

**REGULATION AND POLICY MANAGEMENT BRANCH**

P.O. Box 942883  
Sacramento, CA 94283-0001



July 26, 2019

**NOTICE OF CHANGE TO TEXT AS ORIGINALLY PROPOSED**

Pursuant to the provisions of Government Code Sections 11346.8(c) and 11349.4, and Section 44 of Title 1 of the California Code of Regulations (CCR), the California Department of Corrections and Rehabilitation (CDCR) and the Board of Parole Hearings (Board) are providing notice of proposed changes made to CCR Sections 3490, 3491, 3495, 3496, 3497, 2449.1, 2449.30, 2449.31, 2449.32, 2449.33, and 2449.34, regarding Supplemental Reforms to Parole Consideration.

You are receiving this notice because you provided written comment (including comments sent via email or fax), commented at the public hearing held on June 6, 2019, or requested notice of changes.

To provide notice of the proposed changes to the public, this Notice will be posted on the CDCR Internet website at: [CDCR Pending Regulations](#).

The proposed emergency regulations were filed with the Office of Administrative Law on December 11, 2018, and approved on a temporary emergency basis. Following the publication of Notice of Change to Regulations 19-02 on April 19, 2019, the Court of Appeal, First Appellate District, Division Four found that regulations previously promulgated by CDCR establishing the determinately-sentenced nonviolent parole process did not comport with the constitutional provision they sought to implement. Specifically, in *In re Tijue Adolphus McGhee* (2019) 34 Cal.App.5th 902, issued May 16, 2019, the court struck down the public safety screening process established in the CCR, Title 15, Section 3492. This provision allowed CDCR to screen out for public safety reasons certain nonviolent offenders from referral to the Board for parole consideration under the Board's determinately-sentenced nonviolent parole review. The court found this action was inconsistent with the mandate in California Constitution, Article I, Section 32 for nonviolent offenders to be eligible for referral to the Board for parole consideration. Thus, the court determined the public safety screening did not comport with the constitutional provision it sought to implement and struck this provision of the regulations down.

While the court's finding was limited to the public safety screening in CCR, Section 3492 governing consideration for determinately-sentenced inmates, the court's reasoning would logically apply to the public safety screening and referral process for indeterminately-sentenced nonviolent offenders under these proposed regulations (Section 3497). Therefore, CDCR and the Board determined that modifications to these proposed regulations were necessary to remove the public safety screening process and all other portions of the regulations related to CDCR's screening of inmates prior to referral for public safety reasons. Specifically, CDCR and the Board amended these proposed regulations to remove any process for CDCR to screen nonviolent offenders for public safety reasons prior to referral to the Board as well as the portion

of the Board's jurisdictional review process related to confirming agreement with CDCR's public safety screening results for a referred nonviolent offender.

Additionally, minor modifications were made to enhance the clarity of these regulations.

Amendments to the proposed text originally noticed to the public are indicated by **bold double underline** for newly added text and ~~**bold double underline**~~ for text deleted from the original proposed text. The single underline and single strikethrough formatting from the original proposed text noticed to the public has been removed for clarity, and because those amendments are currently in emergency effect. These proposed changes are being made available for public comment. Only those comments relating directly to the amendments that are indicated by **bold double underline** or ~~**bold double underline**~~ will be considered.

The attached text contains the following changes:

Section 3490, subsection (a) is *amended* to clarify that inmates may only meet the definition of "determinately-sentenced nonviolent offender" if the inmate is sentenced only to determinate terms. Clarifying that inmates may only meet the definition of "determinately-sentenced nonviolent offender" if the inmate is sentenced only to determinate terms is necessary to create consistency with Section 3495, subsection (a), which limits the definition of "indeterminately-sentenced nonviolent offenders" to inmates currently sentenced to an indeterminate term.

Section 3491, subsection (a) is *amended* to clarify that this eligibility review section applies only to determinately-sentenced nonviolent offenders under this article. This subsection is also amended to correct citation formatting for consistency and to add in a missing space. Clarifying that this eligibility review section applies only to determinately-sentenced nonviolent offenders is necessary to ensure that stakeholders understand the specific population to which this section applies. The indeterminately-sentenced nonviolent offenders receive an eligibility review under Section 3496. This subsection is also amended to correct citation formatting for consistency and to add in a missing space.

Sections 3495 through 3496 remain unchanged.

Section 3497 is *amended* to delete all authority for CDCR staff to screen out indeterminately-sentenced nonviolent offenders for public safety reasons. As modified, all offenders deemed to be eligible for nonviolent parole consideration under this article must be immediately referred to the Board of Parole Hearings 180 days prior to their nonviolent parole eligible date unless the offender has previously begun receiving parole consideration hearings before the Board or is otherwise eligible for release within 12 months. Deleting all authority for CDCR staff to screen out indeterminately-sentenced nonviolent offenders for public safety reasons is necessary to bring these proposed regulations into compliance with the intended effect of the court's decision in *In re McGhee*. While the court's holding in that case was specifically directed to the determinately-sentenced nonviolent offender parole process, CDCR and the Board determined that the court's reasoning would also apply to the indeterminately-sentenced nonviolent offender parole process. Thus, to fully implement the reasoning of the court's decision in *McGhee* and avoid further litigation, it is necessary to delete the CDCR process of screening eligible indeterminately-sentenced nonviolent offenders for public safety concerns prior to referring them to the Board for parole consideration.

