Your Responsibility When Using the Information Provided Below:
When we wrote this informational material we did our best to give you useful and accurate information. We know it can be hard for people to get information about the law, and we cannot provide specific advice to everyone who requests it. The laws can change and sometimes can be interpreted in different ways. We cannot always revise this letter every time the law changes. If you use this information, it is your responsibility to make sure it applies to you and that the law has not changed. Most of the materials you need should be available in your institution law library.

CALIFORNIA’S PRISON CROWDING REDUCTION COURT ORDER
(Updated November 2019)

We are sending this letter because you asked for information about California’s prison crowding reduction requirements.

A United States Supreme Court order requires that California keep its CDCR population at a certain level because more crowded conditions were a primary cause of the State being unable to provide constitutional medical and mental health care to people in the prisons. (*Brown v. Plata* (2011) 563 U.S. 493, 131 S. Ct. 1910, 179 L.Ed.2d 969.)

The Supreme Court decision approved a 2009 order by a three-judge federal court that requires the State to reduce crowding to 137.5% of design capacity (at that time, the prisons were crowded to approximately 180% of capacity, and previously had been at almost 200% of capacity). That order, sometimes called a “population cap,” applies to all of the CDCR prisons as a group, not individually. So long as the statewide average is at or below 137.5%, individual prisons, yards, and buildings can be more crowded.

**The court order requiring CDCR’s population to be no more than 137.5% of capacity remains in effect.** In March 2016, the federal court stated that it would continue to supervise population reduction efforts until CDCR has a “firmly established” and “durable” plan to keep the prison population at or below 137.5% of capacity.

The State has been in compliance with the population-reduction order for about five years. As of October 2019, the CDCR prison population is at 135.2% of design capacity.
California is using variety of ways to reduce prison crowding. These include:

- creating early parole consideration for “nonviolent offenders” (Proposition 57), “youth offenders,” and elderly people, and changing the law so that people serving life terms are released when they are found suitable for parole;

- increasing the amount of credits most people can earn for good conduct and programming in prison (Proposition 57);

- building a new prison (California Health Care Facility) and new housing units at some prisons;

- sending people to prisons run by private companies or other public agencies, both in-state and out-of-state. However, as of 2019, CDCR no longer houses people out-of-state;

- expanding the alternative custody program (ACP) and other community-based programs;

- expanding medical parole;

- changing the sentencing laws so that some people who are convicted of felonies and almost all people who get parole revocations serve their time in county jail instead of state prison (sometimes called “realignment”);

- changing the laws so that fewer juveniles get sent to adult prisons and so that most juveniles who do go to prison have opportunities for release during their lifetimes;

- changing the criminal laws to reduce many property and drug crimes from felonies to misdemeanors (Propositions 47 and 64), to limit who can be convicted of murder without being the actual killer or intending to kill (SB 1437), to reduce the number of people who get three strikes sentences (Proposition 36), and to eliminate or make discretionary many of the sentence enhancements for gun use, prior convictions, and prior prison terms (SB 620, 136, 1393, 180);

- expanding use of a law that lets CDCR and District Attorneys recommend that courts recall sentences and resentence people to shorter terms in the interests of justice (Pen. Code § 1170(d)(1)).

For people currently in prison, the Proposition 57 credit increases and “nonviolent offender” parole consideration process are the most significant measures for reducing the amount of time served in prison. We enclose information about Proposition 57 credits and Proposition 57 parole with this letter.

We have information letters on many of the other sentencing, parole, and prison policy changes listed above. Please write to our office to request more information on any of the topics listed above. You can also find information about criminal and parole laws and prison policies in The California Prison and Parole Law Handbook (2019), which should be in the law library. Please write if you would like information about ordering your own copy of the Handbook. The information letters, the Handbook, and information on ordering the Handbook also are available on the Resources page of the Prison Law Office website: www.prisonlaw.com.
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:
PRISON CREDIT RULES
(Updated May 2019)

This letter discusses the California Department of Corrections and Rehabilitation (CDCR) rules on prison credits for good conduct and programming. These rules are found in Title 15 of the California Code of Regulations (CCR), and 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.

