

CALIFORNIA YOUTH OFFENDER PAROLE HEARINGS

SB 260

A Summary of What the New Law is Intended to Do

How to Use the Information Provided Here

Fair Sentencing for Youth Coalition and Human Rights Watch are groups that worked to pass this law. We are organizations working along with many other groups to make California's criminal laws more just. We do not provide legal advice, representation, or referral. We wrote this handout because we know that prisoners and their families often have difficulty obtaining legal information. We did our best to provide useful and accurate information about this new law. However, laws change. We do not have the resources to make changes to materials every time the law changes, nor do we have resources to contact prisoners. If you have an attorney, you should disregard this information and talk to your attorney about how the law applies to your case. What is provided here is general information, it is not legal advice.

In addition, different people have differing opinions as to the meaning of a law. If you have questions about this law, ask an attorney who has expertise in parole law. If you want legal advice about your case, please hire a lawyer to address your specific issues. If you use this handout for any purpose, it is your responsibility to make sure that the law applies to your situation. Please remember, too, that you should make sure that the law has not changed since this handout was written. At the time this handout was written, the regulations were not finished. They will not be finished until late 2014 or 2015. The regulations will make clear parts of the new law that are not entirely clear right now. Also, at this time the Board of Parole Hearings is still figuring out how to make the new law work. As time goes on, more of the process will be clear. Note the date and version of these materials in this text box. If we do update the materials, newer versions will be posted on our website.

How to find and read the law yourself: In this handout you will sometimes see "PC" and a number. PC refers to the California Penal Code. The Penal Code has all the state's laws about crime and punishment. The number is the section of the code where information is found. So, for example, when you see "PC 3051," that means California Penal Code section 3051. When you see that listed, it tells you that is where you can read the actual law about the topic being discussed. We encourage you to read the law for yourself. You can find it at www.fairsentencingforyouth.org, or can search online for the code, or go to the library and read it there. If you are inside, please check your prison law library.

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Who is SB 260 and the new Youth Offender Parole process for?

This new law applies to people who:

- were under the age of 18 at the time they committed their crime,
- were tried as adults, and
- are not excluded for reasons explained below.

Where can I find a copy of the new law?

The newly enacted law is in California Penal Code (PC) sections 3041, 3046, 3051, and 4801. You can search on line for the California Penal Code, or go to the library and read it there. You can also go to www.fairsentencingforyouth.org to find a copy of the law and other helpful information. If you are inside, please check your prison law library.

When does this new law go into effect?

The new law goes into effect January 1, 2014. However, the Board of Parole Hearings (also known as "the Board") is given 18 months (until July 1, 2015) to catch up on the backlog of cases that are entitled to a hearing as of January 1, 2014. PC 3051(i).

What does the new law do?

This law makes important changes in the parole process for people who were under the age of 18 at the time of their crimes. These individuals will have a "Youth Offender Parole Hearing." The purpose of the Youth Offender Parole Hearing is to review a person's suitability for parole and "provide for a *meaningful* opportunity to obtain release." PC 3051(a)(1) & (e). In this case "meaningful" means a real or significant chance of getting out of prison on parole.

Is anyone left out or excluded?

Yes. People are not eligible for a Youth Offender Parole Hearing who were under the age of 18 at the time of their crimes but sentenced to a life sentence that is:

- The result of a third strike under three-strikes laws;
- The result of a one-strike rape (Jessica's Law); or
- Life without parole.

Also, people are not eligible for a Youth Offender Parole Hearing who:

- Commit a *new crime after age 18* and are convicted by a court of a crime in which "malice aforethought" is a necessary element; or
- Those who commit a *new crime after age 18* and are sentenced to a life sentence. PC 3051(h).

How will a Youth Offender Parole Hearing be different from regular parole hearings?

On the one hand, we expect many things about the Youth Offender Parole Hearing to be the same as a regular parole hearing. For example, a person will still have to be found suitable for parole in order to be released, and we expect some existing suitability and unsuitability factors to remain the same. Prisoners also will retain their right to appeal, right to counsel, and other rights they would have at a regular parole hearing.

But we expect the Youth Offender Parole Hearings to be very different, too. In the Youth Offender Parole Hearings, the Board will have to give ***great weight*** to:

- The fact that juveniles are less responsible than adults for their actions (*The new law refers to the "diminished culpability" of youth*);
- The hallmark features of youth (*For example, that youth are, as compared to adults, not as good at understanding risks and the consequences of their actions; resisting impulse and peer pressure; or controlling their surroundings, etc.*); and
- Any subsequent growth and increased maturity of the prisoner. PC 4801(c).