CDCR and the Board also found that retaining CDCR's process of screening eligible indeterminately-sentenced nonviolent offenders for timing restrictions was necessary to ensure

that state funds were not inappropriately wasted on hearings that would not result in earlier release. Specifically, if an indeterminately-sentenced nonviolent offender has already received a parole consideration hearing due to another parole eligible date, the nonviolent parole eligible date is moot because the inmate has already been considered for parole and is currently subject to the statutory period of denial imposed by the previous panel. Additionally, for indeterminately-sentenced nonviolent offenders who have not yet entered the hearing cycle, but who are scheduled to be released or to begin receiving hearings under another parole eligible date less than twelve months from their NPEDs, this process is unnecessary because the inmate will already be scheduled for a hearing under other law before the Board could complete the entire hearing process under these regulations. Specifically, once the Board confirms jurisdiction over an indeterminately-sentenced nonviolent offender, the Board requires approximately 180 days to schedule the hearing due to the period of time needed to meet statutory hearing notification requirements as well as pre-hearing preparation requirements, including completion of comprehensive risk assessments. Then, once the hearing is held, the Board's and Governor's statutory decision review periods extend between 120 and 150 days depending on the crime, followed by any time necessary to resolve referrals to the full Board sitting en banc and issue final release documents.

Therefore, CDCR and the Board found necessary to clarify that all offenders deemed to be eligible for nonviolent parole consideration under this article must be immediately referred to the Board of Parole Hearings upon reaching 180 days prior to their nonviolent parole eligible date unless the offender has previously begun receiving parole consideration hearings before the Board or is otherwise eligible for release within 12 months.

Section 2449.1, subsection (a) is *amended* to clarify that inmates may only meet the definition of "determinately-sentenced nonviolent offender" if the inmate is sentenced only to determinate terms. Clarifying that inmates may only meet the definition of "determinately-sentenced nonviolent offender" if the inmate is sentenced only to determinate terms is necessary to create consistency with Section 3491, subsection (a), which mirrors the same definitions, as well as Section 2449.31, subsection (a), which limits the definition of "indeterminately-sentenced nonviolent offenders" to inmates currently sentenced to an indeterminate term.

Section 2449.30, paragraph (a)(5) is *amended* to clarify that this specific exemption from nonviolent offender qualification applies only when the inmate is currently serving an indeterminate term (as opposed to a current determinate term) after already completing any determinate term, whether concurrent or consecutive, for a violent felony. This amendment is necessary to ensure that inmates whose current crimes include violent felonies are equally disqualified from this nonviolent parole consideration process. Specifically, in the original proposed language, this paragraph did not specify that this exemption was limited to inmates currently serving indeterminate terms, which is necessary to ensure that the inmates subject to this exception are being reviewed for eligibility under the correct article. Additionally, the original proposed language only exempted inmates when they were currently incarcerated on a life term after completing a concurrent term for a violent felony, but did not also exempt those who had completed a consecutive term for a violent felony. This created a disparity in that two inmates who committed identical violent determinate crimes and nonviolent life crimes resulting in identical sentences would be treated unequally under this process if the sentencing courts imposed concurrent sentences on one inmate and consecutive sentences on the other. The inmate with consecutive sentences would qualify for nonviolent parole consideration after completing the determinate term for the violent felony, but the inmate with concurrent sentences would not qualify as a nonviolent offender. In light of that inequity, CDCR and the Board determined that amending this paragraph to clarify that completion of either a concurrent or

consecutive term for a violent felony was necessary to ensure equal treatment of inmates and prevent inmates who commit violent felonies from receiving parole consideration under the non-violent parole process.

Section 2449.31 is *amended* to delete all portions of the Board's jurisdictional review process relating to confirming the results of CDCR's public safety screening process or an indeterminately-sentenced nonviolent offender's eligibility for a new public safety screening one year after the Board deemed the person ineligible for referral due to public safety concerns under the Board's jurisdictional review. Deleting all portions of the Board's jurisdictional review process relating to CDCR's public safety screening process is necessary to effectuate the court's holding in *In re McGhee* because, with the elimination of this process from CDCR authority, the process no longer exists for the Board to review. Similarly, CDCR and the Board determined it is necessary that all portions of the Board's jurisdictional review process relating to an indeterminately-sentenced nonviolent offender's eligibility for a new public safety screening one year after the Board deemed the person ineligible for referral due to public safety concerns under the Board's jurisdictional review must be removed, because this no longer exists as a basis from which to deem an inmate ineligible for referral to the Board.

Section 2449.32 is *amended* to correct citation formatting for consistency and clarity.

