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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 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 your institution's law library.

## INFORMATION ON PROPOSITION 57

(Updated January 2019)

### PRISON CREDIT RULES and NONVIOLENT OFFENDER PAROLE CONSIDERATION

This letter discusses recent changes to California Department of Corrections and Rehabilitation (CDCR) rules on prison credits for good conduct and programming (which apply to almost all people in prison), and rules about earlier parole consideration for some people serving terms for non-violent offenses. These rules came about as a result of Proposition 57, passed by the voters in November 2016. Proposition 57 created Article I, section 32 of the California Constitution, which requires CDCR to issue rules regarding credits and early parole.

The rules on credits and the rules on early parole consideration for people serving determinate sentences went into effect on an "emergency" basis starting in spring 2017. On May 1, 2018, a final version of those rules was approved by the Office of Administrative Law. Effective January 1, 2019, the CDCR has issued new emergency regulations that allow some people serving indeterminate life terms for non-violent crimes (i.e., some third-strikers) to be considered for early parole. There is still ongoing litigation about whether people with non-violent sex offenses can be excluded from Proposition 57 parole eligibility. See Section II of this letter for details.

The rules, statement of reasons, and other information should be available in prison law libraries and made available to people housed in SHUs. The documents are also on the CDCR website at [www.cdcr.ca.gov](http://www.cdcr.ca.gov).

Part I of this letter summarizes the rules on credits. Part II summarizes the rules on nonviolent parole consideration, including eligibility criteria and screenings and the different parole hearing processes for people with determinate sentences and indeterminate sentences. Part III describes how people in prison can challenge the rules or how they are being applied.

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## **I. PRISON TIME CREDITS FOR GOOD BEHAVIOR AND PROGRAMMING**

The CDCR Proposition 57 rules regarding credits replace all previous California laws and CDCR rules regarding credits for good behavior and programming in prison, and include all credits required by a February 2014 federal court order to reduce crowding in the prisons. Under the rules, all people in CDCR custody are eligible to receive at least as much credit to reduce their prison terms as under the old laws and rules, and some people are eligible to receive more credits than before. Note that although CDCR conduct and programming credits apply toward the Earliest Possible Release Date for determinate sentences and the Minimum Eligible Parole Date (MEPD) for indeterminate (life with the possibility of parole) sentences, they do *not* apply toward a Youth Offender Parole Eligible Date (YPED), Elderly Parole Eligible Date (EPED), or Nonviolent Parole Eligible Date (NVPED).

**1. Effective May 1, 2017, many people in prison earn more Good Conduct Credits so long as they comply with prison rules and programming duties.** Good Conduct Credits are now available to all people in prison serving determinate (set-length) sentences and sentences of life with the possibility of parole, including those who are housed in Department of Juvenile Justice (DJJ) facilities or in alternative custody programs. The Good Conduct Credit rules apply also to people serving California prison sentences in out-of-state prisons, federal prisons, or state hospitals. There are different levels of credit eligibility depending on the person's offenses and sentence. (See chart on next page.)

Description of Current Offense and/or Sentence	Past CDCR Credit Rate (before 5/1/17)	Current CDCR Credit Rate (starting 5/1/17) <sup>1</sup>
Life without parole (LWOP) and condemned	0%	0%
Indeterminate term (lifers) not previously eligible for credits (murder, etc.)	0%	20%
Violent offense -- third striker lifers	0%	20%
Violent offense – determinate term – prior 0 credits (a few recidivists)	0%	20%
Violent offense -- determinate or indeterminate sentence	15%	20%
Non-violent offense – third striker lifers	0%	33.3%
Non-violent offense – second strikers with PC 290	20%	33.3%
Non-violent offense – second strikers	33.3%	33.3%
Lifers eligible for 1/3 credits (some crimes in 1980s & 1990s)	33.3%	33.3%
Non-violent offense – determinate sentence	50%	50%
Lifers – eligible for day-for-day (a few crimes)	50%	50%
Violent offense – determinate sentence -- firefighters or in fire camp	15%	50%
Non-violent offense -- second strikers --- firefighters or in fire camp	33.3%	66.6%
Non-violent offense – determinate sentence – firefighters or in fire camp	66.6%	66.6%
Non-violent offense –Minimum A or Minimum B custody	66.6%	66.6%

As the chart shows, there are credit benefits for being in Minimum Custody, completing firefighter training, or being in a fire (conservation) camp. Generally, eligibility for these placements depends on the type of the commitment offense and length of the sentence, criminal history, whether the person has detainers (holds), and their behavior in custody. Some people who

<sup>1</sup> The CDCR’s titles for the various credit categories are NOT internally consistent.

