



Proposition 57: Indeterminately-Sentenced (Third Striker) Nonviolent Parole Process Frequently Asked Questions

(Updated December 2018)

Are indeterminately-sentenced nonviolent offenders eligible for the nonviolent parole consideration process under Proposition 57?

When the Proposition 57 regulations were adopted in May 2018, they excluded indeterminately-sentenced offenders (nonviolent Third Strikers) from the nonviolent parole consideration process. This exclusion was challenged in court, and on September 7, 2018, the Second District Court of Appeals ordered the department to amend its regulations and expand nonviolent parole consideration under Proposition 57 to include indeterminately-sentenced nonviolent offenders.

Has CDCR amended the current regulations?

On December 11, 2018, CDCR filed proposed emergency regulations with the Office of Administrative Law (OAL) to expand nonviolent offender parole consideration under Proposition 57 to include indeterminately-sentenced nonviolent offenders (nonviolent Third Strikers). If approved, this would create two separate processes for nonviolent offenders.

Note: A determinate term is a sentence of specified length. An indeterminate term is a sentence of unspecified length which ends only when the inmate is granted parole by the Board of Parole Hearings (the Board).

When will the proposed emergency regulations go into effect?

The proposed emergency regulations are under a public comment period. OAL will review and are expected to make their final decision on December 31, 2018. If OAL approves, the emergency regulations will be in temporary emergency effect, and will remain in effect for 160 days from the effective date.

Does the nonviolent Third Striker parole process being proposed differ from the one established under Proposition 57?

Yes. Per the proposed emergency regulations, the public safety screening criteria will be applied in the same manner as with determinately-sentenced offenders, but indeterminately-sentenced offenders referred to the Board will get a full in-person parole hearing. If they are granted parole, the decision will be reviewed by the Board and the Governor. A grant of parole may be vacated or rescinded. The current nonviolent parole consideration process for determinately-sentenced offenders consists of a paper review by Deputy Commissioners, and the Governor does not have the authority to review the decisions.

What is the eligibility process?

The proposed emergency regulations state that, in order to be eligible for parole consideration, an inmate must be considered to be an indeterminately-sentenced nonviolent offender. If an indeterminately-sentenced offender is determined to be eligible, he or she will be screened for



possible referral to the Board at least 180 calendar days prior to the day when they have served the full term of his or her primary offense.

The offender's primary term is defined as the longest term of imprisonment imposed by the court that is not an enhancement, consecutive sentence, or alternative term. For life terms imposed for nonviolent offenses under an alternative sentencing scheme, such as the "Three Strikes Law," CDCR will consider the aggravated term for the underlying nonviolent offense as the "term imposed by the court," as required by the Second District Court of Appeals' order. Within five days of passing the public safety screening, indeterminate-sentenced nonviolent offenders will be referred to the Board for a parole consideration hearing. If an offender does not pass CDCR's public-safety screening process, he or she will be screened again one year later.

If an indeterminate-sentenced nonviolent offender is eligible for parole consideration he or she will be scheduled for a parole hearing no later than one year from date of the offender's referral.

What will happen after the offender is referred to the Board?

Unlike the determinately-sentenced nonviolent parole process (see FAQ), the indeterminate-sentenced nonviolent parole process will consist of an in-person, full board hearing, similar to parole suitability hearings already undertaken by the Board for other life-term inmates, youth offenders, and inmates eligible for elderly parole. Parole hearing decisions are proposed decisions for up to 120 days and are subject to review by the Board's Chief Counsel. Offenders denied parole will be denied parole for a period of 3, 5, 7, 10, or 15 years under Marsy's Law. Offenders may have their next parole hearing date advanced if there is a change in circumstances or new information such that there is a reasonable likelihood that additional incarceration is no longer necessary to protect the victim and public.

Which inmates are eligible for the indeterminate-sentenced nonviolent parole process?

- To be considered an "indeterminate-sentenced nonviolent offender," the offender must be sentenced to an indeterminate term and must meet the following criteria:
 - Not condemned to death
 - Not serving life without the possibility of parole
 - Not serving a sentence for a violent felony as defined by California Penal Code section 667.5, subdivision (c).
 - Not serving a determinate term prior to beginning a life term for a violent felony.
 - Not serving a term for a nonviolent felony after completing a concurrent determinate term for a violent felony.
 - Not currently sentenced for a violent felony for an in-prison offense.
 - Has not completed an indeterminate term and is currently serving a determinate term for an in-prison offense.

How many offenders are eligible for the indeterminate-sentenced nonviolent parole process?



As of September 2018, there were approximately 3,000 offenders considered non-sex registrant, nonviolent Third-Strikers.

When are hearings anticipated to begin?

Hearings will begin in June of 2019. The Board will have until the end of 2020 to provide hearings for offenders who are immediately eligible for a hearing, have served 20 years, and who were already scheduled to have a parole hearing in the next five years based on their original sentence.

The Board will have until the end of 2021 to provide a hearing for all other offenders who will be immediately eligible for a hearing under this process.

Will the Governor review the decisions?

The Governor can review parole decisions and take no action, or refer the case for review by the full Board. The Governor can only overturn parole grants for people convicted of murder, which would not be applicable to indeterminately-sentenced nonviolent offenders under this process.