Section 2449.33 is *amended* to delete all portions of the Board's process for vacating a jurisdictional decision relating to an indeterminately-sentenced nonviolent offender's eligibility for a new public safety screening one year after the Board deemed the person ineligible for referral due to public safety concerns under the Board's jurisdictional review. This section is further *amended* to correct citation formatting for consistency. Deleting all portions of the Board's process for vacating a jurisdictional decision relating to an indeterminately-sentenced nonviolent offender's eligibility for a new public safety screening one year after the Board deemed the person ineligible for referral due to public safety concerns is necessary to effectuate the court's holding in *In re McGhee* because, with the elimination of this process from CDCR authority, this process no longer exists for the Board to review. Additionally, correcting citation format is necessary to promote consistency and clarity within the regulations for stakeholders.

Section 2449.34 is *amended* to delete subsection (b), which previously authorized the Chief Hearing Officer or an Associate Chief Deputy Commissioner of the Board to initiate review of a jurisdictional decision at any time prior to the inmate's initial parole consideration hearing under the indeterminately-sentenced nonviolent parole process when the Board either discovered an error or fact or law or discovered new information materially impacting the prior decision. This section is further *amended* to update the remaining paragraph numbers. Deleting authority for the Chief Hearing Officer or Associate Chief Deputy Commissioner to initiate review of a jurisdictional decision upon discovering an error or fact or law or discovering new information materially impacting the prior decision is necessary because, following the eliminations of the screening for public safety concerns, the only remaining purpose of the Board's jurisdictional review is to confirm the inmate's eligibility as a nonviolent offender. If issues arise that raise questions respecting the inmate's eligibility, it is unnecessary for the Board to initiate a new jurisdictional review; rather, the matter would be referred to CDCR Case Records to conduct a new eligibility review under its own regulations using an agency's general power to correct errors in its own decisions.

### **Contact Person**

Inquiries regarding this notice should be directed to Joshua Jugum, Regulation and Policy Management Branch, California Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2266, or e-mail at RPMB@cdcr.ca.gov. In the event the contact person is unavailable, inquiries should be directed to Ying Sun, Associate Director, RPMB, at (916) 445-2269.

### **Submission of Public Comments**

The comment period for these revisions will close on Tuesday, August 13, 2019. Please submit comments by e-mail to RPMB@cdcr.ca.gov; in writing to Joshua Jugum, Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA, 94283-0001, before the close of the public comment period. Comments must be received or postmarked no later than 5:00 p.m. on Tuesday, August 13, 2019. Only those comments relating directly to the enclosed amendments indicated by **bold double underline** or ~~**bold double underline**~~ will be considered.

*Original Signed By:*

YING SUN, Associate Director  
Regulation and Policy Management Branch  
Department of Corrections and Rehabilitation

Attachment

## **TEXT OF PROPOSED REGULATIONS - RENOTICE**

Amendments to the proposed text originally noticed to the public are indicated by **bold double underline** for newly added text and ~~**bold double strikethrough**~~ for text deleted from the original proposed text. The single underline and single strikethrough formatting from the original proposed text noticed to the public has been removed for clarity, and because those amendments are currently in emergency effect. Only those comments relating directly to the amendments that are indicated by **bold double underline** or ~~**bold double strikethrough**~~ will be considered.

**The attached text contains the following changes:**

**California Code of Regulations, Title 15, Crime Prevention and Corrections Division 3, Adult Institutions, Programs and Parole**

**Chapter 1. Rules and Regulations of Adult Operations and Programs**

**Subchapter 5.5. Parole Consideration**

**Article 1. Parole Consideration for Determinately-Sentenced Nonviolent Offenders.**

### **Section 3490. Definitions.**

For the purposes of this article, the following definitions shall apply:

(a) An inmate is a “determinately-sentenced nonviolent offender” if **the inmate was sentenced to a determinate term and** none of the following are true:

- (1) The inmate is condemned to death;
  - (2) The inmate is currently incarcerated for a term of life without the possibility of parole;
  - (3) The inmate is currently serving a term of life with the possibility of parole;
  - (4) The inmate is currently serving a determinate term prior to beginning a term of life with the possibility of parole or prior to beginning a term for an in-prison offense that is a “violent felony;”
  - (5) The inmate is currently serving a term of incarceration for a “violent felony;” or
  - (6) The inmate is currently serving a term of incarceration for a nonviolent felony offense after completing a concurrent determinate term for a “violent felony.”
- (b) Notwithstanding subsection (a), a “determinately-sentenced nonviolent offender” includes an inmate who has completed a determinate or indeterminate term of incarceration and is currently serving a determinate term for an in-prison offense that is not a “violent felony.”
- (c) “Violent felony” is a crime or enhancement as defined in subdivision (c) of ~~Section~~ **Section** 667.5 of the Penal Code.
- (d) “Primary offense” means the single crime for which any sentencing court imposed the longest term of imprisonment, excluding all enhancements, alternative sentences, and consecutive sentences.

(e) "Full term" means the actual number of days, months, and years imposed by the sentencing court for the inmate's primary offense, not including any sentencing credits.

(f) A "nonviolent parole eligible date" is the date on which a nonviolent offender who is eligible for parole consideration under ~~Section~~ Section 3491 has served the full term of his or her primary offense, less any actual days served prior to sentencing as ordered by the court under ~~Section~~ Section 2900.5 of the Penal Code and any actual days served in custody between sentencing and the date the inmate is received by the department.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Section 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a); Section 1170.1(c), Penal Code; *In re Tate* (2006) 135 Cal.App.4<sup>th</sup> 756; and *In re Thompson* (1985) 172 Cal.App.3d 256.