The Board commissioners should now consider someone who was under the age of 18 at the time of the crime differently from an adult. The fact of being young at the time of the crime should support a finding of suitability. As a result, while people who were under the age of 18 at the time of their crime will still have to work hard to prove they deserve parole, this process should increase their chances of being paroled. PC 3051(d).

When will people be eligible for release?

To be released, a person must have a Youth Offender Parole Hearing and be found suitable for parole. Under this law, people are first eligible to be released during one of these three times:

- The 15th year of incarceration, or
- The 20th year of incarceration, or
- The 25th year of incarceration.

How will someone know whether his or her hearing will be at 15, 20, or 25 years?

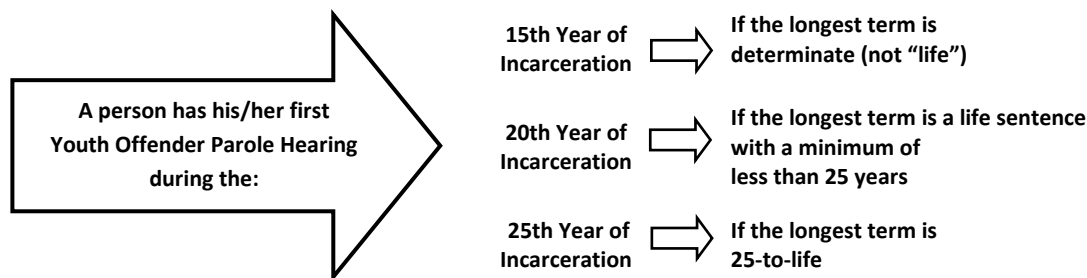
It depends on the person's sentence. The controlling offense determines the time for the first Youth Offender Parole Hearing and possible release.

What is a "controlling offense"?

A controlling offense is the sentence for a single crime or enhancement with the longest term of imprisonment. PC 3051(a)(2)(B).

Example: Luis has a 15-to-life sentence and a 10 year sentence. The 15-to-life is the controlling offense because it is the longest of his sentences.

Example: James has a 15-to-life sentence plus a 25-to-life gun enhancement. His controlling offense is the 25-to-life enhancement because it is the longest of his sentences or enhancements.



Who is eligible at 15 years?

A person whose controlling offense (longest sentence) is **a determinate sentence** will be eligible for release on parole during the 15th year of incarceration. A determinate sentence is one without "life." It is a set number of years. PC 3051(b)(1).

Example: Roberto has a total sentence of 53 years based on three sentences: one for 20 years, one for 15, and one for 18. Because he does not have a life sentence, his first Youth Offender Parole Hearing will be in his 15th year of incarceration.

Who is eligible at 20 years?

A person whose controlling offense (longest sentence) is **a life sentence that is less than 25-years-to-life** will be eligible for release on parole during the 20th year of incarceration. PC 3051(b)(2).

Example: Melissa has a 15-years-to-life sentence plus a 10 year sentence, and a 10 year gun enhancement, for a total sentence of 35-years-to-life. Because her controlling offense is a life sentence under 25-years-to-life, her first Youth Offender Parole Hearing will be in her 20th year of incarceration.

Who is eligible at 25 years?

A person whose controlling offense (longest sentence) is **a life sentence of 25-years-to-life** will be eligible for release on parole during the 25th year of incarceration. PC 3051(b)(3).

Example: Nathan has a sentence of 25-years-to-life. His first Youth Offender Parole Hearing will be in the 25th year of incarceration.

Example: Deon has a total sentence of 65 years. He was sentenced to a 15-years-to-life sentence plus a 25-years-to-life gun enhancement and a 25-years-to-life gang enhancement. Because his controlling offense is 25-to-life, his first Youth Offender Parole Hearing will be in his 25th year of incarceration.

What does "eligible to be released on parole" mean?

It means if the person is found suitable for parole, he or she will be eligible to be released on parole at that time. This is true even if the person has other consecutive sentences related to the controlling offense. PC 3046(c). The person will not be released from other holds, however, such as an ICE hold. And, if a person has incurred new prison terms for crimes committed in prison or after age 17, those sentences must be served.

What if a person has several consecutive sentences (meaning that they have sentences that normally have to be served one after the other)? Will he or she have to serve all of the sentences before going before the parole board or being eligible for release?

