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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 people in prison 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 your institution's law library.

**INFORMATION ON PROPOSITION 57:  
"NONVIOLENT OFFENDER" PAROLE CONSIDERATION**  
(Updated March 2024)

This letter discusses the California Department of Corrections and Rehabilitation (CDCR) and Board of Parole Hearings (BPH) rules under Proposition 57, which allow earlier parole consideration for some people serving terms for nonviolent offenses. The Title 15 rules should be available on CDCR tablets and in prison law libraries. The rules are also on the CDCR website at [www.cdcr.ca.gov](http://www.cdcr.ca.gov).

The Proposition 57 rules about time credits for good conduct and programming are addressed in a separate letter. If you want that letter, and we did not send it to you with this letter, please write to us and ask for it. The time credits letter is also on the Prison Law Office website at [www.prisonlaw.com](http://www.prisonlaw.com), under the Resources tab.

Part I of this letter summarizes the Proposition 57 Title 15 rules for people with determinate (set length) terms and people serving indeterminate (life with the possibility of parole) terms. Part II describes how people can challenge the rules or how they are being applied.

**I. EARLY PAROLE CONSIDERATION FOR SOME PEOPLE SERVING TERMS FOR NONVIOLENT OFFENSES**

Proposition 57, passed by California voters in November 2016, authorizes earlier parole consideration for people who are convicted of nonviolent offenses and sentenced to state prison.<sup>1</sup>

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<sup>1</sup> Proposition 57 adopted California Constitution, Article I, section 32, which states:

(a)(1) Parole Consideration: Any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense. [continued on next page]

Pursuant to this law, CDCR and BPH rules provide early parole consideration for people who CDCR calls “nonviolent offenders.”<sup>2</sup> As of March 2024, CDCR reports that BPH had granted parole in about 14% of the Nonviolent Offender Parole reviews for people with determinate sentences and 26% of the hearings held for people with indeterminate sentences.

**If you are eligible, you will be considered for parole suitability prior to your “Nonviolent Parole Eligible Date,” which is the date on which you have served the “full term” of your “primary offense,” counting pre-sentence credits for actual days served (as awarded by the sentencing court), credits for actual time between sentencing and arrival in the CDCR, and credits for actual days in CDCR.**

- “Primary offense” means the one crime for which the court imposed the longest prison term, without enhancements, alternative sentences, or consecutive sentences.
- “Full term” means the time imposed by the court for the primary offense *without* considering good conduct or programming credits earned in jail or prison.<sup>3</sup> For example, if you are serving a doubled term under the Two Strikes law (which is an alternative sentencing law) for a nonviolent offense, you are eligible for parole consideration after serving the ordinary base term (without the doubling). If you are serving a life term under the Three Strikes law (which is an alternative sentencing law), the full term for the primary offense is the “maximum term applicable by the statute to the underlying nonviolent offense” without the additional three strikes punishment.

The first parts of the nonviolent parole consideration process – a CDCR eligibility review and CDCR referral to the BPH -- are similar for people with determinate sentences and people with

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(A) For purposes of this section only, the full term for the primary offense means the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.

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(b) The Department of Corrections and Rehabilitation shall adopt regulations in furtherance of these provisions, and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety.

<sup>2</sup> The rules on early parole for people with *determinate* (set length) sentences for nonviolent offenses are in California Code of Regulations, title 15, § 2449.1-§ 2449.7 and California Code of Regulations, title 15, § 3490-§ 3493. The rules on early parole for people with *indeterminate (life with the possibility of parole)* sentences are California Code of Regulations, title 15, § 2449.30-§ 2449.34 and California Code of Regulations, title 15, § 3495-§ 3497. Note that due to court decisions striking down parts of CDCR’s original regulations, there are no longer any special bars on eligibility for people with poor behavior in prison (*In re McGhee* (2019) 34 Cal.App.5th. 902), people with current or prior sex offenses (*In re Gadlin* (2020) 10 Cal.5th 915), or people with indeterminate sentences (*In re Edwards* (2018) 26 Cal.App.5th 1181).

<sup>3</sup> See *In re Canady* (2020) 57 Cal.App.5th 1022 (upholding definition of full term as not including good conduct or programming credits).

indeterminate sentences. You should be notified within 15 business days about decisions made at each of these steps.