### **Section 3491. Eligibility Review.**

(a) A determinately-sentenced nonviolent offender, as defined in subsections 3490(a) and 3490(b), shall be eligible for parole consideration by the Board of Parole Hearings under ~~article~~ Article 15 of ~~chapter~~ Chapter 3 of ~~division~~ Division 2 of this title.

(b) Notwithstanding subsection (a), an inmate is not eligible for parole consideration by the Board of Parole Hearings under ~~article~~ Article 15 of ~~chapter~~ Chapter 3 of ~~division~~ Division 2 of this title if any of the following apply:

(1) The inmate is an indeterminately-sentenced nonviolent offender as defined in ~~Section~~ Section 3495, in which case he or she may be eligible for parole consideration under Article 2 of this subchapter;

(2) Within one year of the date of the eligibility review, the inmate will be eligible for a parole consideration hearing under ~~Section~~ Section 3051 or 3055 of the Penal Code or the inmate has already been scheduled for an initial parole consideration hearing under ~~Section~~ Section 3051 or 3055 of the Penal Code; or

(3) The inmate is convicted of a sexual offense that currently requires or will require registration as a sex offender under the Sex Offender Registration Act, codified in ~~Sections~~ Sections 290 through 290.024 of the Penal Code.

(c) The department shall complete an eligibility review within 60 calendar days of an inmate's admission to the department.

(d) The department shall conduct a new eligibility review whenever an official record, such as an amended abstract of judgment or minute order, is received that affects the inmate's eligibility under this article, when an inmate begins serving a determinate term for an in-prison offense that is not a violent felony, or when an inmate is within one year of being eligible for a parole consideration hearing under ~~Section~~ Section 3051 or 3055 of the Penal Code.

(e) The department shall conduct an eligibility review by completing the following steps.

(1) The department shall determine if the inmate is eligible for parole consideration by the Board of Parole Hearings under subsections (a) and (b) of this section.

(2) If the inmate is eligible for parole consideration by the Board of Parole Hearings under subsections (a) and (b), the department shall identify the inmate's primary offense, as defined in subsection 3490(d) of this article.

(A) If at the time of the eligibility review the inmate is serving a term or terms for crimes committed prior to his or her arrival to prison, the terms for any in-prison crimes shall not be considered when identifying the inmate's primary offense.

(B) If at the time of the eligibility review the inmate is serving a term or terms for crimes committed after his or her arrival to prison, only the terms for all in-prison crimes currently being served or yet to be served shall be considered when identifying the inmate's primary offense.

(3) If the inmate is eligible for parole consideration by the Board of Parole Hearings under subsections (a) and (b), the department shall establish his or her nonviolent parole eligible date, as defined in subsection 3490(f) of this article.

(f) Eligibility reviews under this section shall be served on the inmate and placed in the inmate's central file within 15 business days of being completed.

(g) Eligibility reviews under this section are subject to the department's inmate appeal process in accordance with ~~article~~Article 8 of ~~chapter~~Chapter 1 of this ~~division~~Division.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Section 5058, Penal Code.  
Reference: Cal. Const., art. 1, sec. 32(a).

## **Article 2. Parole Consideration for Indeterminately-Sentenced Nonviolent Offenders.**

### **3495. Definitions.**

For the purposes of this article, the following definitions shall apply:

(a) An inmate is an "indeterminately-sentenced nonviolent offender" if the inmate was sentenced to an indeterminate term and none of the following is true:

(1) The inmate is condemned to death;

(2) The inmate is currently incarcerated for a term of life without the possibility of parole;

(3) The inmate is currently serving a term of life with the possibility of parole for a "violent felony;"

(4) The inmate is currently serving a determinate term prior to beginning a term of life with the possibility of parole for a "violent felony;"

(5) The inmate is currently serving an indeterminate term of incarceration for a nonviolent felony offense after completing a concurrent or consecutive determinate term for a "violent felony;"

(6) The inmate is currently sentenced to a "violent felony" for an in-prison offense; or

(7) The inmate has completed an indeterminate term of incarceration and is currently serving a determinate term for an in-prison offense.

(b) Notwithstanding subsection (a), an "indeterminately-sentenced nonviolent offender" includes an inmate who has completed a determinate term of incarceration and is currently serving an indeterminate term for an in-prison offense that is not a "violent felony."

(c) "Violent felony" is a crime or enhancement as defined in subdivision (c) of ~~Section~~Section 667.5 of the Penal Code.

(d) "Primary offense" means the single crime for which any sentencing court imposed the longest term of imprisonment, excluding all enhancements, alternative sentences, and consecutive sentences. For purposes of determining the primary offense under this section, the term of imprisonment for inmates sentenced to a life term under an alternative sentencing scheme for a nonviolent crime shall be the maximum term applicable by statute to the underlying nonviolent offense.

(e) "Full term" means the actual number of days, months, and years for the inmate's primary offense, not including any sentencing credits.