The Proposition 57 rules about earlier parole consideration for some people serving terms for non-violent offenses are addressed in a separate letter. If you want that letter, and we did not send it to you with this letter, please write to us and ask for it. The letter is also on the Prison Law Office website at www.prisonlaw.com, under the Resources tab.

The Proposition 57 Title 15 rules on credits went into effect on an “emergency” basis in spring 2017. On May 1, 2018, a final version of those rules was approved by the Office of Administrative Law. Amendments to the rules were made in October 2018 and January 2019.

The Title 15 rules should be available in prison law libraries and made available to people housed in Restricted Housing. The rules are also on the CDCR website at www.cdc.ca.gov.

Part I of this letter summarizes the Proposition 57 credit Title 15 rules. Part II describes how people in prison can challenge the rules or how they are being applied.
I. PRISON TIME CREDITS FOR GOOD BEHAVIOR AND PROGRAMMING

The CDCR Proposition 57 Title 15 rules regarding credits replace all previous California laws and CDCR rules regarding credits for good behavior and programming in prison, and include 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 (if sentenced as adults) or in alternative custody, pre-parole, or re-entry 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.)

The rules governing credit-earning eligibility categories are in the rules at Title 15 California Code of Regulations (CCR) section 3043.2. Rules about which Work Group designations are used for people in various types of prison assignments is in 15 CCR section 3044; a person’s Work Group designation can be relevant to (but does not necessarily control) their conduct credit-earning rate.
## Description of Current Offense and/or Sentence

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

## NOTES:

- **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). Generally, eligibility for Minimum Custody classification 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. CDCR rules require that some people be 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

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1 CDCR credit for the current types of credit eligibility categories are calculated as:

- 20% - serve 4 actual days, get 1 day conduct credit = 5 days total
- 33.3% - serve 2 actual days, get 1 day conduct credit = 3 days total.
- 50% - serve 1 actual day, get 1 day conduct credit = 2 days total.
- 66.6% - serve 1 actual day, get 2 days conduct credit = 3 days total.
of time without any recent serious disciplinary violations. The CDCR also has some rules limiting some people from being placed in the lowest security levels. 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 violent current or prior felony criminal conviction or juvenile adjudication, violent A-1 or A-2 prison rule violation, or violent parole or probation violation; these rules also give CDCR staff discretion to remove some people’s VIO codes after they serve some time with good behavior and programming. 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 good or poor programming.

- **Conservation (Fire) 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 44 camps housing 3,500 people; the camps are filled only to 75% capacity.

- **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.

- **People Whose Assignments are Limited by Medical, Mental Health, or Disability Needs:** The CDCR rules state that, effective January 1, 2018, some people are eligible for two days conduct credit for every actual day served even if they cannot be assigned to a minimum custody program because of health reasons. These credits “may” be applied retroactively to May 1, 2017, so long as the additional credits do not put a person within

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2 15 CCR § 3377.2.
3 15 CCR § 3375.2(a).
4 15 CCR § 3375.2(b)(29).
5 CDCR, Memorandum: Utilization of Administrative Determinants Based Upon Positive and Negative Inmate Behavior and Increased Access to Rehabilitative Programs (Jul. 5, 2016).
less than 60 days of release. To qualify, a person must meet three criteria (1) be otherwise eligible for Minimum A or Minimum B Custody, (2) be otherwise eligible for 50% credit (meaning this does not apply to non-violent second strikers or people serving terms for violent offenses), and (3) their eligibility for assignment to a Minimum A or Minimum B facility is limited solely because they are getting mental health services at the Enhanced Outpatient (EOP) level or higher, their medical or mental health status requires additional clinical and custodial supervision, or they have a permanent disability or need for dialysis that impacts placement.  

- **Reception Centers**: People in CDCR Reception Centers earn credits at the same rate would receive in General Population (see chart on page 3), except that people who are Minimum Custody generally don’t start earning any increased credits until they are transferred out of the Reception Center.  

  There is an exception – Minimum Custody Credits should be granted to people who are delayed in a Reception Center past 60 days solely due to a permanent disability that impacts placement or need for dialysis; these people start earning any additional credits for Minimum Custody starting the 61st day of their Reception Center stay.