The final parts of the process are a BPH review to confirm whether the person is eligible for Nonviolent Offender Parole consideration and then a review to decide whether the person's release would pose an unreasonable risk to public safety. People with determinate sentences get a "paper" review by one hearing officer. People with indeterminate life sentences get a formal in-person hearing the same as a regular parole suitability hearing.

#### A. CDCR Eligibility Review

CDCR staff should do an **eligibility review** within 60 days after you arrive in the CDCR and any time there is a change to your sentence or you get a new sentence.

You are **ineligible** for Nonviolent Offender Parole consideration if *any* of the following are true:

- you are serving a sentence of death or life without the possibility of parole (LWOP);
- you are currently convicted of and sentenced to a term for a "violent felony" listed in Penal Code § 667.5(c), even if the violent felony term was stayed, even if your primary offense is nonviolent, and even if you have already served all of the time for the violent felony portion of your sentence;<sup>4</sup>
- you are currently serving a term for a nonviolent felony after completing a concurrent term for a violent felony listed in Penal Code § 667.5(c);
- you are currently serving a term for a nonviolent felony prior to beginning an consecutive indeterminate life term for a violent felony or prior to beginning any term for an in-prison violent felony listed in Penal Code § 667.5(c);
- you are currently serving an indeterminate life term for a nonviolent felony after completing a consecutive term for a violent felony listed in Penal Code § 667.5(c);
- if you are serving a determinate sentence, you must not be eligible for a Youth Offender Parole or Elder Parole consideration hearing within one year of the Nonviolent Parole eligibility review and you must not have a Youth Offender Parole or Elder Parole hearing already scheduled.

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<sup>4</sup> Courts have upheld CDCR's policy of barring eligibility for people whose determinate sentences include a mix of consecutive violent and nonviolent terms, finding the policy to be consistent with the intent of Proposition 57, as well as the general legal principles that consecutive subordinate determinate terms merge into an indivisible aggregate sentence. (*In re Mohammad* (2022) 12 Cal.5th 518; *In re Hicks* (2023) 97 Cal.App.5th 348; *In re Koenig* (2023) 7 Cal.App.5th 558 [315 Cal.Rptr. 3d 592].)

If the review indicates that you are eligible, CDCR then determines your Nonviolent Parole Eligible Date.

If CDCR decides that you are ineligible, you can challenge the decision by filing a CDCR Form 602-1 administrative grievance and, if necessary, a CDCR Form 602-2 administrative appeal.

### **B. CDCR Referral to the BPH**

When you approach your Nonviolent Parole Eligibility Date, CDCR will review your case and refer you to BPH for parole consideration unless you already are being released or considered for parole under some other law. Specifically, CDCR will not refer you to BPH if you are:

- serving a determinate sentence and your Nonviolent Parole Eligible Date is less than 180 calendar days before your regular Earliest Possible Release Date (EPRD) or your EPRD is scheduled for less than 210 calendar days after the date of the CDCR review, or
- serving an indeterminate life sentence and you previously had some other type of parole consideration hearing or will be eligible for some other type of parole consideration hearing within the next 12 months.

If you have concerns about the CDCR's referral process, you can file a CDCR Form 602-1 administrative grievance and, if necessary, a CDCR Form 602-1 administrative appeal.

### **C. BPH Review: "Paper" Review for People Serving Determinate Sentences**

The information in this sub-section describes the "paper" parole hearing process that applies to people serving determinate sentences who are being considered for Nonviolent Offender Parole. Sub-section D, below, describes the formal hearing process that applies to people serving indeterminate life sentences who are being considered for Nonviolent Offender Parole.

If you are serving a determinate sentence, when your case is referred to BPH for Nonviolent Offender Parole consideration, you should be notified that you can submit a written statement to BPH. YOU SHOULD SUBMIT A STATEMENT ABOUT WHY YOU SHOULD BE PAROLED EARLY, FOCUSING ON WHY YOU WILL NOT POSE A RISK OF VIOLENCE OR CRIMINALITY. IF POSSIBLE, YOU SHOULD HAVE FAMILY, FRIENDS, POTENTIAL EMPLOYERS OR OTHERS WITH HELPFUL INFORMATION SUBMIT STATEMENTS TO BPH.

