *Do No Harm*, presented by Bree Derrick, Deputy Director, Idaho Department of Corrections
- ◆ *A Force for Positive Change*, presented by Damon West, Motivational Speaker

Lastly, the Board's Transcript Analysis Program provides commissioners with individualized feedback regarding their parole hearing decisions. Eighteen consultations occurred between the Board's legal division and commissioners under the Transcript Analysis Program in 2019.

## Appendix D

### Structured Decision-Making Framework

#### Structured Decision Making Framework Worksheet For Parole Hearings Conducted by the California Board of Parole Hearings

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Derived in past collaboration with Renée Gobeil, Carleton University & Jean Sutton, Parole Board of Canada, 2007

This Framework guides an analysis of current risk and additional factors by Board panels in order to support a decision rationale that is consistent with the Board's governing statutes, regulations, and case law. This is a structured professional judgment model; factors are not used to provide a score. The panel retains its full discretion when determining an offender's suitability for release.

Comprehensive Risk Assessment	Low / Moderate / High		
<u>Risk Related Factors</u>			
Criminal & Parole History	Aggravating (-)	Neutral	Mitigating (+)
<b>Rating Examples</b>			
<ul style="list-style-type: none"><li><b>Aggravating:</b> The extent to which an offender has an early onset of criminality, (i.e., age 11 or younger) multiple crimes with short intervals between, crimes that escalated in seriousness, and multiple parole violations or revocations.</li><li><b>Mitigating:</b> No prior criminal history, or minor infractions with long intervals between crimes.</li><li><b>Neutral:</b> If multiple crimes, they are minor with no escalation of severity, long intervals between.</li></ul>			
<b>Long-Term Offender Considerations</b>			
Different types of long-term offenders may have different trajectories. Overall, they have lower rates of re-arrests than other violent offenders and rates of re-arrest for homicides are very low. Predictors of recidivism for long-term offenders are not markedly different than for offenders in general, despite having greater periods of incarceration.			
Offender Self-Control	Aggravating (-)	Neutral	Mitigating (+)
<b>Rating Examples</b>			
<ul style="list-style-type: none"><li><b>Aggravating:</b> The extent to which an offender reflected poor self-control at the time of the crime(s) as indicated by one or more of the self-control factors (e.g., substance abuse, poor problem solving, sexual deviance, etc.).</li><li><b>Mitigating:</b> At the time of the crime(s) offender did not reflect poor self-control as indicated by one or more of the self-control factors (e.g., substance abuse poor problem solving, sexual deviance, etc.).</li><li><b>Neutral:</b> Self-control factors present at the time of the crime(s) do not indicate either serious concern for offender lack of self-control or confidence in offender's ability to maintain self-control at the time of the crime(s).</li></ul>			
<b>Long-Term Offender Considerations</b>			
There are no unique aspects of self-control based on type of offender or sentence length. Panels should be confident that any of the above disinhibitors that are related to the offender's criminal conduct or prison behavior have been addressed or are no longer relevant.			
Programming	Aggravating (-)	Neutral	Mitigating (+)
<b>Rating Examples</b>			
<ul style="list-style-type: none"><li><b>Aggravating:</b> The CRA identifies risk factors that remain currently relevant. The offender has not completed correctional programs based on that risk. (Offender was not afforded the opportunity to complete such</li></ul>			

programming or offender was assigned to such programming but did not actively participate and complete assignments.)

- **Mitigating:** The CRA does not identify risk factors that remain currently relevant or the factors identified have been addressed by the offender through active participation and completion of required assignments for assigned programming; programming was based on RNR.
- **Neutral:** The CRA identifies risk factors that remain currently relevant and the offender has completed some correctional programs to address those factors, but one or more elements of the offender's RNR have not been adequately addressed.

#### Long-Term Offender Considerations

Contrary to RNR, for low-risk offenders with serious commitment offenses, the intent of programming is to improve the offender's suitability for parole; programming upon release would also be preferred. Specific responsivity factors (e.g., motivation, language ability, cultural context) are relevant in that they impact offenders' participation in programming. Panels must note this as such factors impede program efficacy. For moderate and high-risk offenders, appropriate programming of sufficient dosage should be required for a positive decision, absent overriding mitigating circumstances. Alternatively, panels should require access to appropriate programming in the community upon release.