- **Work Group C and Work Group D-2**: 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 (Work Group D-2).

- **Loss of Credits for Rule Violations**: 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. These credits also apply to people in DJJ (if sentenced as adults) and in alternative custody, pre-parole and re-reentry programs.

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8 15 CCR § 3044 (b)(8)(B).
9 15 CCR § 3044(b)(9) (Work Group U for Reception Center).
10 15 CCR § 3044 (b)(8)(F) (disability delay exception). People with disabilities impacting placement have a CDCR code DPW, DPO, DPM, DLT, DPV, DPH or DPS.
11 15 CCR § 3044 (b)(4) and (b)(6).
12 15 CCR § 3323; see also § 3043.3(h) (Milestone Credit); 15 CCR § 3043.4(i) (Rehabilitative Achievement Credit).
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; if a person earns excess credits, the excess credits will be rolled over and can be applied in the following year. Milestone Completion Credits can be lost due to rules violations.

- **Rehabilitative Achievement Credits**: This type of credit is for participation in eligible self-help and volunteer public service activities. Starting August 1, 2017, people could earn 1 week (7 days) of credit for every 52 hours of participation, up to a maximum of 4 weeks (28 days) of credit per year. As of May 1, 2019 (under new emergency regulations), people can earn 10 days of credit for every 52 hours of participation, up to a maximum of 40 days credit per year. People who are housed in DJJ or alternative custody facilities, including pre-parole or re-entry programs, can earn Rehabilitative Achievement Credits, but in different amounts (starting August 1, 2017, the rate was 1 week of credit for 3 months of participation, up to a maximum of 4 weeks credit per year; starting May 1, 2019, the rate is 10 days of credit for every 3 months of participation, up to a maximum of 40 days credit per year). Starting May 1, 2019, if a person earns excess credits, the excess credits will be rolled over and can be applied during following years. Rehabilitative Achievement Credits can be lost due to rules violations.

- **Education Merit Credits**: These credits recognize the achievements of people who earn high school diplomas, high school equivalency, or higher education degrees, or who complete an offender mentor certification program. A person must earn at least 50 percent or more of the degree or diploma during their current term to receive Education Merit Credits. Starting on August 1, 2017, a person who earned a high school diploma or equivalent got 90 days of credit, these credits apply retroactively to degrees earned prior to that date. Starting on May 1, 2019 (under new emergency regulations), a person who earns a high school diploma or equivalent earns 180 days of credit; people who previously got only 90 days of credit under the older rule will be granted an additional 90 days of credit. Starting August 1, 2017, a person who earns a higher education degree or an offender mentor certification gets 180 days credit. 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.
II. HOW CAN A PERSON IN PRISON CHALLENGE THE TIME CREDIT RULES OR HOW THEY ARE BEING APPLIED?

If you believe that prison conduct or programming credits are not being fairly applied in your case, you should file an administrative appeal and pursue it to the highest level necessary. For most credit issues, use a CDCR Form 602 Inmate/Parolee Appeal. If you are being denied credit opportunities due to a disability, file a CDCR 1824 Reasonable Accommodation Request.

If you pursue an administrative appeal to the highest level of review, and are not satisfied with the responses, you 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 rules fairly.

If you pursue an administrative appeal to the highest level of review and are not satisfied with the responses, you can file a state court habeas petition arguing that the CDCR is interpreting or applying its rules 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.
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INFORMATION ON PROPOSITION 57:
“NONVIOLENT OFFENDER” PAROLE CONSIDERATION
(Updated September 24, 2019)

This letter discusses the California Department of Corrections and Rehabilitation (CDCR) rules on earlier parole consideration for some people serving terms for non-violent offenses. These rules are found in Title 15 of the California Code of Regulations (CCR), and 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.

The Proposition 57 rules about good conduct and programming credits are addressed in a separate letter. If you want that letter, and we did not send it to you with this letter, please write to us and ask for it. The letter is also on the Prison Law Office website at www.prisonlaw.com, under the Resources tab.

