



Proposition 57: Determinately-Sentenced Nonviolent Parole Process Frequently Asked Questions

(Updated December 2018)

What is the Proposition 57 nonviolent parole process?

When Proposition 57 was overwhelmingly approved by California voters on November 8, 2016, it authorized the California Department of Corrections and Rehabilitation (CDCR) to develop regulations in conjunction with the Board of Parole Hearings (Board) that create a parole consideration process for determinately-sentenced nonviolent offenders who have served the full-term of their primary offense in state prison. That process began implementation on July 1, 2017, and the Proposition 57 regulations were finalized on May 1, 2018.

Proposition 57 does not create a right for nonviolent offenders to be released from prison. It gives the Board the authority to review eligible offenders in prison and, if they no longer pose an unreasonable threat of violence or threat of significant criminal activity, approve their release to community supervision.

What does the determinately-sentenced nonviolent parole process consist of?

Determinately-sentenced nonviolent offenders have served the full-term of their primary offense when they have served the longest term of imprisonment imposed by a court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence. The full-term of a primary offense does not include post-sentencing credits.

Are nonviolent Third Strike offenders included in the nonviolent parole consideration process?

When the Proposition 57 regulations were adopted in May 2018, they excluded life with parole offenders 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. On December 11, 2018, CDCR filed proposed emergency regulations with the Office of Administrative Law (OAL) to establish parole consideration for indeterminately-sentenced nonviolent offenders (nonviolent Third Strikers) under Proposition 57. . If approved, the emergency regulations filed on December 11, 2018 would create two separate processes for nonviolent offenders – one for determinately-sentenced nonviolent offenders and one for indeterminately-sentenced nonviolent offenders.

For the nonviolent Third Striker parole process, please see Indeterminately-Sentenced Nonviolent Parole Process Frequently Asked Questions.

How are eligible determinately-sentenced inmates referred to the Board?

If an inmate is determined to be an eligible determinately-sentenced nonviolent offender, he or she will be screened for possible referral to the Board no later than 35 days prior to serving the full term of his or her primary offense. Only those inmates who pass CDCR's rigorous public-



safety screening criteria will be referred to the Board. If an inmate does not pass the public-safety screening process, he or she will be screened again one year later.

How are eligible indeterminately-sentenced inmates referred to the Board?

If an inmate is determined to be an eligible indeterminately-sentenced nonviolent offender, he or she will be screened for possible referral to the Board no later than 180 days prior to serving the full term of his or her primary offense. Only those inmates who pass CDCR's rigorous public-safety screening criteria will be referred to the Board. If an inmate does not pass the public-safety screening process, he or she will be screened again one year later.

What is the notification process for inmates?

Eligible inmates are notified of the results of the public-safety screening process and, if referred to the Board, provided information about the nonviolent offender parole process. Determinately-sentenced nonviolent offenders will be informed of their opportunity to submit a written statement to the Board. Indeterminately-sentenced inmates will be informed of their rights in the parole hearing process, including their right to an attorney and to be present at their hearing.

Which inmates will be eligible?

All nonviolent inmates are eligible for the nonviolent parole consideration process except those who are:

- condemned;
- currently incarcerated for a term of life without the possibility of parole;
- currently incarcerated for a term of life with the possibility of parole for a violent felony, as defined by Penal Code 667.5(c);
- currently serving a term of incarceration for a violent felony or prior to beginning a term for an in-prison offense that is a violent felony;
- currently serving a term of incarceration for a nonviolent felony offense after completing a concurrent determinate term for a violent felony;
- convicted of a sexual offense that currently requires or will require registration as a sex offender under the Sex Offender Registration Act.

Can victims and prosecutors participate in the parole review process for determinately-sentenced inmates?

Yes. Within five business days of referral by CDCR, the Board will notify victims registered with CDCR's Office of Victim and Survivor Rights and Services and the prosecuting agency or agencies, and provide them an opportunity to submit a written statement. Recipients will have 30 calendar days after the Board issued the notification to submit a written statement to the Board.

Can victims and prosecutors participate in the parole review process for indeterminately-sentenced inmates?

Yes. Victims registered with CDCR's Office of Victim and Survivor Rights and Services and prosecutors will be notified of an inmate's parole hearing 90 days prior to the hearing and have the right to attend the hearing in person, by video-conferencing, and to submit written statements for the Board's consideration.



How does the Board reach a decision for determinately-sentenced nonviolent offenders?

A Deputy Commissioner at the Board conducts an administrative review to determine if the offender's release to community supervision would pose a current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity. The review will include information such as the offender's criminal history, institutional behavior, rehabilitation efforts, and any written statements received from the inmate, victims, or prosecutor. As in the nonviolent second-striker process, no hearing will be scheduled.

How does the Board reach a decision for indeterminately-sentenced nonviolent offenders?

A panel comprised of one or two commissioners and a deputy commissioner will conduct a full in-person hearing at the prison where the inmate is housed. The panel will consider all relevant and reliable information, including the inmate's criminal history, current commitment offenses, institutional behavior, rehabilitative programming, education, vocational training, parole plans, any input from the victims and prosecutor, the inmate's statements at the hearing, and results of a comprehensive risk assessment conducted by the Board's forensic clinical psychologists.

How soon will determinately-sentenced inmates be released to community supervision if approved by the Board?

CDCR will release approved determinately-sentenced nonviolent offenders 60 calendar days after the Board's decision. During that time, CDCR and the Board will conduct all statutorily required pre-release reviews, such as checks for warrants, detainers, or other legal holds. In addition, CDCR and the Board will conduct all statutorily required notifications, such as victim, prosecutor, and law enforcement notifications.

How soon will indeterminately-sentenced inmates be released to community supervision if approved by the Board?

Indeterminately-sentenced nonviolent offenders who are granted parole by the Board after a parole hearing are processed for release once the grant of parole becomes final, after the Board's review and review by the Governor. The Penal Code gives the Board up to 120 days to transcribe the recording of the hearing and review the decision, after which the Governor has 30 days to review the decision.

Who will supervise determinately-sentenced offenders approved for release to community supervision?

Supervision in the community will be conducted by the Division of Adult Parole Operations (DAPO) or a county probation department.

Can a Board decision be reversed?

Yes. Determinately-sentenced inmates may request review of a Board decision within 30 calendar days of the inmate being served the decision. The Board will then review the original decision and determine whether to uphold or vacate it. Inmates, registered victims, and prosecutors will be notified of the outcome. In addition, the Board may at any time prior to the inmate's release, review its decision if the decision contained an error of law, an error of fact, or



if the Board receives new information that would have materially impacted the previous decision had it been known at the time the decision was issued. For decisions rendered after a parole hearing, anyone may request that the decision be reviewed by the Board's Chief Counsel any time before the decision becomes final (up to 120 days following the hearing). The Board's legal office will review the decision to determine if there has been an error of law, an error of fact, or if there is new information that creates a substantial likelihood of resulting in a substantially different result upon re-hearing.

Can the Governor reverse the Board's decision?

No, unlike the Board's parole decisions regarding inmates convicted of murder, the Governor cannot reverse a grant of parole by the Board regarding indeterminate-sentenced nonviolent offenders. The Governor can, however, review the decision and refer it to the full Board for further review. Parole decisions regarding determinately-sentenced nonviolent offenders under Proposition 57 are not subject to gubernatorial review.

Have any offenders been released under the determinately-sentenced nonviolent parole process?

As of October 2018, 9,161 referrals have been made to the Board. Of those, 7,451 have been reviewed, with 1,576 approved (17%) for release and 5,875 denied.