Institutional Behavior	Aggravating (-)	Neutral	Mitigating (+)
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#### Rating Examples

- **Aggravating:** Serious misconduct at any point during the current period of incarceration or recent misconduct, regardless of severity.
- **Mitigating:** Absence of misconduct plus behavior that goes above and beyond rule compliance (i.e., meritorious behavior).
- **Neutral:** Absence of misconduct alone is not a predictor of release outcome; no misconduct plus basic rule compliance.

#### Long-Term Offender Considerations

Long-term offenders typically have low rates of misconduct (lower than other offenders), especially after the first 18 months of adjustment. Those long-term offenders with a pattern of serious misconduct over time or recent misconduct (Rules Violation Reports) (i.e., within 5 years) would be an anomaly and viewed to be higher risk. A pattern of frequent minor misconduct (Counseling Chronos) throughout the sentence would also be a concern, if this reflects ongoing problems with self-control. An apparent relationship or pattern consistent with the dynamics of the commitment offense would also be of concern. Recent (within past year) minor misconduct (Counseling Chronos), depending on context, would not necessarily warrant an assessment of aggravating.

Offender Change	Aggravating (-)	Neutral	Mitigating (+)
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#### Rating Examples

- **Aggravating:** Offender rejects the need for change, has refused programs or been kicked out due to noncompliance, or despite programming continues to express views that demonstrate lack of change.
- **Mitigating:** Clear demonstration of change, regardless of whether the offender completed programs or not.
- **Neutral:** Some evidence offender is different since commission of crime but change is not substantial, clear, or consistent over time.

#### Long-Term Offender Considerations

Meritorious reports from staff or volunteers might be a good source for indications of change. The CRA might also provide some insights regarding change over time. The panel hearing is an opportunity for panels to examine this

more closely and would be time better spent than rehashing the minute details of the crime, as this is more relevant to offender outcome.

Release Plan	Aggravating (-)	Neutral	Mitigating (+)
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Is the release plan realistic for *this* offender? Does the offender have protective factors in place in case of lapses, such as pro-social friends, employment? If the offender fails on release, what is the likely impact on the community?

#### Rating Examples

- **Aggravating:** The offender lacks a concrete, realistic parole plan and there is a nexus between the lack of a parole plan and current dangerousness.
- **Mitigating:** The offender has concrete, realistic parole plans addressing *most* of the community stability factors (e.g., stable housing, prospective employment, pro-social supports, realistic plans to manage risk factors).
- **Neutral:** The offender has concrete, realistic parole plans addressing *some* of the community stability factors with several factors not adequately addressed (e.g. offender has plans to live with supportive pro-social family but it is in the same crime-ridden neighborhood where his criminally involved peers live). The offender offers general statements about risk factors (e.g., “I need to avoid people, places and things I associate with my drug use”) but cannot offer specific details or strategies to manage those risk factors.

#### Long-Term Offender Considerations

The initial transition to assisted living is challenging as offenders decompress from long imprisonment. This initial supportive environment may buffer risk such that the increased risk of initial release (first 6 months) may be delayed. Protective factors change over time and must be considered. Finally, holistic programming (accommodation, employment, mental health, addictions support, social networks, etc.) is essential.

Case-Specific Factors	Aggravating (-)	Neutral	Mitigating (+)
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Is there anything that seems salient for this particular offender that may influence/effect risk, change, release planning or risk management that has not been considered?

#### Rating Examples

- **Aggravating:** There is a unique case-specific factor that increases the offender's current dangerousness.
- **Mitigating:** There is a unique case-specific factor that decreases the offender's current dangerousness.
- **Neutral:** There are no unique case-specific factors that affect the offender's current dangerousness.

#### Additional Factors

Victim/DA Considerations	Aggravating (-)	Neutral	Mitigating (+)
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Did the victim, victim's next of kin, or prosecutor provide information or argument relevant to the express issue of safety or current dangerousness and thus, the offender's suitability for parole?

#### Rating Examples:

- **Aggravating:** The victim, victim's next of kin, or the prosecutor provided reliable information relevant to the express issue of safety or current dangerousness.
- **Mitigating:** The victim, victim's next of kin, or the prosecutor provided reliable information indicating the offender does not pose a current risk of dangerousness.
- **Neutral:** The victim, victim's next-of-kin, or the prosecutor did not provide information relevant to the express issue of safety or current dangerousness and thus, the offender's suitability for parole.

