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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 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.

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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.

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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.

Memorandum

Date : June 16, 2014

Subject: **ELDERLY PAROLE PROGRAM**

The purpose of this memorandum is to provide an overview of the new Elderly Parole Program. On February 10, 2014, the Three Judge Panel in the *Plata/Coleman* class action lawsuit ordered CDCR to finalize and implement a new parole process whereby elderly inmates will be referred to the Board of Parole Hearings (board) to determine suitability for parole. The procedures for the new Elderly Parole Program will affect parole suitability hearings scheduled on or after October 1, 2014.

Eligibility

Inmates who are 60 years or older and who have been incarcerated for 25 years or more are eligible for the Elderly Parole Program. Eligible inmates may be serving an indeterminate or a determinate sentence.

Scheduling of Hearings

Eligible inmates who are not currently in the board's hearing cycle (i.e., those who are serving a determinate term or serving an indeterminate term and have not yet had their initial parole suitability hearing), will be referred by CDCR to the board and scheduled for an initial suitability hearing.

Eligible inmates who are currently in the board's hearing cycle (i.e., those who have already had their initial suitability hearing or will have it before October 1, 2014) will be considered for a new hearing consistent with the California Supreme Court's decision in *In re Vicks*, meaning the board will initially focus its resources on those inmates who are most likely to be found suitable for parole. This will be accomplished through administrative review of the inmate's record by the board for possible advancement of the inmate's next hearing date, if the board finds a reasonable likelihood that consideration of the public and victim's safety does not require the additional period of incarceration of the inmate. Eligible inmates may also continue to petition to advance their next hearing pursuant to the provisions of Penal Code section 3041.5(d).

During the administrative review and the petition to advance processes, the board will give special consideration to eligible inmates' advanced age, long-term confinement, and diminished physical condition, if any. The board will also consider all other relevant information when determining whether or not there is a reasonable likelihood that consideration of the public and victim's safety does not require the additional period of incarceration of the inmate, including institutional behavior and input from victims and victims' next-of-kin. If an eligible inmate is denied parole, the denial length will be set pursuant to Penal Code section 3041.5(b)(4) ("Marsy's Law") for 3, 5, 7, 10, or 15 years.

Risk Assessments

Inmates who are 60 years of age or older and who have served a minimum of 25 years and who are scheduled for a hearing on or after October 1, 2014, will receive a new or revised risk assessment, which will specifically address how the inmate's advanced age, long-term confinement, and diminished physical condition, if any, may impact the inmate's potential risk for future violence.

Panels and Procedure

Hearings will be conducted by two or three person panels; at least one panel member will be a Commissioner. All other parole suitability hearing procedures not impacted by the provisions outlined herein will be applied to elderly parole hearings.

Decision Review

Parole suitability hearing decisions for elderly parole inmates will be reviewed in the same manner as all other parole suitability hearing decisions.

Term Calculations

Inmates who are found suitable for elderly parole and who are serving an indeterminate term will be released to parole when their grant becomes final (after all applicable reviews). Inmates who are found suitable for elderly parole and who are serving a determinate term will be released to parole when their grant becomes final.