



## PRISON LAW OFFICE

General Delivery, San Quentin CA 94964  
Telephone (510) 280-2621 • Fax (510) 280-2704  
www.prisonlaw.com

Director:  
Donald Specter

Managing Attorney:  
Sara Norman

Staff Attorneys:  
Mae Ackerman-Brimberg  
Rana Anabtawi  
Steven Fama  
Alison Hardy  
Sia Henry  
Corene Kendrick  
Rita Lomio  
Margot Mendelson  
Millard Murphy  
Thomas Nosewicz  
Camille Woods  
Lynn Wu

### 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 all 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 information, 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 ABOUT ELDER PAROLE

(April 2018)

We have received your request for information about the laws and rules regarding parole consideration of people in prison who are elderly. 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, including about the January 2018 change in California law regarding elder parole ((discussed below at the bottom of page 3).

Elder parole consideration for people in CDCR began after February 10, 2014, when the federal three-judge court overseeing the California prison overcrowding class action case (*Plata/Coleman v. Brown*) issued an order that, among other things, required the State to put in place a new parole process so that **people 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 Elder Parole Program required by the federal court applies to people serving indeterminate (life with the possibility of parole) terms and people serving determinate (set length) terms.** It does not apply to people 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. CDCR has most recently told the federal court that in the approximately four years since the elder parole program began, there have been 2,627 hearings for people eligible for elderly parole, resulting in 692 grants, 1,714 denials, and 221 stipulations to unsuitability.

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 person's release would pose an unreasonable risk of danger to public safety.

#### Board of Directors

Penelope Cooper, President • Michele WalkinHawk, Vice President • Marshall Krause, Treasurer  
Harlan Grossman • Christiane Hipps • Margaret Johns • Cesar Lagleva  
Laura Magnani • Michael Marcum • Ruth Morgan • Seth Morris

However, for all Elderly Parole Program hearings, the BPH risk assessments will consider how age and physical condition reduce the risk of future violence.

### **Elderly Parole Program for Lifers (People 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. The BPH will give scheduling priority to those 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 lifer meets the elder parole eligibility criteria and if so whether to schedule a hearing sooner than is already scheduled.

Any lifer who is 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 lifers even if it has been less than three years since the person 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 person's situation, not on the petition.

The same general procedures and legal standards that apply to regular lifer parole suitability hearings will apply when elder parole is an issue. This means the BPH may deny parole if an elderly person'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 the risk for future violence.

Lifers who are found suitable under the Elder 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 People Serving a Determinate-Term**

The BPH also provides Elderly Parole Program suitability hearings for people serving a determinate term who are 60 years or older and have served 25 years or more on their current term. BPH says it will provide a parole consideration hearing for eligible determinate term persons within one year of the person becoming eligible (that is, one year from the date the person 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 to a determinate term elder parole hearing. This means the BPH may deny parole if an elderly person'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 the risk for future violence.

People serving a determinate term who are found suitable under the Elder 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 person would have been otherwise released.

If you are a serving a determinate term and 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.

+++++

### **California's January 2018 Law Establishing an Elder Parole Program**

Effective January 1, 2018, as a result of legislation signed by the Governor, California enacted an elder parole program. See Penal Code section 3055. The elder parole program established in Penal Code section 3055 is the same as that required by the federal court except section 3055 makes certain types of sentences or convictions ineligible. The Penal Code 3055 program excludes not only people sentenced to life without possibility of parole (LWOP) or who are condemned, as does the program required by the federal court, but also excludes people who are sentenced under the Three Strikes law or who were convicted of first degree murder of a peace officer.

CDCR and the State have told the federal court that they will continue using the federal court ordered elder parole program (in which all are eligible except for those sentenced to death or LWOP) until the federal case ends or the February 10, 2014 order is modified. **As such, the elderly parole program required by the federal court, as described above, remains in effect.**

\*\*\*\*\*

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).