No. A person with more than one sentence will have a Youth Offender Parole Hearing at the time set in the new law and, if granted parole, be eligible for release.

Example: Chris has a 40-years-to-life sentence. He was sentenced to one 25-years-to-life sentence and another (consecutive) 15-years-to-life sentence. Under the old law, his release date would be at a minimum of 40 years of incarceration. Under this new law, the controlling offense determines when he will be eligible for parole. In this case, his controlling offense is the 25-to-life sentence, and if found suitable for parole, he would be eligible for release in his 25th year of incarceration. PC 3046(c).

Do lifers who would normally receive a hearing before 20 or 25 years have to wait for the new timelines under PC 3051(b)?

No. If a lifer is eligible under another law for an earlier parole hearing, that is when his or her hearing will be. The new law sets maximum times at 20 or 25 years before a first hearing is held. If a person has a right to an earlier hearing under another law, he or she will have the suitability hearing at that earlier time, but will still receive the great weight considerations described above. PC 3051(b).

Example: Juan has a sentence of 15-years-to-life, and under existing law has a right to a hearing in his 14th year. He will not have to wait until 20 years of incarceration for his hearing, and at that hearing he will receive the great weight considerations described above. PC 3051(b).

Example: Charlene has a 25-years-to-life sentence plus another 10-year sentence to be served concurrently (at the same time.) Under other law, she has a Minimum Eligible Parole Date (MEPD) of 23 years. Her first hearing will be at 23 years, not 25 years and at that hearing she will receive the great weight considerations described above. PC 3051(b).

Does a prisoner have to serve the time on the controlling offense to be eligible for parole?

No. The number of years of incarceration is what is counted, and it does not matter which sentence or enhancement is being served first.

When figuring out when the first hearing will be, what counts as years of “incarceration”?

Years of incarceration do not just mean the number of years in a CDCR state prison. “Incarceration” also includes time detained in a city or county jail, a local juvenile facility, a mental health facility, or at DJJ. PC 3051(a)(2)(A).

Do prisoners have to ask or petition for a first or any Youth Offender Parole Hearing?

No. They will be set in the same manner as all other suitability hearings.

A lot of people will be eligible right away when the law goes into effect. Who will get their hearings first?

This is still being determined. As of the time this was written, the Board intended to have cases already scheduled for 2014 to go forward. It will then prioritize lifer cases of people newly eligible for a Youth Offender Parole Hearing. It will likely be sometime after May that the first of those cases have hearings. Then people with determinate sentences will have their hearings. The Board of Parole Hearings will set the hearings. People will be notified when their hearings are set. The Board has until July 1, 2015 to catch up with the cases that are immediately eligible.

What if a person who is a qualified youth offender is denied parole? When will the next hearing be set?

If a person is denied parole, a new Youth Offender Parole Hearing will be set according to an existing law, known as “Marsy’s Law.” It requires that the next parole hearing be set 3, 5, 7, 10, or 15 years later. However, the new Youth Offender Parole law requires commissioners to consider important factors as they decide when the next hearing should be set. They must consider that the prisoner was under the age of 18 at the time of the crime and the diminished culpability of juveniles as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual. PC 3051(g). We believe these factors should cause the Board to choose shorter time periods between hearings.

If a person who is a qualified youth offender with a determinate (no “life”) sentence is denied parole at his Youth Offender Parole Hearing, and his regular release date comes up before the next Youth Offender Parole Hearing, what happens?

He or she will be released at the Earliest Possible Release Date (EPRD) established on the determinate term.

Example: Justin has a sentence of 18 years. He had his Youth Offender Parole Hearing at 15 years but was denied parole. His next hearing was set for five years later. Because his EPRD is before the next hearing date, he will be released at his EPRD and will not need the hearing.

Will qualified youth offenders be able to challenge a denial of parole in a Youth Offender Parole Hearing?

Yes, they will be able to challenge a denial in the same way any parole denial can be challenged, for example, by filing a petition for writ of habeas corpus.

If someone who is a qualified youth offender was denied parole before this new law went into effect on January 1, 2014 does that person automatically get an earlier Youth Offender Parole Hearing?

No. It would be good to consult with an attorney who knows parole law and procedure to decide whether it would be wise to petition the Board for an earlier hearing based on new information or changed circumstances in a particular case.

Will the “matrix” be used to add on more time after being found suitable?