(f) A "nonviolent parole eligible date" is the date on which an indeterminate-sentenced nonviolent offender who is eligible for a parole consideration hearing under ~~S~~section 3496 has served the full term of his or her primary offense, less any actual days served prior to sentencing as ordered by the court under ~~S~~section 2900.5 of the Penal Code and any actual days served in custody between sentencing and the date the inmate is received by the Department.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Section 5058, Penal Code. Reference: Cal. Const., art. 1, sec. 32(a); Section 1170.1(c), Penal Code; *In re Edwards* (Sept. 7, 2018, B288086) ~~==~~Cal.App.4th~~==~~ [237 Cal.Rptr.3d 673]; *In re Tate* (2006) 135 Cal.App.4th 756; and *In re Thompson* (1985) 172 Cal.App.3d 256.

### **3496. Eligibility Review.**

(a) An "indeterminate-sentenced nonviolent offender," as defined in subsection 3495(a), shall be eligible for a parole consideration hearing by the Board of Parole Hearings under Article 16 of Chapter 3 of Division 2 of this title.

(b) Notwithstanding subsection (a), an inmate is not eligible for a parole consideration hearing by the Board of Parole Hearings under Article 16 of Chapter 3 of Division 2 of this title if the inmate is convicted of a sexual offense that currently requires or will require registration as a sex offender under the Sex Offender Registration Act, codified in ~~S~~sections 290 through 290.024 of the Penal Code.

(c) The Department shall complete an eligibility review within 60 calendar days of an inmate's admission to the Department.

(d) The Department shall conduct a new eligibility review whenever an official record, such as an amended abstract of judgment or minute order, is received that affects the inmate's eligibility under this article or when an inmate begins serving a term for one or more in-prison offenses of which at least one is an indeterminate term and none is for a "violent felony."

(e) The Department shall conduct an eligibility review by completing the following steps:

(1) The Department shall determine if the inmate is eligible for a parole consideration hearing by the Board of Parole Hearings under subsections (a) and (b) of this section.

(2) If the inmate is eligible for a parole consideration hearing by the Board of Parole Hearings under subsections (a) and (b), the Department shall identify the inmate's primary offense, as defined in subsection 3495(d) of this article.

(A) If at the time of the eligibility review the inmate is serving a term or terms for crimes committed prior to his or her arrival to prison that are not a violent felony, the terms for any in-prison crimes that are not a violent felony shall be considered when identifying the inmate's primary offense.

(B) If at the time of the eligibility review the inmate is serving a term or terms for crimes committed after his or her arrival to prison that are not a violent felony, only the terms for all in-prison crimes that are not a violent felony currently being served or yet to be served shall be considered when identifying the inmate's primary offense.

(3) If the inmate is eligible for a parole consideration hearing by the Board of Parole Hearings under subsections (a) and (b), the Department shall establish his or her nonviolent parole eligible date, as defined in subsection 3495(f) of this article.

(f) Eligibility reviews under this section shall be served on the inmate and placed in the inmate's central file within 15 business days of being completed.

(g) Eligibility reviews under this section are subject to the Department's inmate appeal process in accordance with Article 8 of Chapter 1 of this Division.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Section 5058, Penal Code.  
Reference: Cal. Const., art. 1, sec. 32(a).

### **3497. Public Safety Screening and Referral to the Board of Parole Hearings.**

(a) ~~If an inmate~~Inmates is determined to be eligible for a parole consideration hearing under ~~Section 3496, he or she~~ shall be ~~screened under this section for possible referral~~referred to the Board of Parole Hearings.

~~(b) Inmates shall be screened under this section~~ at least 180 calendar days prior to their nonviolent parole eligible date, unless

~~(c) An inmate is eligible for referral to the Board of Parole Hearings if, on the date of the screening, all of the following are true:~~

~~(1) The inmate is not currently serving a Security Housing Unit term;~~

~~(2) The Institutional Classification Committee has not assessed the inmate a Security Housing Unit term within the past five years, unless the Department assessed the Security Housing Unit term solely for the inmate's safety;~~

~~(3) The inmate has not served a Security Housing Unit term in the past five years, unless the Department assessed the Security Housing Unit term solely for the inmate's safety;~~

~~(4) The inmate has not within the past five years been found guilty of any of the following:~~

~~(i) A serious rules violation for a Division A-1 or Division A-2 offense as specified in subsection 3323(b) or 3323(e);~~

~~(ii) A serious rules violation for battery on a peace officer not involving the use of a weapon as specified in subsection 3323(d)(1);~~

~~(iii) A serious rules violation for assault on a peace officer by any means likely to cause great bodily injury as specified in subsection 3323(d)(2);~~

~~(iv) A serious rules violation for battery on a non-prisoner as specified in subsection 3323(d)(3);~~

~~(v) A serious rules violation for threatening to kill or cause serious bodily injury to a public official, their immediate family, their staff, or their staff's immediate family as specified in subsection 3323(d)(4);~~

~~(5) The inmate has not been assigned to Work Group C as specified in subsection 3044(b)(4) in the past year;~~

~~(6) The inmate has not been found guilty of two or more serious Rules Violation Reports in the past year;~~

~~(7) The inmate has not been found guilty of a drug-related offense as specified in section 3016 or refused to provide a urine sample as specified in subsection 3290(d) in the past year; and~~

~~(8) The inmate has not been found guilty of any Rules Violation Reports in which a Security Threat Group nexus was found in the past year.~~

~~(d) Notwithstanding (c) an inmate is not eligible for referral to the Board of Parole Hearings if, on the date of the screening, the inmate has they have~~ previously been scheduled for a parole consideration hearing under any other provision of law or will be eligible for a parole consideration hearing under any other provision of law within the next 12 months.

