

## **PROPOSED REGULATORY TEXT**

Proposed additions are indicated by underline and deletions are indicated by ~~strikethrough~~.

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS  
TITLE 15. CRIME PREVENTION AND CORRECTIONS  
DIVISION 2. BOARD OF PAROLE HEARINGS

### **CHAPTER 3. PAROLE RELEASE**

Article 14. Parole Consideration Hearings for Youth Offenders is *added* to read as follows:

#### **ARTICLE 14. PAROLE CONSIDERATION HEARINGS FOR YOUTH OFFENDERS**

##### **§ 2440. Youth Offender Defined.**

(a) A youth offender is an inmate who committed his or her controlling offense prior to reaching age 18, was sentenced to a determinate term or a life term, and is not disqualified based on any factors listed in subdivision (c) of this section.

(b) For purposes of determining whether an inmate qualifies as a youth offender, the “controlling offense” is the single crime or enhancement for which any sentencing court imposed the longest term of imprisonment.

(c) Inmates who committed their controlling offenses prior to reaching age 18 are disqualified as youth offenders under this article if one or more of the following factors exist:

(1) The inmate received a sentence of life without the possibility of parole;

(2) The inmate’s sentence on the controlling offense is enhanced due to a prior felony conviction under Penal Code sections 1170.12 or 667(b)-(i);

(3) The inmate’s sentence on the controlling offense is enhanced as a one-strike sex offense under Penal Code section 667.61;

(4) The inmate committed any offense after reaching age 18 that includes “malice aforethought” as a necessary statutory element of the offense; or

(5) The inmate committed any offense after reaching age 18 for which the inmate was sentenced to a life term of any length.

(d) If two or more offenses carry identical sentence lengths and are the inmate’s longest terms of imprisonment, the controlling offense shall be determined as follows:

(1) If none of the sentences were enhanced pursuant to Penal Code section 1170.12, subdivisions (b) through (i) of section 667(b)-(i), or section 667.61, the controlling offense is the earliest of the offenses.

(2) If one sentence was enhanced pursuant to Penal Code section 1170.12, subdivisions (b) through (i) of section 667(b)-(i), or section 667.61, the controlling offense is the enhanced offense.

(3) If more than one sentence was enhanced pursuant to Penal Code section 1170.12, subdivisions (b) through (i) of section 667(b)-(i), or section 667.61, the controlling offense is the earliest of the enhanced offenses.

(e) Enhancement of a non-controlling offense pursuant to Penal Code section 1170.12, subdivisions (b) through (i) of section 667, or section 667.61 shall not be the basis for disqualification under subdivision (c) of this section.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Sections 667, 667.61, 1170.12, 3051, Penal Code.

### **§ 2441. Youth Offender Factors.**

(a) Diminished Culpability of Juveniles as Compared to Adults. The diminished culpability of juveniles as compared to adults includes, but is not limited to, individualized consideration of one or more of the following factors:

- (1) the ongoing development in a juvenile's psychology and brain function;
- (2) the transient characteristics of youth;
- (3) the increased vulnerability of youth;
- (4) a juvenile's limited control over his or her own environment;
- (5) a juvenile's diminished susceptibility to deterrence; or
- (6) the disadvantages to juveniles in criminal proceedings.

(b) Hallmark Features of Youth. The hallmark features of youth include, but are not limited to, individualized consideration of one or more of the following factors:

- (1) immaturity;
- (2) an underdeveloped sense of responsibility;
- (3) impulsivity or impetuosity;
- (4) recklessness or heedless risk-taking; or
- (5) an inability to assess or appreciate the risks and consequences of behavior.

(c) Subsequent Growth and Increased Maturity of the Inmate. The subsequent growth and increased maturity of the inmate includes, but is not limited to, individualized consideration of one or more of the following factors:

- (1) considered reflection;
- (2) maturity of judgment;
- (3) self-recognition of human worth and potential;
- (4) remorse;
- (5) rehabilitation.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Sections 667, 667.61, 1170.12, 3051, Penal Code; *Graham v. Florida* (2010) 560 U.S. 48, 130 S.Ct. 2011; *Miller v. Alabama* (2012) 132 S.Ct. 2455; *People v. Caballero* (2012) 55 Cal.4th 262, 282 P.3d 291, 145 Cal.Rptr.3d 286; *Moore v. Biter* (2013) 725 F.3d 1184; *Roper v. Simmons* (2005) 543 U.S. 551.

**§ 2442. Youth Offender Qualification Process.**

(a) Correctional Case Records Services of the department determines whether an inmate qualifies as a youth offender under section 2440 of these regulations.

(b) Youth offender determinations by the department are subject to the appeal process found in Title 15, California Code of Regulations, section 3084-3084.9. Inmates contesting a youth offender disqualification by the department must submit a CDCR Form 602 Inmate Appeal to Correctional Case Records Services of the department under that appeal process.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Section 3051, Penal Code; and Sections 2440 and 3084.1, California Code of Regulations, Title 15.