- “15%” credit means a person gets credit for 15 percent of the days actually served, and ends up serving about 85% of the actual time imposed.
- “20%” credit means a person gets credit for 20% of the days actually served (one day credit for four days served) and ends up serving about 80% of the actual time imposed).
- “33.3%” credit means a person gets credit for 33.3% of the days actually served (one day credit for two days actually served) and ends up serving about 66.6% of the actual time imposed.
- BUT “50%” credit does NOT mean a person gets credit for 50% of days actually served. Rather, a person gets credit for 100% of days served (day-for-day) and ends up serving 50% of the actual time imposed (sometimes referred to as "half-time")
- Similarly, “66.6%” credit does NOT mean a person gets credit for 66.6% of days actually served. Rather, a person gets credit for 200% of days served (two-for-one) and ends up serving about 33.3% of the actual time imposed.

are ineligible when they arrive in CDCR may become eligible as their time left to serve becomes shorter and they demonstrate good behavior and programming. The specific policies are complicated and may change over time, but here are some considerations:

- **Minimum Custody:** Minimum A and Minimum B are the lowest custody levels in CDCR prisons (the higher custody levels are Maximum, Close, Medium A, and Medium B). CDCR rules require that some people be in Close Custody due to a lengthy sentence, history of escape, detainer for an offense with a possible long sentence, some serious disciplinary offenses, and having special security concerns; many people can be considered for a custody level reduction after serving a period of time without any recent serious disciplinary violations.<sup>2</sup> The CDCR also has rules limiting which people can be placed in the lowest security levels.<sup>3</sup> Another set of rules requires or allows CDCR to put a person in a higher security level than they would otherwise qualify for by placing a “VIO” code on their classification due to a current or prior criminal conviction, juvenile adjudication, A-1 or A-2 prison rule violation, or parole or probation violation for a violent felony; the rules also allow CDCR staff discretion to remove some people’s VIO code after they serve some time with good behavior and programming.<sup>4</sup> Note that in an effort to expand access to programs, the CDCR recently adopted a policy requiring classification committees to actively consider granting “overrides” by placing people in higher or lower levels than otherwise indicated by their classification scores, based on positive or negative programming.<sup>5</sup>
- **Conservation Camp:** Only people who are minimum custody and behave well in prison can be assigned to camp. A person is not eligible if they are required to register as a sex offender, have an arson offense, or have history of escape with force or violence. They must also pass a physical evaluation. There are currently 43 camps housing 3,500 people; the camps are filled only to 75% capacity.<sup>6</sup>
- **People with Immigration (ICE) Detainers:** Anyone who has previously been deported is not eligible for minimum custody or conservation camp, unless the person is naturalized U.S. citizen or a U.S. permanent resident and ICE confirms the person is not deportable. Anyone who has been confirmed by ICE to be deportable is not eligible for minimum custody or camp. Otherwise, a person with a potential or actual ICE hold is eligible for minimum custody or camp only if they have either family ties in California or 12 months total work history in California. There are no longer policies excluding people from particular countries from minimum custody or camp.<sup>7</sup>

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<sup>2</sup> 15 CCR § 3377.2.

<sup>3</sup> 15 CCR § 3375.2(a).

<sup>4</sup> 15 CCR § 3375.2(b)(29).

<sup>5</sup> CDCR, *Memorandum: Utilization of Administrative Determinants Based Upon Positive and Negative Inmate Behavior and Increased Access to Rehabilitative Programs* (Jul. 5, 2016).

<sup>6</sup> Penal Code § 2760; Penal Code § 2780.5; CDCR website [www.cdcr.ca.gov/conservation\\_camps/](http://www.cdcr.ca.gov/conservation_camps/).