~~(e)(b) Within five business days of being screened, inmates~~Inmates who are eligible for referral under this section shall be referred to the Board of Parole Hearings for a parole consideration hearing under Article 16 of Chapter 3 of Division 2 of this title.

~~(f) Inmates shall be screened again under this section one year from the date of their previous public safety screening until they are scheduled for a parole consideration hearing or are no longer eligible for a parole consideration hearing under section 3496, if any of the following apply:~~

~~(1) The inmate was determined to be ineligible for referral under this section;~~

~~(2) The inmate was referred to the Board of Parole Hearings and a hearing officer determined the Board of Parole Hearings did not have jurisdiction to conduct a parole consideration hearing under section 2449.31 of Division 2 of this title;~~

~~(g)(c) Public safety screening and referral~~Referral results shall be served on the inmate and placed in the inmate's central file within 15 business days of being completed and, if the inmate is deemed eligible for referral to the Board of Parole Hearings, he or she shall be provided information about the parole consideration hearing process.

~~(h)(d) Public safety screenings and referrals~~Referral results under this section are subject to the Department's inmate appeal process in accordance with Article 8 of Chapter 1 of this Division.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b); and Section 5058, Penal Code.  
Reference: Cal. Const., art. 1, sec. 32(a).

## California Code of Regulations, Title 15, Division 2, Board of Parole Hearings

### Chapter 3. Parole Release.

#### Article 15. Parole Consideration for Determinately-Sentenced Nonviolent Offenders.

##### 2449.1. Definitions.

For the purposes of this article, the following definitions shall apply:

(a) An inmate is a “determinately-sentenced nonviolent offender” if **the inmate was sentenced to a determinate term and** none of the following are true:

- (1) The inmate is condemned to death;
  - (2) The inmate is currently incarcerated for a term of life without the possibility of parole;
  - (3) The inmate is currently serving a term of life with the possibility of parole;
  - (4) The inmate is currently serving a determinate term prior to beginning a term of life with the possibility of parole or prior to beginning a term for an in-prison offense that is a “violent felony;”
  - (5) The inmate is currently serving a term of incarceration for a “violent felony;” or
  - (6) The inmate is currently serving a term of incarceration for a nonviolent felony offense after completing a concurrent determinate term for a “violent felony.”
- (b) Notwithstanding subsection (a), a “determinately-sentenced nonviolent offender” includes an inmate who has completed a determinate or indeterminate term of incarceration and is currently serving a determinate term for an in-prison offense that is not a “violent felony.”
- (c) “Violent felony” is a crime or enhancement as defined in subdivision (c) of ~~S~~ection 667.5 of the Penal Code.
- (d) “Primary offense” means the single crime for which any sentencing court imposed the longest term of imprisonment, excluding all enhancements, alternative sentences, and consecutive sentences.
- (e) “Full term” means the actual number of days, months, and years imposed by the sentencing court for the inmate’s primary offense, not including any sentencing credits.
- (f) A “nonviolent parole eligible date” is the date on which a nonviolent offender who is eligible for parole consideration under ~~S~~ection 3491 has served the full term of his or her primary offense, less any actual days served prior to sentencing as ordered by the court under ~~S~~ection 2900.5 of the Penal Code and any actual days served in custody between sentencing and the date the inmate is received by the department.
- (g) A “hearing officer” is a commissioner, deputy commissioner, associate chief deputy commissioner, or the Chief Hearing Officer.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b). Reference: Cal. Const., art. 1, sec. 32(a); *In re Tate* (2006) 135 Cal.App.4th 756; and *In re Thompson* (1985) 172 Cal.App.3d 256.

## **Article 16. Parole Consideration for Indeterminately-Sentenced Nonviolent Offenders.**

### **2449.30. Definitions.**

For the purposes of this article, the following definitions shall apply:

(a) An inmate is an “indeterminately-sentenced nonviolent offender” if the inmate was sentenced to an indeterminate term and none of the following are true:

(1) The inmate is condemned to death;

(2) The inmate is currently incarcerated for a term of life without the possibility of parole;

(3) The inmate is currently serving a term of life with the possibility of parole for a “violent felony;”

(4) The inmate is currently serving a determinate term prior to beginning a term of life with the possibility of parole for a “violent felony;”

(5) The inmate is currently serving an indeterminate term of incarceration for a nonviolent felony offense after completing a concurrent or consecutive determinate term for a “violent felony”;

(6) The inmate is currently sentenced to a “violent felony” for an in-prison offense; or

(7) The inmate has completed an indeterminate term of incarceration and is currently serving a determinate term for an in-prison offense.