**§ 2443. Youth Parole Eligibility Dates.**

(a) A Youth Parole Eligibility Date (YPED) is the earliest date on which a youth offender is eligible for a parole consideration hearing pursuant to subdivision (b) of Penal Code section 3051. A youth offender's YPED is set according to the following criteria:

(1) If the controlling offense is a determinate term of any length, the YPED is the first day after the youth offender has completed 14 actual years of incarceration;

(2) If the controlling offense is a life term of less than 25 years to life, the YPED is the first day after the youth offender has completed 19 actual years of incarceration; or

(3) If the controlling offense is a life term of 25 years to life, the YPED is the first day after the youth offender has completed 24 actual years of incarceration.

(b) (1) Correctional Case Records Services of the department calculates the YPED for all inmates qualified as youth offenders.

(2) YPED calculations by the department are subject to the appeal process found in Title 15, California Code of Regulations, sections 3084-3084.9. Inmates contesting a YPED calculation by the department must submit a CDCR Form 602 Inmate Appeal to Correctional Case Records Services of the department under that appeal process.

(c) For purposes of this section, "incarceration" means detention in any city or county jail, local juvenile facility, state mental health facility, Division of Juvenile Justice facility, or department facility since the youth offender began serving sentences for crimes committed when he or she was under the age of 18.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Section 3051, Penal Code; and Sections 3084.1, California Code of Regulations, Title 15.

**§ 2444. Scheduling of Hearings.**

(a) Youth offenders shall be scheduled for their initial parole consideration hearings in the year following their YPED unless the youth offender is entitled to an earlier parole consideration hearing pursuant to any other provision of law.

(b) Subsequent parole consideration hearings shall be scheduled for youth offenders in accordance with Penal Code 3041.5(b)(3).

(c) Notwithstanding subdivisions (a) or (b), when a youth offender's earliest possible release date (EPRD) is less than five months after the youth offender completes his or her 15th year of incarceration, the board shall not schedule a hearing.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Sections 3041.5 and 3051, Penal Code; and Sections 2268, 2270, 2304, and 2306, California Code of Regulations, Title 15.

**§ 2445. Comprehensive Risk Assessments**

When preparing a risk assessment under this section for a youth offender, pursuant to Penal Code section 3051, the psychologist shall also take into consideration the youth offender factors, as defined in section 2441 of these regulations.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Sections 3041.5 and 3051, Penal Code; and Section 2240, California Code of Regulations, Title 15.

**§ 2446. Parole Consideration Hearings.**

(a) Panels shall conduct parole consideration hearings for youth offenders in compliance with the requirements for initial and subsequent parole consideration hearings described in this chapter and Penal Code sections 3040, et seq.

(b) Hearing panels shall not select a base term or calculate an adjusted base term for youth offenders.

(c) In addition to evaluating the factors of suitability and unsuitability found in sections 2281 and 2402, the hearing panel shall give great weight to the youth offender factors described in section 2241: (1) the diminished culpability of juveniles as compared to adults; (2) the hallmark features of youth; and (3) any subsequent growth and increased maturity of the inmate.

(d) The panel shall review and consider any written submissions that provide information about the youth offender at the time of his or her controlling offense or the youth offender's growth

and maturity while incarcerated from a youth offender's family members, friends, school personnel, faith leaders, or representatives from community-based organizations.

(e) A hearing panel shall find a youth offender suitable for parole unless the panel determines, even after giving great weight to the youth offender factors, that public safety requires a lengthier period of confinement because the circumstances of the commitment offense, when combined with the offender's pre- or post-incarceration history, or his or her current demeanor and mental state, indicate that the offender remains an unreasonable risk to public safety.

(f) If a hearing panel finds a youth offender unsuitable for parole, the panel shall impose a denial period in accordance with paragraph (3) of subdivision (b) of Penal Code section 3041.5.

(g) Nothing in this article is intended to alter the rights of victims at parole consideration hearings.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Sections 3041, 3041.5, 3046(c), 3051, and 4801(c), Penal Code; and Sections 2240, 2281, and 2402, California Code of Regulations, Title 15; *In re Lawrence (2008) 44 Cal.4th 1181, 1214.*

#### **§ 2447. Post-Hearing Procedures.**

(a) Decision Review. Panel decisions from parole consideration hearings for youth offenders are proposed decisions subject to review pursuant to subdivision (b) of Penal Code section 3041 and section 2041 of these regulations.

##### (b) Release.

(1) Notwithstanding any other provisions of this Chapter, if a grant of parole for a youth offender becomes final pursuant to subdivision (b) of section 3041, the youth offender shall be paroled regardless of the manner in which the board would normally set release dates pursuant to subdivision (a) of Penal Code section 3041, subject to Penal Code sections 3041.1 and 3041.2 as applicable.

(2) Any release of a youth offender on parole shall be subject to any applicable writs, detainers, holds, or warrants.

(c) Advancement of Next Hearing. When determining whether to advance a youth offender's next hearing following a petition to advance hearing date pursuant to subdivision (d) of Penal Code section 3041.5 or following an administrative review pursuant to paragraph (4) of subdivision (b) of Penal Code section 3041.5, commissioners and deputy commissioners shall consider the youth offender factors as defined in section 2441 of these regulations.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3051(e), 3052, and 5076.2, Penal Code. Reference: Sections 3041.1, 3041.2, 3041.5, 3046, and 3051, Penal Code; and Sections 2041 and 2042, California Code of Regulations, Title 15.