<sup>7</sup> CDCR, *Memorandum Re: Implementation of California Senate Bill 54, “The California Values Act”* (Jan. 2, 2018); CDCR, *Memorandum Re: Modification to Minimum Custody Determinations of Foreign-Born Inmates* (Feb 12, 2013).

- **People Whose Assignments are Limited by Medical, Mental Health, or Disability Needs:** The CDCR rules state that, effective January 1, 2018, various people are eligible for two days conduct credit for every actual day served even if they cannot be assigned as a firefighter or go to a conservation camp or minimum custody program. These credits “may” be applied retroactively to May 1, 2017, so long as the additional credits do not put a person within less than 60 days of release. The groups of people who qualify include (a) people who are eligible for Minimum A or Minimum B Custody but who do not meet requirements for camp assignment or firefighter training/assignment, (b) people otherwise eligible for Minimum A or Minimum B Custody whose eligibility for such assignment is limited solely because they are getting mental health services at the Enhanced Outpatient (EOP) level or higher and/or their medical or mental health status requires additional clinical and custodial supervision, and (c) people otherwise eligible for assignment to Minimum A or Minimum B Custody who have a permanent disability or need for dialysis that impacts placement (also, people delayed beyond in the reception center due to permanent disability or dialysis will start getting two-for-one credits starting the 61st day of the reception center stay).

People in prison can still be placed on Zero Credit earning status for twice refusing to accept assigned housing, refusing to perform an assignment, or being a program failure (Work Group C) or due to placement in a segregation unit for a serious disciplinary offense (D-2 status).

People in prison can still lose Good Conduct Credits (and Milestone Completion Credits and Rehabilitative Achievement Credits) if they violate prison rules; in some cases, they may be able to get lost credits restored if they then remain free of rule violations for some period of time.

**2. Effective August 1, 2017, all people in CDCR prisons serving determinate sentences or sentences of life with the possibility of parole are eligible to earn additional credits for successful participation in approved rehabilitative programs.**

The programming credits are:

- **Milestone Completion Credits:** These credits are awarded for achieving objectives in approved rehabilitative programs, including academic, vocational, and therapeutic programs. The regulations got rid of restrictions that used to bar some types of people from earning Milestone Credits; however, people serving CDCR terms who are housed in in other jurisdictions (not a CDCR prison or CDCR contract facility) cannot get Milestone Credits. A person must participate in a class, so Milestone Credits cannot be earned just for passing a test; also a person cannot get Milestone Credits for earning a high school diploma if they already have one. The programs eligible for credit include full-time rehabilitative programming, alternative custody programs, Enhanced Outpatient (EOP) mental health participation and Developmentally Disabled Program (DDP) participation. The regulations

expand Milestone Credits to 12 weeks in a 12-month period; excess credits will be rolled over to the following year. Milestone Completion Credits can be lost due to rules violations.<sup>8</sup>

- **Rehabilitative Achievement Credits:** This type of credit is for participation in self-help and volunteer public service activities. People can get one week of credit for every 52 hours of participation, with a maximum of four weeks credit per year, for participating in eligible self-help programs. Rehabilitative Achievement Credits can be lost due to rules violations. People serving CDCR terms who are housed in in other jurisdictions (something other than a CDCR prison or CDCR contract facility) cannot get Rehabilitative Achievement Credits.
- **Education Merit Credits:** These credits recognize the achievements of people who earn high school diplomas, high school equivalency, or higher education degrees, or complete the offender mentor certification program available at several CDCR prisons. A person must earn at least 50 percent or more of the degree or diploma during their current term to receive Education Merit Credits. A person who earns a high school diploma or equivalency gets 90 days of credit and a person who earns other degrees or an offender mentor certification gets 180 days credit. These credits took effect in August 2017, but will be applied retroactively for degrees earned prior to that date. Education Merit Credits apply to people serving California prison sentences who are housed out-of-state, in federal prison, or in state hospitals. Educational Merit Credits cannot be taken away due to rule violations.

A person who is having problems with getting their good conduct or programming credits or with having their credits taken away should file a CDCR Form 602 administrative appeal and pursue it to the highest level necessary.