The Title 15 rules on early parole consideration for people serving determinate sentences went into effect on an “emergency” basis 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 issued emergency rules that allow some people serving indeterminate life terms for non-violent crimes (i.e., some third-strikers) to be considered for early parole. Effective August 21, 2019, the CDCR issued emergency rules eliminating the CDCR “public safety screening” step of the parole consideration process. There is ongoing litigation about some parts of the CDCR rules, the most recent developments are underlined in this letter.

The Title 15 rules should be available in prison law libraries and made available to people in Restricted Housing. The documents are also on the CDCR website at www.cdc.ca.gov.

Part I of this letter summarizes the Proposition 57 Title 15 rules. Part II describes how people in prison can challenge the rules or how they are being applied.
I. 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. Those eligible and the process for parole consideration are described below. As of the end of August 2019, CDCR reports that the Board of Parole Hearings (BPH) had granted parole in about 20% of approximately 10,500 non-violent cases considered as of that date.

CDCR Title 15 rules provide early parole consideration for some “determinately [set length] sentenced nonviolent offenders.” Effective January 1, 2019, as a result of a court decision in In re Edwards (2018) 26 Cal.App.5th 1181, the rules also provide early parole consideration for some “indeterminately-sentenced nonviolent offenders;” 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

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1 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.

2 The regulations for determinately sentenced nonviolent offenders are 15 CCR §§ 2449.1-2449.7 and 15 CCR §§ 3490-3493.

3 The regulations for indeterminately sentenced nonviolent offenders are 15 CCR §§ 2449.30-2449.34 and 15 CCR §§ 3495-3497. These regulations are in effect as of January 1, 2019, but are still undergoing the formal adoption process, and the CDCR may make changes during that process.
term applicable by the statute to the underlying nonviolent offense,” without the additional three strikes punishment or any enhancements.

The first parts of the nonviolent parole consideration process – a CDCR eligibility review, CDCR referral to the BPH, and a BPH jurisdictional review – are similar for people with determinate sentences and people with indeterminate sentences, though there are a few differences. The person should be notified within 15 business days about the decision made at each step.

The final part of the process is a BPH merits review to determine whether the person’s release would pose an unreasonable risk to public safety. Currently, the type of review depends on whether a person has a determinate sentence or an indeterminate life sentence. People with determinate sentences get a “paper” review by one hearing officer; however, the lack of a formal in-person hearing is being challenged in the courts (see Section I-D, below). People with indeterminate life sentences get a formal in-person hearing, just like a regular parole suitability 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 deemed to be 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);
- 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));
- The person is currently serving a determinate term for a nonviolent felony after completing a concurrent determinate term for a violent felony;
- 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);
- 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;
• The person has *any past or current conviction for an offense that requires sex offender registration under Penal Code § 290*. The exclusion of all people with sex offenses is being challenged. On January 28, 2019, the Second District Court of Appeal issued a decision striking down the CDCR regulations that exclude anyone with a *prior* conviction for a registrable sex offense under §290; however, that decision is being reviewed by the California Supreme Court, which means the CDCR currently does not have to follow the Court of Appeal’s decision. (*In re Gadlin*, No. S254599.) On March 5, 2018, the Sacramento County Superior Court issued an order striking down the CDCR rules that prohibit early parole consideration for anyone with a *current* conviction for a registrable sex offense, on the grounds that the voters did not intend for all all people with sex offenses to be ineligible. However, the state has appealed and the Court of Appeal has stayed the superior court order so that it is not currently in effect. (*Alliance for Constitutional Sex Offense Laws v. CDCR*, Third Dist. Ct. of Appeal No. C087294);

• 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 Referral to the BPH (Formerly CDCR Public Safety Screening)**

Up until early July 2019, CDCR staff did a public safety screening when a person neared their Nonviolent Parole Eligible Date. If the person passed the public safety screening, the CDCR referred the person to the Board of Parole Hearings (BPH) for Nonviolent Parole consideration. If the person failed the public safety screening, they were not referred to the BPH.\(^4\)

On April 29, 2019, a court of appeal held that these public safety screenings violated Proposition 57 because it is the job of the BPH, not the CDCR, to decide whether people are suitable