(b) Notwithstanding subsection (a), an “indeterminately-sentenced nonviolent offender” includes an inmate who has completed a determinate term of incarceration for a “violent felony” and is currently serving an indeterminate term for an in-prison offense that is not a “violent felony.”

(c) “Violent felony” is a crime or enhancement as defined in subdivision (c) of Section 667.5 of the Penal Code.

(d) “Primary offense” means the single crime for which any sentencing court imposed the longest term of imprisonment, excluding all enhancements, alternative sentences, and consecutive sentences. For purposes of determining the primary offense under this section, the term of imprisonment for inmates sentenced to a life term under an alternative sentencing scheme for a nonviolent crime shall be the maximum term applicable by statute to the underlying nonviolent offense.

(e) “Full term” means the actual number of days, months, and years for the inmate’s primary offense, not including any sentencing credits.

(f) A “nonviolent parole eligible date” is the date on which an indeterminately-sentenced nonviolent offender who is eligible for a parole consideration hearing under Section 3496 of Division 3 of this title has served the full term of his or her primary offense, less any actual days served prior to sentencing as ordered by the court under Section 2900.5 of the Penal Code and any actual days served in custody between sentencing and the date the inmate is received by the Department.

(g) A “hearing officer” is a commissioner, deputy commissioner, associate chief deputy commissioner, or the Chief Hearing Officer.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b). Reference: Cal. Const., art. 1, sec. 32(a); *In re Edwards* (Sept. 7, 2018, B288086) ==Cal.App.4th== [237 Cal.Rptr.3d 673]; *In re Tate* (2006) 135 Cal.App.4th 756; and *In re Thompson* (1985) 172 Cal.App.3d 256.

#### **2449.31. Jurisdictional Review.**

(a) Within 15 calendar days of a referral from the Department under ~~Section~~ 3497 of Division 3 of this title, a hearing officer shall review the inmate's case and determine whether the board has jurisdiction to schedule the inmate for an initial parole consideration hearing.

(b) The board has jurisdiction to schedule the inmate for a parole consideration hearing under ~~Section~~ 2449.32 if **allboth** of the following are true:

(1) The inmate is eligible for a parole consideration hearing under ~~Section~~ 3496 of Division 3 of this title; **and**

~~(2) The inmate, as of the date of the jurisdictional review, meets the criteria for referral to the board under subsection 3497(c) of Division 3 of this title; and~~

~~(3) The inmate has not previously been scheduled for a parole consideration hearing under any other provision of law and is not eligible for a parole consideration hearing under any other provision of law during the 12 months following the date of the referral screening under ~~Subs~~ection 3497 of Division 3 of this title.~~

(c) If the hearing officer determines the board does not have jurisdiction to schedule the inmate for a parole consideration hearing, he or she shall issue a written decision that includes a statement of reasons supporting the decision. A copy of the decision shall be served on the inmate and placed in the inmate's central file within 15 business days of being issued. ~~Inmates determined to be ineligible for referral to the board under this section shall be screened for possible referral to the board again as provided in subsection 3497(f) of Division 3 of this title.~~

(d) If the hearing officer determines the board has jurisdiction to schedule the inmate for an initial parole consideration hearing, the board shall schedule the inmate for a parole consideration hearing as provided in ~~Section~~ 2449.32.

(e) Inmates may seek review of decisions issued under this section by writing the board in accordance with ~~Section~~ 2449.34 within 30 calendar days of being served the decision. Decisions issued under this section are not subject to the Department's inmate appeal process under Article 8 of Chapter 1 of Division 3 of this title.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b). Reference: Cal. Const., art. 1, sec. 32(a).

#### **2449.32. Parole Consideration Hearings.**

(a) An indeterminate-sentenced nonviolent offender shall be scheduled for an initial parole consideration hearing as follows:

(1) If, as of the date of his or her referral to the board under ~~Section~~ 3497 of Division 3 of this title, the inmate's nonviolent parole eligible date was at least 180 calendar days in the

future, the inmate shall be scheduled for an initial parole consideration hearing within 60 calendar days following his or her nonviolent parole eligible date.

(2) If, as of the date of his or her referral to the board under Section 3497 of Division 3 of this title, the inmate's nonviolent parole eligible date was less than 180 calendar days in the future or it was in the past, the inmate shall be scheduled for an initial parole consideration hearing within one year from the date of his or her referral to the board.

(b) Notwithstanding subsection (a) the board shall, by no later than December 31, 2021, schedule all parole consideration hearings for indeterminate-sentenced nonviolent offenders who are eligible for an initial parole consideration hearing on or before December 31, 2021, as a result of this ~~Article~~article. Indeterminate-sentenced nonviolent offenders who, as of January 1, 2019, have been incarcerated for 20 years or more and who are within five years of their Minimum Eligible Parole Date shall be scheduled for an initial parole consideration hearing on or before December 31, 2020.

(c) Hearing panels shall conduct parole consideration hearings for indeterminate-sentenced nonviolent offenders in compliance with the requirements for initial and subsequent parole consideration hearings described in this Division, Penal Code Sections 3040, et seq., and applicable case law.