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<sup>8</sup> During the period in which the emergency regulations were in effect, there were disputes about whether some people were improperly awarded Milestone Credits for education programs and whether the CDCR had wrongfully taken Milestone Credits away from some people. The CDCR took actions in response to these concerns. First, the CDCR revised its proposed regulations to clarify its position on the requirements for earning Milestone Credits for education programs. Second, the CDCR did additional training for education staff on the Propostion 57 credit rules. Third, the CDCR did audits of credits that were previously awarded and is took away credits from some people. Fourth, the CDCR imposed a temporary “freeze” on Milestone Credits, but stated it would retroactively award Milestone Credits for any time period affected by the freeze.

## II. EARLY PAROLE CONSIDERATION FOR SOME PEOPLE SERVING TERMS FOR NONVIOLENT OFFENSES

Proposition 57 authorizes earlier parole consideration for people in state prison who were convicted of nonviolent felony offenses.<sup>9</sup>

Since summer 2017, the CDCR rules provide early parole consideration for some “determinately [set length] sentenced nonviolent offenders”.<sup>10</sup> Effective January 1, 2019, the rules provide early parole consideration for some “indeterminately-sentenced nonviolent offenders;”<sup>11</sup> this mostly applies to people serving three-strikes sentences for nonviolent offenses.

**An eligible person will be considered for parole suitability prior to their “Nonviolent Parole Eligible Date,” which is the date on which the person has served the “full term” of their “primary offense,” counting pre-sentence credits for actual days served (as awarded by the sentencing court), credits for actual time between sentencing and arrival in the CDCR, and credits for actual days in CDCR.** “Primary offense” means the one crime for which the court imposed the longest prison term, without taking into account enhancements, alternative sentences, or consecutive sentences. “Full term” means the time imposed by the court for the primary offense *without* considering good conduct or programming credits earned in jail or prison. For example, a person serving a doubled term under the two strikes law (which is an alternative sentencing law) for a nonviolent offense is eligible for parole consideration after serving just the ordinary base term (without the doubling or any enhancements). For a person serving a life term under the three strikes law (which is an alternative sentencing law), the full term for the primary offense is the “maximum term applicable by the statute to the underlying nonviolent offense,” without the additional three strikes punishment or any enhancements.

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<sup>9</sup> This part of California Constitution, Article I, section 32 states:

(a)(1) Parole Consideration: Any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.

(A) For purposes of this section only, the full term for the primary offense means the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.

....

(b) The Department of Corrections and Rehabilitation shall adopt regulations in furtherance of these provisions, and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety.

<sup>10</sup> The regulations for *determinately* sentenced nonviolent offenders are 15 CCR §§ 2449.1-2449.7 and 15 CCR §§ 3490-3493.

<sup>11</sup> The regulations for *indeterminately* sentenced nonviolent offenders are 15 CCR §§ 2449.30-2449.34 and 15 CCR §§ 34953497. These regulations are in effect as of January 1, 2019, but are still undergoing the full rule adoption process, and the CDCR may make changes to the regulations during that process.

The first parts of the nonviolent parole consideration process are similar for people with determinate sentences and people with indeterminate sentences, though there are a few differences. There are several steps – a CDCR eligibility review, a CDCR public safety screening, and a BPH jurisdictional review; the person should be notified promptly within 15 business days about the decision made at each step. The final part of the process is a BPH review to determine whether the person’s release would pose an unreasonable risk to public safety. The type of review at this step depends on whether a person has a determinate sentence or an indeterminate life sentence -- people with determinate sentences get a “paper” review and people with indeterminate life sentences get a formal in-person hearing.

#### A. CDCR Eligibility Review

CDCR staff should do an **eligibility review** within 60 days after a person arrives in the CDCR and again whenever there is a change to the sentence they are serving or they get a new sentence. For people with determinate sentences, a new review should also happen if they come within one year of being considered for Youth Offender Parole or Elderly Parole.

