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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 prisoners often have trouble getting legal information and we cannot give specific advice to all prisoners who ask 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 RE: ELDERLY PRISONER PAROLE

(January 2015)

We have received your request for information about new California Department of Corrections and Rehabilitation (CDCR) policies regarding parole of elderly prisoners. 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 three-judge court overseeing the California prison overcrowding class action case (*Plata/Coleman v. Brown*) issued an order that, among other things, requires the State to put in place a new parole process so that **prisoners who are 60 years of age or older and have been incarcerated at least 25 years on their current sentence will be referred to the Board of Parole Hearings (BPH) to determine suitability for parole.**

**The new Elderly Parole Program applies to prisoners serving indeterminate (life with the possibility of parole) terms and prisoners serving determinate (set length) terms.** It does not apply to prisoners serving death or life without the possibility of parole (LWOP) terms. Attached to this letter is a June 16, 2014, BPH memorandum which gives an overview of the program. The BPH has told the three-judge court that as of December 31, 2014, it had granted parole to 115 prisoners eligible for elderly parole.

The same general procedures and legal standards that apply to regular lifer parole suitability hearings apply to the Elderly Parole Program. This means the BPH may deny parole if an elderly prisoner's release would pose an unreasonable risk of danger to public safety. However, for all Elderly Parole Program hearings, the BPH risk assessments will consider how age and physical condition reduce elderly prisoners' risk of future violence.

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### **Elderly Parole Program for Lifers (Prisoners Serving Indeterminate Terms)**

Lifers who are 60 years or older and have been incarcerated 25 years or more on their current sentence, and *who have not yet had an initial parole suitability hearing*, will be referred by the CDCR to the BPH and scheduled for an Elderly Parole Program suitability hearing.

Lifers who are 60 years or older and have been incarcerated 25 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. under the Elderly Parole Program. The BPH will give scheduling priority to those prisoners who are most likely to be found suitable for parole, with the length of the most recent denial being used as one factor to determine likelihood of suitability.

The BPH says it has been and will review all 3-year denials annually to determine if a more prompt parole consideration hearing should be scheduled. During that annual review, BPH will consider whether the prisoner meets the elder parole eligibility criteria and if so whether to schedule a hearing sooner than is already scheduled.

Any lifer who eligible for elderly parole, including those with lengthier (for example, five, ten, or fifteen year) denial periods, can file a petition with the BPH asking that their hearing be advanced because they meet the eligibility criteria for elder parole. The BPH will accept petitions from elderly prisoners even if it has been less than three years since the prisoner last filed a hearing advancement petition, but because only one such advancement petition is allowed every three years, the BPH decision will be made based on its own review of the prisoner's situation, not on the petition.

The same general procedures and legal standards that apply to regular lifer parole suitability hearings will apply when an elder parole is an issue. This means the BPH may deny parole if an elderly prisoner's release would pose an unreasonable risk of danger to public safety. However, for all Elderly Parole Program hearings, the BPH risk assessments will consider how age, time served, and diminished physical condition, if any, reduce elderly prisoners' risk for future violence.

Lifers who are found suitable under the Elderly Parole program will be released when the parole grant becomes final (after review by the full BPH and, in some cases, by the Governor), regardless of the release date under the usual term calculation procedures.

If you are an eligible lifer 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.

### **Elderly Parole Program for Determinate-Term Prisoners**

The BPH will also hold Elderly Parole Program suitability hearings for determinate-term prisoners who are 60 years or older and have served 25 years or more on their current term. These hearings will start in February 2015. BPH will hold a parole consideration hearing for eligible determinate term prisoners within one year of the prisoner becoming eligible (that is, one year from the date the prisoner is both age 60 or older and has also served 25 years on his or her current term).

The same general procedures and legal standards that apply to regular lifer parole suitability hearings will apply when a determinate term prisoner has an elder parole hearing. This means the BPH may deny parole if an elderly prisoner's release would pose an unreasonable risk of danger to public safety. However, the BPH risk assessment done for the hearing will consider how age, time served, and diminished physical condition, if any, reduce an elderly prisoner's risk for future violence.

Determinate term prisoners who are found suitable under the Elderly Parole program will be released when the parole grant becomes final (after review by the full BPH), even if that date is before the date the prisoner would have been otherwise released.

If you are a determinate term prisoner who is 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.

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If you want more information about the parole consideration process in general or about how to file a state court petition for writ of habeas corpus, please write back to the Prison Law Office to request free information packets on those topics. Some information is also available on the Resources page of the Prison Law Office website at [www.prisonlaw.com](http://www.prisonlaw.com).