



FOR INFORMATIONAL PURPOSES  
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CONTACT: (916) 445-4950

## Proposed Regulations for Statutory Elderly Parole Program

The Board of Parole Hearings has been conducting elderly parole hearings under a court order since October 2014. At these hearings individuals who have been incarcerated for 25 years, and are over 60 years of age are considered for parole release. Special consideration is given to the individual's age, time served, and any diminished capacity.

On January 1, 2021, Penal Code section 3055 was amended by Assembly Bill (AB) 3234, to provide elderly parole consideration for some people who are 50 years of age or older and have served a minimum of 20 years of continuous incarceration.<sup>1</sup>

Due to the passage of AB 3234, the Board must adopt and implement regulations for conducting elderly parole hearings. On August 6, 2021, the Board issued the first draft of the proposed regulations. Since then, the Board has worked with stakeholders to update and amend the draft regulations. The Board will take public comment and vote on an updated draft at its monthly executive meeting on August 16, 2021. The draft regulations are available on the Board's website at [www.cdcr.ca.gov/bph/](http://www.cdcr.ca.gov/bph/)

These proposed regulations will allow the Board to carry out the mandate in Penal Code section 3055, and once approved will remain in place unless they are repealed.

### Background

Through ongoing litigation in *Coleman v. Newsom*, and *Plata v. Newsom*, a three-judge court issued an order that required the State to submit a plan to reach a prison population cap of 137.5% design capacity in two years. According to the three-judge court's order, the population reduction was necessary because, at the time, the State's prisons housed twice as many prisoners as they were designed for, making the prisons unsafe for prisoners and staff. As a measure to reduce overcrowding, on February 10, 2014, the three-judge court directed the Board to "finalize and implement a new parole process whereby inmates who are 60 years of age and have served a minimum of [25] years of their sentence" to be referred to the Board for parole consideration. This process excluded from eligibility inmates who were either sentenced to life without the possibility of parole or condemned. The court-ordered Elderly Parole Program was fully implemented on October 1, 2014.

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<sup>1</sup> The Penal Code excludes second and third strike inmates, and those convicted of first-degree murder of a peace officer or former peace officer from this new criteria. These individuals will continue receiving elderly parole consideration under the court-ordered criteria of 60 years of age or older, and 25 years of continuous incarceration.

On January 1, 2018, the California Legislature enacted AB 1448 (2017-2018 Reg. Session), which codified into law the Elderly Parole Program by adding section 3055 to the Penal Code. The statutory version of the Elderly Parole Program differed from the Court-Ordered Elderly Parole Program in several respects. First, in addition to excluding condemned inmates or inmates sentenced to life without the possibility of parole as the court-ordered program does, the statutory Elderly Parole Program also excluded inmates sentenced on any current offense under the strike laws in Penal Code sections 1170.12 or 667, subdivisions (b) through (i). Second, the statutory Elderly Parole Program also excluded any inmate convicted of first-degree murder of a peace officer, where the individual knows or reasonably should have known the victim was a police officer, or the inmate was convicted of first-degree murder of a peace officer or former peace officer and was intentionally killed for the performance of their official duties.

In signing AB 1448, Governor Brown commented that the Elderly Parole Program “has been a successful program that saves [California] a significant amount of money that would be otherwise spent for geriatric prisoners who no longer pose a risk to public safety,” and that he believed “the pool of eligible inmates can and should be broadened.” On January 1, 2021, Governor Newsom signed, AB 3234 (2019-2020 Reg. Session), which amended Penal Code section 3055 to encompass the broader version of the statutory Elderly Parole Program to include inmates who are 50 years old and have served 20 years of continuous incarceration. The additional exclusions of AB 1448 still apply. Penal Code section 3055, subdivision (j), provides that the Board shall complete by December 31, 2022, all elderly parole hearings for individuals entitled to an elderly parole hearing by January 1, 2023.

### **Key Provisions of the Proposed Regulations**

1. The regulations define an elderly inmate in compliance with Penal Code section 3055, and detail those who are excluded from elderly parole under the Penal Code. The regulations also define continuous incarceration and detail that CDCR’s Case Records staff will calculate an individual’s Elderly Parole Eligible Date, or EPED.
2. The Board will meet with an elderly inmate during the sixth year before their EPED for a consultation.
3. An elderly inmate shall be scheduled for an elderly parole hearing within six months following their EPED.
4. The Board’s hearing panel shall give special consideration to whether elderly inmate factors reduce the person’s risk of future violence. The elderly inmate factors of age, time served, and diminished physical condition are more clearly defined.
5. If parole is not granted, subsequent elderly parole hearings shall be scheduled in accordance with Penal Code section 3041.5, subdivision (b)(3).
6. If an individual is determinately sentenced and due for release within a year they will not be scheduled for an elderly parole hearing.

## **Why are regulations governing elderly parole hearings needed?**

The amendment of Penal Code section 3055 creates a two-track elderly parole program. Some inmates will become eligible for elderly parole pursuant to the Penal Code's formula of 50 years of age and 20 years of continuous incarceration. Those convicted of second or third strikes, or first-degree murder of a peace officer or former peace officer will continue under the court-ordered elderly parole formula of 60 years of age and 25 years of continuous incarceration. As a result, the procedures for statutory elderly parole needed to be clearly stated so people can understand the process.

## **Where can I find additional information about the calculation of an EPED?**

CDCR will soon promulgate their own regulations regarding the calculation of an individual's EPED, and the ability to appeal eligibility decisions and calculations.

## **Once an EPED is set, when will an elderly parole hearing be scheduled?**

If an individual's EPED is before January 1, 2023, the individual will be scheduled for an elderly parole hearing on or before December 31, 2022. If an individual's EPED is after January 1, 2023, they will be scheduled for an elderly parole hearing within six months of their EPED.

## **Is the Board scheduling parole hearings under the statutory parole formula?**

Yes. It took some time to build out the Board's Information Technology System so it could identify and track EPEDs under both the Penal Code and court order. That build is complete, and CDCR Case Records staff are in the process of calculating statutory EPEDs for those that qualify. Once a statutory EPED is calculated for an individual who has not yet had a parole hearing under any other provision of law, they are sent to a queue to be scheduled for an elderly parole hearing.

## **What does it mean to give special consideration to whether age, time served, and diminished physical condition have reduced an elderly individual's risk for future violence?**

Section 2449.43 of the regulations further define the elderly factors and the criteria that will be considered. The factors include consideration of a person's age, the impact of long-term confinement, and diminished physical condition, if any.

## **What is the timeline for promulgating these regulations?**

If the Board votes to approve the proposed regulations, they will be submitted to the Office of Administrative Law, they will be published, and a public comment period will follow. The Board will review all public comments and address the comments in a final statement of reasons filed with the office of administrative law. The Board is seeking to have the regulations final on January 1, 2022.

## **Additional Resources**

For additional information concerning the parole hearing process, please visit the Board of Parole Hearings' website at <https://www.cdcr.ca.gov/bph/parole-suitability-hearings-overview/> or call (916) 445-4072.