Within 5 business days after CDCR refers a case to BPH, BPH shall notify the crime victims and prosecuting agencies about the pending parole review and give them 30 calendar days to submit written statements.

Within 30 calendar days after the notification period ends, a BPH staff member will review documents including your central file and criminal history records and written statements submitted by you and your supporters, the crime victims, and/or the prosecutor. The BPH staff

member is called a “hearing officer” even though -- unlike other types of parole suitability proceedings -- there is no actual hearing at which you or anyone else can appear.<sup>5</sup>

The hearing officer will first confirm that you are eligible for Nonviolent Offender Parole. If eligibility is confirmed, the hearing officer must then decide whether you pose a “current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity.” The hearing officer shall consider all the circumstances, including the nature of your current conviction, prior criminal record, in-prison behavior and programming, along with any input from you, the crime victims, and the prosecutor. The regulations list specific aggravating and mitigating factors to be considered. If a decision to approve release will result in you being released two or more years before your regular Earliest Possible Release Date (EPRD), your case must also be reviewed by a higher level BPH officer who can either approve or deny release. The written decision should include a statement of reasons and you should receive a copy of it within 15 business days after it is issued.

Any time prior to release, a higher level BPH staff can request a review of a decision that is based on an error of fact or an error of law, or if there is new information that would have affected the decision. The review must be completed within 30 calendar days after the request is received. If the original decision is overturned, a new decision and statement of reasons should be written, and you should receive a copy of it within 15 business days after it is issued. In addition, any time prior to release, BPH can vacate a parole grant if it is determined that you are no longer eligible for parole consideration. Unlike some other types of parole consideration proceedings, the Governor does not have authority to review Nonviolent Offender Parole grants.

There is a strong argument that BPH may not deny Proposition 57 parole unless there is a rational nexus between the factors cited by BPH and a finding of current dangerousness.<sup>6</sup>

If the BPH grants release – and does not overturn or vacate the decision -- then you should be released 60 days after the date of the BPH release decision, following any required notifications to crime victims and law enforcement agencies. If you have an additional term to serve for an in-prison offense, the additional term shall start 60 days after the BPH release decision. After release, you will serve the normal parole or PRCS period that would apply for your crimes.

If release is denied, overturned, or vacated, you can ask BPH to review the decision. This is done through a special review procedure (**not** the CDCR 602 process). You can ask for review by submitting a written request to BPH within 30 calendar days after the decision being challenged. A BPH officer who was not involved in the original decision will conduct a review within 30 calendar days after your request is received. The officer will either uphold the original decision or vacate it and issue a new decision. You should be notified in writing within 15 business days after the review decision is made.

If release is denied, overturned, or vacated, CDCR will review the matter after one year to determine whether you should be re-referred to BPH for Nonviolent Offender Parole consideration.

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<sup>5</sup> Courts have upheld BPH’s use of this type of “paper” parole review. (*In re Kavanaugh* (2021) 61 Cal.App.5th 320; *In re Bailey* (2022) 76 Cal.App.5th 837.)

<sup>6</sup> See *In re Ilsa* (2016) 3 Cal.App.5th 489 [applying *In re Lawrence* (2008) 44 Cal.4th 1181 to CDCR’s former non-violent second striker parole process].

#### **D. BPH Review: Formal Hearing for People Serving Indeterminate Life Sentences**

The information in this sub-section discusses the formal hearing process that applies to people serving indeterminate life sentences who are being considered for Nonviolent Offender Parole. The hearing process that applies to people serving determinate sentences who are being considered for Nonviolent Offender Parole is discussed in sub-section C, above.

If you are serving an indeterminate life sentence and CDCR refers you to BPH for Nonviolent Offender Parole consideration, BPH has 15 calendar days to do a “jurisdictional review” to confirm whether you are eligible for Nonviolent Offender Parole. BPH should give you a copy of the review decision within 15 business days after it is issued. If you become ineligible for Nonviolent Offender Parole any time prior to release, BPH can review the case again and make an ineligibility finding. If BPH decides you are not eligible for a hearing, you can ask for review by submitting a written request to the BPH within 30 calendar days after the decision being challenged (**not** by using the CDCR 602 process).