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\(^4\) Under the prior CDCR rules, a person failed the public safety screening if they: (1) had a current Security Housing Unit (SHU) term or was assessed a SHU term in the past 5 years or had served a SHU term in the past 5 years (unless for the person’s own safety); (2) had a Level A-1 or A-2 serious rule violation in the past 5 years or, for a person serving an indeterminate life sentence, they had a certain types of Level B offenses; (3) had been assigned to Work Group C in the past year; (4) had 2 or more serious rule violations of any level in the past year; (5) had a drug-related rule violation or refusal to provide a urine sample in the past year; (6) had a rule violation with a nexus to an STG group (gang) in the past year.
or unsuitable for parole. *(In re McGhee (2019) 34 Cal.App.5th, 902)* The state did not appeal, and the *McGhee* decision became final. The CDCR stopped doing public safety screenings in early July 2019. On August 21, 2019, the state has issued emergency rules eliminating the public safety screenings. These rules also say that people who went through CDCR public safety screenings prior to July 9, 2019 and who were not referred to the BPH will be reviewed by CDCR staff again (and presumably referred to the BPH) by November 1, 2019 unless they are no longer eligible for Nonviolent Offender Parole consideration.

Currently, when an eligible person approaches their parole date they will be referred to the BPH for parole consideration unless: (1) they are serving a determinate sentence and their Nonviolent Parole Eligible Date is less than 180 calendar days before their regular Earliest Possible Release Date (EPRD) or their EPRD is scheduled for less than 210 calendar days after the date of the CDCR review, or (2) they are serving an indeterminate life sentence and they previously had some other type of parole consideration hearing or will be eligible for some other type of parole consideration hearing within the next 12 months after the date of the CDCR review.

A person who has concerns about the CDCR’s eligibility review process or application of *McGhee* can file a CDCR Form 602 administrative appeal and pursue 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. Hearings for people with determinate sentences are described in subsection D, below. Hearings for people with indeterminate life sentences are 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.
The “paper” parole hearing process for people serving determinate sentences is being challenged. Two superior courts have held that the BPH must provide in-person hearings at which the person may appear and be heard, and one of the courts held that there must be two hearing officers and that the person must have an attorney. (In re Flores, Sacramento Superior Court, No. 18HC00046, Order dated May 15, 2019; In re Kavanaugh, San Diego Superior Court, No. HC23654, Order dated July 15, 2019.) However, the CDCR currently does not have to follow these orders. The state is appealing both cases. (In re Flores, Third Dist. Ct. of Appeal, No. C089974; In re Kavanaugh, Fifth Dist. Ct. of Appeal, Div. 1, No. D076500.) The Flores order isworded so that it will not take effect unless and until it is affirmed on appeal, and the superior court that decided Kavanaugh has granted a stay of its order while the appeal is pending.

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.

There is a strong argument that that the BPH may not deny Proposition 57 parole unless there is a rational nexus between the factors cited by the BPH and a finding of current dangerousness. (See In re Ilasa (2016) 3 Cal.App.5th 489 [applying In re Lawrence (2008) 44 Cal.4th 1181 to CDCR’s former non-violent second striker parole process].)

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. 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 review 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 Serving 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 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.

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5 Unlike some other types of parole consideration proceedings, the Governer does not have authority to review Nonviolent Offender Parole grants.
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 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.
- 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.

There is a strong argument that that the BPH may not deny Proposition 57 parole unless there is a rational nexus between the factors cited by the BPH and a finding of current dangerousness. (See In re Ilasa (2016) 3 Cal.App.5th 489 [applying In re Lawrence (2008) 44 Cal.4th 1181 to the CDCR’s former non-violent second striker parole process].)

The Prison Law Office can provide more detailed information about the formal BPH parole suitability 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.
II. HOW CAN A PERSON IN PRISON CHALLENGE THE RULES OR HOW THEY ARE BEING APPLIED?

If you are denied Nonviolent Offender Parole, you should file the appropriate type of administrative appeal as described in Section I, above.

If you pursue an administrative appeal to the highest level of review, and are not satisfied with the responses, you 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 parole rules fairly.

If you pursue an administrative appeal to the highest level of review and are not satisfied with the responses, you 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.