A person will be screened out as **ineligible** for Nonviolent Parole consideration if any of the following are true:

- The person is serving a sentence of *death or life without the possibility of parole* (LWOP); OR
- The person is currently serving an *indeterminate sentence* of life with the possibility of parole *for a violent felony* (violent felonies are listed in Penal Code § 667.5(c)); this is effective January 1, 2019.
- The person is currently serving a *determinate sentence* for a *violent felony* (these are listed in Penal Code § 667.5(c)); OR
- The person is currently serving a *determinate term* for a *nonviolent felony after completing a concurrent determinate term for a violent felony*; OR
- The person is currently serving a *determinate term* (for either a *violent or nonviolent felony*) *prior to beginning an indeterminate life term with the possibility of parole (for either a violent or nonviolent felony)*; OR
- The person *has completed a determinate term or indeterminate life term and is currently serving a determinate term for an in-prison offense that is a nonviolent felony*; OR
- The person has any past or current conviction for an offense that requires sex offender registration under Penal Code § 290. The exclusion of people with nonviolent sex offenses is being challenged. On March 5, 2018, the Sacramento County Superior Court issued an order stating that the CDCR rules violate Proposition 57 because the voters did not intend for all sex crimes to be labeled as violent or for all people with sex offenses to be ineligible

for parole consideration. However, the state has appealed and the court of appeal has stayed the superior court order so that it is not in effect while the appeal is under consideration. (*Alliance for Constitutional Sex Offense Laws v. CDCR*, Third Dist. Ct. of Appeal No. C087294); OR

- For a person serving a determinate sentence, the person must not be eligible for a Youth Offender Parole or Elder Parole consideration hearing within a year of the Nonviolent Parole eligibility review and must not have an initial Youth Offender Parole or Elder Parole hearing already scheduled.

If the review indicates that the person is eligible, the CDCR determines their Nonviolent Parole Eligible Date (NVPED).

If the CDCR decides that a person is ineligible for nonviolent offender parole, the person can challenge the decision by filing a CDCR Form 602 administrative appeal and pursuing it to the highest level necessary.

#### **B. CDCR Public Safety Screening**

When the person nears their Nonviolent Parole Eligible Date, CDCR staff do a **public safety screening** to see if the person has behaved and programmed well in prison. For a person with a determinate sentence, this screening should happen at least 35 days prior to the Nonviolent Parole Eligible Date. For a person with an indeterminate life sentence, this screening should happen at least 180 calendar days before the Nonviolent Parole Eligible Date.

The person will fail the public safety screening and will **not** be considered for Nonviolent Parole if any of the following are true:

- The person has a current Security Housing Unit (SHU) term or has been assessed a SHU term in the past 5 years (unless for the person's own safety); OR
- The person has had a Level A-1 or A-2 serious rule violation in the past 5 years. In addition, a person who is serving an indeterminate life sentence will fail the public safety screen if they have a Level B offense for (1) battery on a peace officer not involving use of a weapon, (2) assault on a peace officer by means likely to cause great bodily injury, (3) battery on a non-prisoner, or (4) threatening to kill or cause serious bodily injury to a public official, their immediate family, their staff, or their staff's immediate family; OR
- The person has been assigned to Work Group C in the past year; OR
- The person has had 2 or more serious rule violations of any level in the past year; OR
- The person has had a drug-related rule violation or refusal to provide a urine sample in the past year; OR

- The person has had a rule violation with a nexus to an STG group (gang) in the past year;  
OR
- The person is serving a determinate sentence and their Nonviolent Parole Eligible Date is less than 180 calendar days prior to their regular Earliest Possible Release Date (EPRD) *or* their EPRD is scheduled for less than 210 calendar days after the date of the screening; OR
- The person is serving an indeterminate life sentence and they have previously had some other type of parole consideration or will be eligible for some other type of parole consideration hearing within the next 12 months after the date of the screening.

If the person passes the public safety screening, the CDCR should refer the case to the Board of Parole Hearings (BPH) within five business days after the screening.

A person who fails the public safety screening will be screened again after serving 1 more year, and will be screened every year thereafter (unless they get a changed or new sentence that makes them ineligible for Nonviolent Parole consideration).

A person who is screened out by the CDCR as being ineligible for a referral to the BPH can challenge the screening decision by filing a CDCR Form 602 administrative appeal and pursuing it to the highest level necessary.

### **C. BPH Jurisdictional Review**

Within 15 calendar days after a CDCR referral, BPH staff should do a “jurisdictional review” to confirm the person meets the eligibility and public safety requirements for Nonviolent Parole consideration.