If eligibility is confirmed, BPH must schedule you for a formal parole consideration hearing. Like other formal parole consideration hearings, this will be a full in-person parole hearing in front of a panel of BPH commissioners or deputy commissions, at which you will be represented by a lawyer. The same legal standard will apply as for other types of formal parole hearings – the BPH panel will consider whether you “would pose an unreasonable risk of danger to society if released from prison.”

The deadline for holding hearings depend on the time between the referral to BPH and your Nonviolent Parole Eligible Date. If the referral to BPH happens less than 180 days before your Nonviolent Parole Eligible Date, the hearing must be held within one year from date of the referral. If the referral to BPH happens 180 days or more before the Nonviolent Parole Eligible Date, the hearing must be held within 60 days after the Nonviolent Parole Eligible Date.

As with other types of formal parole suitability hearings, a Nonviolent Offender Parole decision will not be final for 120 days and can be reviewed by higher level BPH officials. The Governor can ask BPH to review a Nonviolent Offender Parole decision *en banc*, but the Governor cannot himself overturn a BPH decision granting Nonviolent Offender Parole.

Also, as with other types of formal parole hearings, Nonviolent Offender Parole denials will be for a period of 3, 5, 7, 10, or 15 years, but you may ask to have their next hearing date advanced if there is a change in circumstances or new information that creates a reasonable likelihood that you will be deemed suitable for parole.

BPH does not have an administrative grievance or appeal process for challenging denials of parole suitability.

There is a strong argument that that BPH may not deny Proposition 57 parole unless there is a rational nexus between the factors cited for the denial and a finding of current dangerousness.<sup>7</sup>

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<sup>7</sup> See *In re Ilsa* (2016) 3 Cal.App.5th 489 [applying *In re Lawrence* (2008) 44 Cal.4th 1181 to the CDCR’s former non-violent second striker parole process].

Prison Law Office can provide more detailed information about the formal BPH parole suitability hearing process. The information is available by writing to Prison Law Office, General Delivery, San Quentin, CA 94964, or on the Resources page at [www.prisonlaw.com](http://www.prisonlaw.com).

## **II. HOW CAN I CHALLENGE THE PROPOSITION 57 PAROLE RULES OR HOW THEY ARE BEING APPLIED TO ME?**

If you are denied Nonviolent Offender Parole, you should file the appropriate type of CDCR administrative grievance/appeal or BPH request for review as described in Section I, above.

If you pursue an administrative grievance/appeal or a request for review, and are not satisfied with the responses, you can send the grievance/appeal or request and the responses to Prison Law Office for review: Prison Law Office, General Delivery, San Quentin, CA 94964. Prison Law Office is interested in making sure the CDCR applies its parole rules fairly.

If you pursue a request for review or an administrative grievance/appeal to the highest level of review and are not satisfied with the responses, you can file a state court habeas petition arguing that CDCR or BPH is interpreting or applying its regulations in an unreasonable manner and/or is violating federal or state law.

Note that although courts can review CDCR and BPH decisions regarding eligibility and suitability for Nonviolent Offender Parole, Proposition 57 does not give courts any new authority to independently recall commitments and resentence people.<sup>8</sup> Also, CDCR is immune from federal civil rights damages lawsuits for harm caused by prior unlawful rules barring parole eligibility to certain groups of nonviolent offenders.<sup>9</sup>

Free manuals on How to File a CDCR Administrative Grievance/Appeal and on State Court Petitions for Writ of Habeas Corpus are available by writing to Prison Law Office, General Delivery, San Quentin, CA 94964 or on the Resources page at [www.prisonlaw.com](http://www.prisonlaw.com).

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There is information on your legal rights and how to protect your rights in *The California Prison and Parole Law Handbook*, published by the Prison Law Office. The *Handbook* is on CDCR electronic tablets and kiosks in the Law Library/California/Secondary Sources/The California Prison and Parole Law Handbook. In addition, people who have internet access can view and print the *Handbook* under the Resources tab at [www.prisonlaw.com](http://www.prisonlaw.com). As of early 2024, we are in the process of updating the *Handbook* to reflect changes in the law since 2019. Updated chapters will state the dates on which they were updated.

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<sup>8</sup> *People v. Dynes* (2018) 20 Cal.App.5th 523.

<sup>9</sup> *Jones v. Allison* (9th Cir. 2021) 9 F.4th 1136.