No, the matrix will not apply to qualified youth offenders found suitable for parole. The matrix is an existing regulation that sometimes requires years of incarceration be added in certain cases even after a person was found suitable for parole. Under the new Youth Offender Parole law, once a person is found suitable for parole, he or she will be paroled, unless he or she has incurred new prison terms for crimes committed in prison that must be served after the life sentence. (Although the actual parole decision will be reviewed by the Board and the Governor (and release delayed) for up to 120 or 150 days following the hearing. See below.) PC 3046(c).

Will the Governor have a say in these decisions?

Yes. The Board must send to the Governor its decisions in all cases in which a person was sentenced to a life sentence for murder. The state constitution allows the Governor to affirm, modify, or reverse the Board in these cases. However, the Governor’s decision must be based on the same factors the Board is required to consider. Cal. Constitution Art. 5, Sec. 8(b). The Governor also has the authority to review all other cases in which a person was sentenced to a life term for reconsideration by the full Board. When the Governor considers the decision of the Board in the case of a qualified youth offender, the Governor will have to consider that the person was under the age of 18 at the time of the crime, as well as the diminished culpability of juveniles as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual. PC 4801(c).

Are prisoners entitled to an attorney for the Youth Offender Parole Hearing?

Yes. A person can hire his or her own attorney, or if someone cannot afford a private attorney, one will be appointed at no cost. This is a new law, so make sure the attorney not only has experience in parole law, but also understands this new law.

Will the same commissioners who currently serve on the BPH implement and oversee these suitability hearings?

Yes. The same commissioners will hear these cases, but they are being trained on how to conduct the Youth Offender Parole Hearings and apply the “great weight” factors described above. In addition, the Board is required to draft regulations that will guide the actions of the commissioners in these hearings. Those regulations will not be completed until late 2014 or in 2015.

Will people going to a Youth Offender Parole Hearing be seen by Board psychologists who specialize in adolescent and young adult development for a psychological evaluation and risk assessment?

No. The new law states that, if used by the Board, psychological evaluations and risk assessment instruments must take into consideration the diminished culpability of juveniles as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual. PC 3051(f)(1). At the time this handout was written, the Board psychologists planned to address this requirement by adding to their reports a paragraph that directly discusses those factors. Advocates and inmates will need to assess whether that is enough to meet the requirements of the new law.

Is there a special role at the hearing for friends and family members of the prisoner?

Yes. The new law states that family members, friends, school personnel, faith leaders, and representatives from community-based organizations who have knowledge about the young person prior to the crime, or who can attest to his or her growth and maturity since the time of the crime can submit letters. This was allowed in regular parole hearings, too, but the fact that this law specifies it should make the commissioners pay extra attention to that support. The new law does not allow friends and family to come to the hearing. PC 3051(f)(2).

What is the meeting that occurs six years before a first parole hearing?

The new law requires the Board to meet with all prisoners six years before their minimum eligible parole release date. PC 3141(a). The meeting will be a consultation intended to help the prisoner know what he or she needs to do to be found suitable for parole. The Board will make recommendations about steps the person should take to become suitable for parole, as well as identifying positive steps the prisoner is already taking. Prisoners do not need to request the consultation; the Board will schedule it. For those who are eligible for a hearing earlier than six years from the time the new law takes effect in January 2014, it appears the Board is not planning on meeting with them.

What about people who have a hearing set in early 2014?

People who have hearings early in 2014 should discuss with their attorneys whether to postpone or waive their hearings until either they are better prepared or the hearing procedures become clearer through the Board's practices or the upcoming regulations.

Why don't we know exactly what the hearings will be like?

We will know more once the hearings begin and regulations are completed. Senate Bill 260 enacted a law, but regulations have not yet been created. PC 3051(e). You can think about this like a recipe: The law is like the ingredients, and regulations are like the instructions about what to do with the ingredients. Senate Bill 260 provides very good ingredients, but the details of what to do with them still need to be worked out. The Board will rely on temporary rules for use on the hearings that are set in 2014, and then work over 2014 will be done on the actual regulations. The public has a chance to comment and help shape these regulations. That means if you are someone who cares how California puts this law to use, you should be involved. It's very important! Family members, community people, and people in the inside all have important insights to add to the process of making this law work right. People who are on the inside and have Youth Offender Parole Hearings during this time will have especially important observations about how things are working or not working. The Fair Sentencing for Youth coalition will send out updates on how you can be involved. Sign up at www.fairsentencingforyouth.org to learn about how you can contribute to this process. Or, go to the Board website: <http://www.cdcr.ca.gov/BOPH/>