Youth Offender Factors	Great Weight Applied:	Yes/No
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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. The panel shall give great weight to the youth offender factors: Diminished culpability of youths as compared to adults, the hallmark features of youth, and subsequent growth and increased maturity while incarcerated.

<b>Elderly Parole Considerations</b>	<b>Consideration Given:</b>	<b>Yes/No</b>	
The panel shall give special consideration to the offender's advanced age, long-term confinement, and diminished physical condition, if any, when determining the offender's suitability for parole.			
<b>Intimate Partner Battering Considerations</b>	<b>Great Weight Applied:</b>	<b>Yes/No</b>	
The panel shall give great weight to any information or evidence that, at the time of the commission of the crime, the offender had experienced intimate partner battering, but was convicted of an offense that occurred prior to August 29, 1996; the panel shall state on the record the information or evidence that it considered and the reason for the parole decision; the fact that an offender presented evidence of intimate partner battering cannot be used to support a finding that the offender lacks insight into his or her crime and its causes.			
<b><u>Discordant Information</u></b>			
Is there any discordant or incongruent information that must be considered prior to making a release decision?			
<b>Final Analysis</b>	<b>Aggravating (-)</b>	<b>Neutral</b>	<b>Mitigating (+)</b>
<b>Recommendation</b>	<b>Grant/Deny</b>		

## **Appendix E**

### Summary of Significant Litigation Pending in State and Federal Courts Potentially Impacting Discretionary Parole in California

#### **California Supreme Court**

*In re Palmer III*; California Supreme Court No. S256149

Issues presented are: 1) Did this life inmate's continued confinement become constitutionally disproportionate under article I, section 17 of the California Constitution and/or the Eighth Amendment of the United States Constitution? 2) If this life prisoner's incarceration became constitutionally disproportionate, what is the remedy?

*In re Gadlin*; California Supreme Court No. S254599

Issue presented is: Under Proposition 57 (Cal. Const., art. I, §32), may CDCR categorically exclude from early parole consideration all prisoners who have been previously convicted of a sex offense requiring registration under Penal Code section 290?

*In re Mohammad*; California Supreme Court No. S259999

Issue presented: Proposition 57 amended the California Constitution to provide for early parole consideration for persons convicted of nonviolent felonies. Does the text of Proposition 57 both preclude consideration of the ballot materials to discern the voters' intent and prohibit CDCR from enacting implementing regulations that exclude inmates who stand convicted of both nonviolent and violent felonies from early parole consideration?

*People v. Williams*; Case: S262229, Supreme Court of California

Issue presented: Does Penal Code section 3051, subdivision (h), violate the equal protection clause of the Fourteenth Amendment by excluding young adults convicted and sentenced for serious sex crimes under the One Strike law (Pen. Code, § 667.61) from youth offender parole consideration, while young adults convicted of first degree murder are entitled to such consideration?

#### **Appellate Court Cases:**

*In re Canady*; Third Appellate District No. C089363

This is a habeas appeal. The trial court found that post-conviction credits earned by inmates must be applied toward the Nonviolent Parole Eligibility Date.

*In re Flores*; Third Appellate District No. C089974

This is a habeas appeal. The trial court concluded that determinately-sentenced nonviolent offenders are entitled to the same process and protections provided to life inmates under *In re Lawrence*, including the right to attend a live hearing.

*In re Kavanaugh*; Fourth Appellate District, Division 1 No. D076500

This is habeas appeal. The trial court found that due process requires that determinately-sentenced nonviolent offenders be provided an attorney and a hearing before two hearing officers when they are considered for parole release.

*In re Moreno*; Fourth Appellate District, Division 1 No. D076821, SD Super. No. HCN 1586; SCN 367442-1 consolidated with *Kavanaugh*. *In re Smith*; Fourth Appellate District, Division 1 No. D077003; SD Super. No. HC19685; SCD208823 consolidated with *Kavanaugh*

*In re Michael Williams*; Second Appellate District, Div. 5 No. B303744

Original habeas petition in court of appeal. Williams alleges it is an equal protection violation to treat him differently from persons sentenced to life without the possibility of parole for offenses they committed as a juvenile because he is denied parole consideration. Williams was 21 when he shot two men during a robbery, killing one, for which he was subsequently sentenced to life without the possibility of parole.

## **Federal Litigation**

*Jones v. Diaz*; N.D. Cal. No. 3:19-cv-7814

Possible class action civil lawsuit challenging delayed implementation of nonviolent parole consideration for indeterminately-sentenced nonviolent inmates.