If the BPH staff find that the BPH has jurisdiction to proceed, then the BPH must conduct a hearing to decide if releasing the person would pose a danger to public safety. The type of hearing and the standard applied will depend on whether the person is serving a determinate sentence or an indeterminate life sentence. A person serving a determinate sentence will get a “paper” hearing, as described in sub-section D, below. A person serving an indeterminate life sentence will get a regular in-person parole hearing, as described in subsection E, below.

If the BPH find that the BPH does not have jurisdiction to proceed, the BPH should notify the person within 15 business days after the decision. The person can seek review of the decision by writing to the BPH within 30 calendar days after they receive the notice. The person should **not** use the regular CDCR 602 administrative appeal process.

**D. BPH Hearing on Dangerousness: Paper Review for People Serving Determinate Sentences**

The information in this sub-section describes the “paper” parole hearing process that applies to people serving determinate sentences who are being considered for Nonviolent Offender Parole. Sub-section E, below, describes the formal hearing process that applies to people serving indeterminate life sentences who are being considered for Nonviolent Offender Parole.

When a person serving a determinate sentence is referred to BPH for Nonviolent Offender Parole consideration, the person should be notified that he or she can submit a written statement to BPH. PEOPLE SHOULD SUBMIT A STATEMENT ABOUT WHY THEY SHOULD BE PAROLED EARLY, FOCUSING ON WHY THEY WILL NOT POSE A RISK OF VIOLENCE OR CRIMINALITY. IF POSSIBLE, PEOPLE SHOULD HAVE FAMILY, FRIENDS, POTENTIAL EMPLOYERS OR OTHERS WITH HELPFUL INFORMATION SUBMIT STATEMENTS TO BPH.

Within 5 business days after the jurisdictional review confirms the person is eligible, the BPH should notify the crime victims and prosecuting agencies about the pending parole review and give them 30 calendar days to submit written statements.

Within 30 calendar days after the notification period ends, a BPH staff member will review documents including the person’s central file and criminal history records and written statements by the person, the person’s supporters, the crime victims, and/or the prosecutor. The BPH staff member is called a “hearing officer” even though -- unlike other types of parole suitability proceedings -- there is no actual hearing at which the person or anyone else can appear.

The hearing officer should decide whether or not the person being considered for release poses a “current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity.” The hearing officer shall consider all the circumstances, including the nature of the person’s current conviction, prior criminal record, in-prison behavior and programming, along with any input from the person, the crime victims, and the prosecutor. The regulations list specific aggravating and mitigating factors to be considered. If a decision to approve release will result in the person being released two or more years before their regular Earliest Possible Release Date (EPRD), the case must be reviewed by a higher level BPH officer who can either approve or deny release. The written decision should include a statement of reasons supporting the decision and the person should receive a copy of it within 15 business days after it is issued.

Any time prior to release, a higher level BPH staff can request a review of a decision that is based on an error of fact or an error of law, or if there is new information that would have affected the decision. The review must be completed within 30 calendar days after the request is received. If the original decision is overturned, a new decision and statement of reasons should be written, and the person should receive a copy of it within 15 business days after it is issued. In addition, any time prior to release, a parole grant can be vacated if it is determined that the person is no longer eligible for parole consideration or no longer passes the public safety screening criteria.

If the BPH grants release – and does not overturn or vacate the decision -- then the person should be released 60 days after the date of the BPH release decision, following any required notifications to crime victims and law enforcement agencies.<sup>12</sup> If the person has an additional term to serve for an in-prison offense, the additional term shall start 60 days after the BPH release decision. After release, the person will presumably serve the normal parole or PRCS period that would apply for their crimes.

If release is denied, overturned, or vacated, the CDCR will re-screen the person after 1 year to determine whether the person should be re-referred to the BPH for Nonviolent Offender Parole consideration.

If release is denied, overturned, or vacated, the person can ask the BPH to review the decision. This is done through a special review procedure (**not** the CDCR 602 process). The person can ask for review by submitting a written request to the BPH within 30 calendar days after the decision being challenged. A BPH officer who was not involved in the original decision will conduct a review within 30 calendar days after the request is received. The officer will either uphold the original decision or vacate it and issue a new decision. The person should be notified in writing within 15 business days after the review decision is made.