(d) If a hearing panel finds an indeterminate-sentenced nonviolent offender suitable for parole, and the parole grant is not vacated or rescinded, the inmate shall be released subject to all applicable review periods required by Sections 3041, 3041.1, and 3041.2 of the Penal Code, notwithstanding his or her minimum eligible parole date or any additional terms imposed for in-prison offenses.

(e) If a hearing panel finds an indeterminate-sentenced nonviolent offender unsuitable for parole, the panel shall impose a denial period in accordance with paragraph (3) of subdivision (b) of Section 3041.5 of the Penal Code. The inmate's next hearing date may be advanced under paragraph (4) of subdivision (b) or paragraph (1) of subdivision (d) of Section 3041.5 of the Penal Code.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b). Reference: Cal. Const., art. 1, sec. 32(a). Sections 3041, 3041.1, 3041.2 and 3041.5, Penal Code.

### **2449.33. Vacating a Jurisdictional Review Decision.**

(a) If at any time prior to release an inmate is subsequently determined to be ineligible for a parole consideration hearing under Section 3496 of Division 3 of this title, the Chief Hearing Officer or an associate chief deputy commissioner shall:

(1) Issue a written decision vacating the previous jurisdictional decision issued under Section 2449.31 that includes a statement of reasons supporting the new decision; and

(2) Vacate all parole decisions resulting from any initial or subsequent parole consideration hearings scheduled under Section 2449.32, except as provided in subsection (b). The provisions of paragraph (3) of subdivision (b) of Section 3041 of the Penal Code shall not apply to parole decisions vacated pursuant to this subsection.

(b) A parole decision shall not be vacated under Paragraph (2) of subsection (a) if one of the following is true:

(1) The inmate is currently eligible for a parole consideration hearing under any other provision of law; or

(2) The inmate will within 18 months be eligible for a parole consideration hearing under any other provision of law.

(c) If at any time prior to an inmate's initial parole consideration hearing under ~~Section~~ 2449.32, it is subsequently determined the inmate did not meet the criteria for referral to the board under ~~Sub~~section 3497~~(e)~~ of Division 3 of this title at the time of the board's jurisdictional review under ~~Section~~ 2449.31, the Chief Hearing Officer or an associate chief deputy commissioner shall issue a written decision vacating the previous jurisdictional decision issued under ~~Section~~ 2449.31 that includes a statement of reasons supporting the new decision. Any initial parole consideration hearing scheduled for the inmate under ~~Section~~ 2449.32 shall be cancelled unless, on the date of the scheduled hearing, the inmate will be eligible for a parole consideration hearing under any other provision of law.

(d) Within 15 business days of issuing a decision under subsection (a) or (c), a copy of the decision shall be served on the inmate and placed in the inmate's central file. The board shall, within five business days of issuing a decision under subsection (a) or (c), send notice of the decision to any victim or prosecuting agency, if any, who received notice of the scheduled parole consideration hearing.

~~(e) If a decision is vacated under subsection (c), the inmate shall be screened again for possible referral to the board as provided in subsection 3497(f) of Division 3 of this title.~~

~~(f)~~ Inmates may request review of a decision issued under this section by writing the board as provided in ~~Section~~ 2449.34 within 30 calendar days of being served the decision. Decisions under this section are not subject to the Department's inmate appeal process under Article 8 of Chapter 1 of Division 3 of this title.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b). Reference: Cal. Const., art. 1, sec. 32(a).

#### **2449.34. Review of Jurisdictional Decision.**

(a) An inmate may request review of a jurisdictional decision issued under ~~Section~~ 2449.31 by submitting a written request to the board within 30 calendar days of the inmate being served the decision. The inmate's written request shall include a description of why the inmate believes the previous decision was not correct and may include additional information not available to the hearing officer at the time the previous decision was issued.

~~(b) The Chief Hearing Officer or an associate chief deputy commissioner may also initiate a review under this section at any time prior to the inmate's initial parole consideration hearing if the previous decision contained an error of law, an error of~~

~~fact, or if the board receives new information that would have materially impacted the previous decision had it been known at the time the decision was issued.~~

~~(e)~~ A hearing officer, who was not involved in the original decision, shall complete a review of the decision within 30 calendar days of the board receiving the request.

~~(d)~~(c) The hearing officer reviewing the previous decision shall consider all relevant and reliable information and issue a decision either concurring with the previous decision or overturning the previous decision with a statement of reasons supporting the new decision.

~~(e)~~(d) A copy of the decision shall be served on the inmate and placed in the inmate's central file within 15 business days of being issued.

~~(f)~~(e) If a decision under this section overturns a previous decision issued under Section 2449.31 that determined the board did not have jurisdiction to review the inmate because he or she was not eligible for parole consideration, the board shall schedule the inmate for an initial parole consideration hearing within 180 calendar days.

~~(g)~~(f) Decisions under this section are not subject to the Department's inmate appeal process under Article 8 of Chapter 1 of Division 3 of this title.

Note: Authority cited: Cal. Const., art. 1, sec. 32(b). Reference: Cal. Const., art. 1, sec. 32(a).