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Your Responsibility When Using the Information Provided Below:

When putting this material together, we did our best to give you useful and accurate information because we know that incarcerated people often have trouble getting legal information and we cannot give specific advice to everyone who asks for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet, it is your responsibility to make sure that the law has not changed and still applies to your situation. Most of the materials you need should be available in the prison law library.

INFORMATION ABOUT THE ELDERLY PAROLE PROGRAM

(revised May 2023)

We have received your request for information about the laws regarding “elder parole” for people incarcerated in the California Department of Corrections and Rehabilitation (CDCR). We apologize for sending this form letter, but we are unable to provide individual responses to everyone who seeks our help. We hope that this letter will answer your questions.

Eligibility for Elderly Parole Consideration

There are two separate tracks for elderly parole that apply to different groups of people:

- **Penal Code § 3055** establishes a program that requires parole suitability hearings for people when they reach **50 years of age or older and have served at least 20 years of continuous incarceration on their sentence**. The program applies to people with determinate (set length) sentences and to people with indeterminate (life with possibility of parole) sentences, but *not* to people with sentences of death or life without the possibility of parole (LWOP). Also, a person is *not* eligible for Penal Code § 3055 elder parole if their case was sentenced under the Two Strikes or Three Strike law or was a conviction for first-degree murder of a law enforcement officer in the line of duty or in retaliation. (See also 15 CCR § 2449.40(a); 15 CCR § 3499(a); see also 3499.1(d) [defining what is or is not a break in custody].)¹
- A **February 10, 2014 federal court order** establishes a separate eligibility track for elderly parole. In a California prison overcrowding class action case (*Plata/Coleman v. Brown* (E.D. Cal./N.D. Cal.) No. 2:90-cv-0520), a federal three-judge court required the

¹ As of the date this letter is being written, 15 CCR §§ 3499-3499.1 have not yet been formally adopted. However, we expect that CDCR soon will complete the rulemaking process and the Office of Administrative Law will approve formal adoption of these rules.

State to have a parole consideration process for people who are **60 years of age or older and have served at least 25 years of their sentence**. This court-ordered process applies to people with determinate terms and to people with indeterminate terms, but *not* to people with sentences of death or life without the possibility of parole (LWOP). Unlike the Penal Code § 3055 program, people *can* get considered for elderly parole under the federal court order if their case is a Two Strikes or Three Strikes sentence or a conviction for first-degree murder of an officer in the line of duty or in retaliation.

Scheduling of Elderly Parole Hearings

The date that a person becomes eligible for an elderly parole hearing is called their elder parole eligible date (EPED). (15 CCR § 3499.1(a), (d).) When a person arrives at the reception center, CDCR case records staff determine if they may become eligible for elderly parole and set their EPED. (15 CCR § 3499.1(c)-(d).) The EPED should be listed on the person's Legal Status Summary.

Be aware that a person must actually serve 20 (or 25) years of their sentence to be eligible for elderly parole consideration. Thus, when calculating the EPED, CDCR does *not* apply any good conduct or programming credit earned by the person either prior to or after sentencing. This means that a person's regular Earliest Possible Release Date or Minimum Eligible Parole Date might be earlier than their EPED.

A person who reaches their EPED and who has *not* already been released or had an initial parole suitability hearing under some other law, will be scheduled for an elderly parole hearing within six months after their EPED. (15 CCR § 2449.41.)

People who reach their EPED and who have already been denied parole at a prior hearing under some other law will be considered for elderly parole at their next regularly scheduled parole hearing. However, once a person reaches their EPED, they can file a petition with the BPH asking to advance the date of their next hearing because they now meet the eligibility criteria for elder parole consideration.

Elderly Parole Hearing Process

At an elderly parole hearing, a panel of Board of Parole Hearings (BPH) commissioners or deputy commissioners considers whether or not the person is suitable for parole. Elder parole hearings use the same procedures as regular parole suitability hearings, including appointment of an attorney to represent the person. (15 CCR § 2449.42(a), (d).)

At an elder parole hearing, the BPH panel shall give special consideration to how age, time served, and diminished physical condition, if any, have reduced the person's risk for future violence. (15 CCR § 2449.42(b); see also 15 CCR § 2449.43 [description of elder factors].) The BPH panel "shall find an elderly inmate suitable for parole unless the panel determines, even after giving special

consideration to the elderly inmate factors, that the elderly inmate remains a current, unreasonable risk to public safety.” (15 CCR § 2449.42(c); see also *In re Shelton* (2020) 53 Cal.App.5th 650, 669-670 [failure to give “special consideration” to elder factors was among reasons for vacating BPH parole denial].)

CDCR reports that from February 2014 through March 2023, there have been 8,628 elderly parole hearings, resulting in 2,418 grants, 5,429 denials, and 781 stipulations to unsuitability. An additional 5,178 hearings were waived, postponed, continued, or canceled.

What Happens After an Elderly Parole Grant or Denial

A person who is found suitable for elder parole will be released when the parole grant becomes final after review by the full BPH (and in some indeterminate-sentence cases, after review by the Governor). If the person has an additional sentence for an in-prison offense (sometimes called a “*Thompson term*”), they should not be required to serve that additional sentence. (*In re Hoze* (2021) 61 Cal.App.5th 309.) Also, there is a good legal argument that a person who is granted parole at a regular parole hearing prior to their EPED should not be required to serve any additional sentence for an in-prison offense once they reach their EPED.

If a person is denied elder parole, the BPH will schedule their next hearing to be held in 3, 5, 7, 10, or 15 years. (Penal Code § 3041.5(b); 15 CCR § 2449.41(c).) However, no further hearing will be scheduled if the person is serving a determinate term and is already within one year of their Earliest Possible Release Date. (15 CCR § 2449.41(e).) There also are some cases in which a person will reach their regular Earliest Possible Release Date and be released before the date of their next scheduled elderly parole hearing. (15 CCR § 2449.41(d).)

If you think you are improperly being denied eligibility for elder parole, have an incorrect EPED date, or are not being released in a timely manner after being granted elderly parole, you should file a CDCR Form 602-1 administrative grievance and appeal to the highest level necessary. If you are not satisfied with the response to your appeal, you can file a state court petition for writ of habeas corpus.

If you have had a regular parole hearing or elder parole hearing, and you think you were improperly denied parole, you can file a state court petition for writ of habeas corpus without having to file any sort of administrative grievance or appeal.

If you want more information about parole suitability hearing procedures, filing administrative grievances and appeals, or filing state court petitions for writ of habeas corpus, please write to Prison Law Office to request free information packets on those topics. Information is also available on the Resources page of Prison Law Office’s website at www.prisonlaw.com.