#### **E. BPH Hearing on Dangerousness: Formal Hearing for People Service Indeterminate Life Sentences**

The information in this sub-section discusses the formal hearing process that applies to people serving indeterminate life sentences who are being considered for Nonviolent Offender Parole. The “paper” hearing process that applies to people serving determinate sentences who are being considered for Nonviolent Offender Parole is discussed in sub-section D, above.

When a person serving an indeterminate life sentence is referred to BPH for Nonviolent Offender Parole consideration, the BPH must schedule the person for a formal parole consideration hearing. Like other formal parole consideration hearings, this will be a full in-person parole hearing in front of a panel of BPH commissioners or deputy commissions, at which the person will be represented by a lawyer. The same legal standard will apply as for other types of formal parole hearings – the BPH panel will consider whether the person’s “would pose an unreasonable risk of danger to society if release from prison.”

The BPH is expected to start conducting Nonviolent Offender Parole hearings in June 2019. The deadlines for holding hearings will be:

- December 31, 2020: for people who are immediately eligible for Nonviolent Offender Parole consideration as of January 1, 2019, have served 20 years or more, and are within 5 years of their Minimum Eligible Parole Date.

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<sup>12</sup> Unlike some other types of parole consideration proceedings, the Governor does not have authority to review Nonviolent Offender Parole grants.

- December 31, 2021: for all other people who are immediately eligible for Nonviolent Offender Parole consideration as of January 1, 2019.
- Within one year from date of referral to the BPH: for people whose Nonviolent Parole Eligible Dates are less than 180 days after the referral.
- Within 60 days after the Nonviolent Parole Eligible Date: for people whose Nonviolent Parole Eligible Dates are 180 days or more after the referral.

As with other types of formal parole suitability hearings, a Nonviolent Offender Parole decision will not be final for 120 days and can be reviewed by higher level BPH officials. The Governor can ask the BPH to review a parole decision *en banc*, but the Governor cannot himself overturn a BPH decision granting Nonviolent Offender Parole.

Also, as with other types of formal parole hearings, Nonviolent Offender Parole denials will be for a period of 3, 5, 7, 10, or 15 years, but a person may ask to have their next hearing date advanced if there is a change in circumstances or new information that creates a reasonable likelihood that the person will be deemed suitable for parole.

The BPH does not have an administrative appeal process for challenging denials of parole suitability.

The Prison Law Office can provide more detailed information about the formal BPH parole hearing process. The information is available by writing to Prison Law Office, General Delivery, San Quentin, CA 94964, or on the Resources page at [www.prisonlaw.com](http://www.prisonlaw.com).

### **III. HOW CAN A PERSON IN PRISON CHALLENGE THE RULES OR HOW THEY ARE BEING APPLIED?**

If you think there are problems with the new rules about Nonviolent Offender Parole for people with indeterminate sentences, you can submit a comment to the CDCR. These rules currently are in effect on an emergency basis and are not yet final. The CDCR will have 160 days from January 1, 2019 to issue a notice of change to the rules, receive public comments, make any changes to the proposed rules, and then send a final version of the proposed rules to the Office of Administrative Law for approval. The CDCR has not yet set a deadline for receiving public comments or for holding a public hearing. However, the address for sending written comments will be CDCR Regulations and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283 or by email to [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov).

A person who is denied prison conduct or programming credits or who is denied Nonviolent Offender Parole should file the appropriate type of administrative appeal as described in Sections I and II, above.

A person who pursues an administrative appeal to the highest level of review, and is not satisfied with the responses, can send the appeal and responses to the Prison Law Office for review: Prison Law Office, General Delivery, San Quentin, CA 94964. The Prison Law Office is interested in making sure the CDCR applies its credit and parole rules fairly.

A person who pursues their administrative appeal to the highest level of review and is not satisfied with the responses, can file a state court habeas petition arguing that the CDCR or BPH is interpreting or applying its regulations in an unreasonable manner and/or is violating federal or state law.

Free manuals on How to File a CDCR Administrative Appeal and on State Court Petitions for Writ of Habeas Corpus are available by writing to the Prison Law Office, General Delivery, San Quentin, CA 94964 or on the Resources page at [www.prisonlaw.com](http://www.prisonlaw.com).