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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 November 2020)

We have received your request for information about the laws regarding “elder parole” for people incarcerated in California prisons. 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.

On February 10, 2014, the federal three-judge court overseeing the California prison overcrowding class action case (*Plata/Coleman v. Brown*) issued an order that required the State to develop and implement **“a new parole process whereby inmates who are 60 years of age or older and have served a minimum of twenty-five years of their sentence will be referred to the Board of Parole Hearings to determine suitability for parole.”** The process approved by the court applies to people serving indeterminate (life with the possibility of parole) terms and to people serving determinate (set length) terms. It does not apply to people serving death or life without the possibility of parole (LWOP) terms. The date that a person becomes eligible for an elderly parole hearing is listed on their Legal Status Summary.

Effective January 1, 2018, Penal Code § 3055 went into effect [Assembly Bill No. 1440]. The “Elderly Parole Program” created by § 3055 is the same as the program approved by the federal court except that § 3055 excludes from parole consideration people with Two or Three Strike sentences and people convicted of first-degree murder of a law enforcement officer in the line of duty. However, the State has told the federal court that it will continue using the program approved by the federal court until the federal case ends or the February 10, 2014 order is modified. Thus, the BPH is not excluding from elder parole consideration people who are 60 years or older and who have Two or Three Strike sentences or convictions for first-degree murder of an officer.

Penal Code § 3055 has been amended, effective January 1, 2021 [Assembly Bill No. 3234]. The amendment **lowers the age for elder parole consideration to 50 years old and the number**

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of years served to 20. The BPH has until December 31, 2022 to complete parole hearings for people who became eligible for elder parole considerations when this amendment took effect and whose new elder parole hearing eligibility date is before January 1, 2023. It is not known whether the BPH will exclude from elder parole consideration people who are 50 to 59 years old and who have a Two or Three Strike sentence or a conviction for first-degree murder of a police officer.

The State reports that from February 2014 through the end of September 2020, the BPH held 4,838 elder parole hearings, resulting in 1,377 grants, 3,010 denials, and 451 stipulations to unsuitability.

Elderly Parole Program for People Serving Indeterminate Terms (Life with the Possibility of Parole)

People with indeterminate sentences (life with the possibility of parole) who are 50 years or older and have been incarcerated 20 years or more on their current sentence, and *who have not already had an initial parole suitability hearing*, will be referred by the CDCR to the BPH and scheduled for an Elderly Parole Program suitability hearing. The elder parole hearing will be scheduled within one year of the person becoming eligible (in other words, one year from the date the person is both age 50 or older and also has served 20 years or more).

People with indeterminate sentences who are 50 years or older and have been incarcerated 20 years or more on their current term, and *who have already been denied parole at the initial suitability hearing* will be considered for elder parole at their next regularly scheduled parole hearing. When the elder parole law first was enacted, the BPH conducted administrative reviews to identify cases in which hearings should be advanced due to eligibility for elder parole. Also, a person who is eligible for elder parole can file a petition with the BPH asking that their hearing be advanced because they meet the eligibility criteria for elder parole. A person with a long denial period (7, 10, or 15 years) can file an advancement petition every 3 years.

The same general procedures and legal standards that apply to regular life parole suitability hearings will apply to elder parole hearings. This means the BPH may deny parole if a person's release would pose an unreasonable risk of danger to public safety. However, for elder parole hearings, the BPH shall give special consideration to how age, time served, and diminished physical condition, if any, have reduced the person's risk for future violence.

A person with an indeterminate term 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 cases, by the Governor). If a person is denied elder parole, the denial length will be set for 3, 5, 7, 10, or 15 years pursuant to Penal Code section 3041.5(b)(4).

Elderly Parole Program for People Serving Determinate (Set-Length) Terms

The BPH also holds Elderly Parole Program suitability hearings for people who are serving determinate terms and who are 50 years or older and have been incarcerated for 20 years or more on their current sentence. The parole consideration hearing will be scheduled within one year of the person becoming eligible (in other words, one year from the date the person is both age 50 or older and also has served 20 years or more).

The same general procedures and legal standards that apply to regular lifer parole suitability hearings will apply to a determinate term elder parole hearing. This means the BPH may deny parole if a person's release would pose an unreasonable risk of danger to public safety. However, for elder parole hearings, the BPH shall give special consideration to how age, time served, and diminished physical condition, if any, have reduced the person's risk for future violence.

A person with a determinate term who is found suitable for elder parole will be released when the parole grant becomes final (after review by the full BPH), even if that date is before the person's regular "earliest possible release date" (EPRD). If a person is denied elder parole, the denial length will be set for 3, 5, 7, 10, or 15 years pursuant to Penal Code section 3041.5(b)(4). If the next elder parole hearing date is after the regular EPRD, then the person will be released on their EPRD.

If you believe you are eligible for elder parole, and think the elder parole program is not being fairly applied to you, please write us. We will read your letter and consider whether we can help.

If you want more information about the parole consideration process or about how to file a state court petition for writ of habeas corpus to challenge a denial of elder parole, please write back to Prison Law Office to request free information packets on those topics. Information is also available on the Resources page of the Prison Law Office website at www.prisonlaw.com.