

Staff Memorandum 2026-13
BPH Sentence Review Regulations, CDCR Restricted Housing Regulations, and Fiscal Costs of Incarceration for Elderly People

At its October 27, 2026, meeting, the Committee will consider several issues affecting California's incarcerated population, including the Board of Parole Hearings' new clemency-referral and recall-of-sentence regulations, restricted housing units, and alternatives to incarceration for individuals who are elderly, disabled, or have significant medical needs.

Table of Contents

Introduction.....	2
BPH Regulations on Commutation and Recall-of-Sentence Recommendations...	2
A. BPH review process.....	3
B. Recall and resentencing recommendations.....	4
C. Commutation recommendations.....	5
Solitary Confinement and Restricted Housing Units.....	5
A. Ashker litigation.....	6
B. The California Mandela Act and Governor Newsom's veto.....	6
C. CDCR's 2023 Restricted Housing reforms.....	7
D. CDCR's 2026 Emergency Regulations.....	8
E. Office of the Inspector General Review.....	8
Older Adults and Medically Vulnerable Individuals.....	10
A. California's aging prison population.....	10
B. Elderly parole.....	11
C. Compassionate release.....	12
D. Medical parole.....	13
E. Alternative Custody Program.....	14
F. Senate Bill 108 Report.....	14
G. CalAIM and community-based health care.....	16
Staff Recommendations.....	17
• Continue studying recent changes to solitary confinement.....	17
• Expand the Alternative Custody Program.....	17
Conclusion.....	17

Introduction

At its October meeting, the Committee will convene for the first time inside a California state prison. Consistent with that setting, the Committee will examine several issues that concern not only who California incarcerates and for how long, but what happens during lengthy periods of incarceration and how the correctional system should respond as circumstances change over time.

The three topics before the Committee reflect different aspects of that question. Recent changes to restricted housing rules raise questions about how prisons should maintain institutional safety and respond to serious misconduct while preserving humane conditions and opportunities for rehabilitation. New regulations adopted by the Board of Parole Hearings create a process for reconsidering the sentences of people who have already served decades in prison, based in part on their conduct, rehabilitation, and current risk to public safety. And California's growing population of older, disabled, and medically vulnerable incarcerated people raises questions about when continued incarceration remains necessary and whether some individuals can be safely cared for in less restrictive and less costly settings.

These issues are particularly relevant to the Committee's statutory mandate to recommend reforms that establish effective alternatives to incarceration and improve the state's parole system. Considering these issues from inside a California prison gives the Committee an opportunity to hear directly from people who experience the correctional policies it is examining.

BPH Regulations on Commutation and Recall-of-Sentence Recommendations

In its 2021 Annual Report, the Committee recommended a review process for people sentenced to life without parole.¹ Recently-effective regulations from the Board of Parole Hearings (BPH) have created such a process.

In March 2025, Governor Newsom, citing the high-profile cases of Erik and Lyle Menendez, announced plans to expand and codify a new clemency review process.² Clemency is a power given to the Governor in the California Constitution that allows a sentence to be commuted to a shorter length, a conviction to be pardoned, or a reprieve to be granted, temporarily delaying the execution of a sentence, such as a death sentence.³

¹ Committee on Revision of the Penal Code, 2021 Annual Report, 49–55.

² See Hannah Wiley, *Newsom Cites Menendez Brothers Case in Seeking Changes to Parole Board Process*, Los Angeles Times, March 10, 2025.

³ Cal. Const., art. V, § 8(a). See also *Santos v. Brown*, 238 Cal.App.4th 398, 413–414 (2015) (explaining that a commutation reduces punishment, a pardon provides relief from the legal consequences of a conviction, and a reprieve temporarily suspends execution of a sentence).

BPH began the formal rulemaking process in September 2025 and solicited comments from criminal justice organizations, correctional officials, victim advocates, and other stakeholders.⁴ Following the public comment period, BPH filed the final regulations with the Secretary of State on July 9, 2026, and they took effect on October 1, 2026.⁵ A lawsuit led by the Criminal Justice Legal Foundation challenging the validity of the regulations was filed in July 2026.⁶

The new process — which allows BPH to refer people for clemency and sentence review by a court — is similar to one that existed in California for people serving life without parole until it was discontinued more than 30 years ago.⁷

A. BPH review process

The regulations created a new review process for people who have served 25 years or more in prison — including those serving sentences of life without the possibility of parole — to determine whether they should receive a recommendation for commutation from the Governor and a recall and resentencing by the sentencing court under Penal Code section 1172.1.⁸ There are six categories of people excluded from consideration under the new review process, including people sentenced to death and people with a current or future Penal Code section 290 sex-offense registration requirement.⁹

After an initial eligibility screening and comprehensive risk assessment, BPH will hold a hearing to determine if the person meets the regulatory criteria for a recommendation.¹⁰ If so, BPH will issue recommendations to both the Governor for commutation and the sentencing court for recall and resentencing under Penal Code section 1172.1.¹¹

⁴ BPH RN 25-01 rulemaking file, Notice of Proposed Regulatory Action (Sept. 5, 2025) and Notice of Change to Text (re-noticed Feb. 20, 2026 – Mar. 9, 2026).

⁵ BPH RN 25-01, filed with the Secretary of State July 9, 2026, effective October 1, 2026.

⁶ See *Chavez et al. v. Board of Parole Hearings*, Sacramento County Superior Court No. 26WM000178.

⁷ Until 1994, California parole board regulations required review of people sentenced to life without parole for possible clemency recommendations. The regulation originally required review after 12 years of incarceration and every three years thereafter. In 1982, it was amended to require review after 30 years of incarceration, before being repealed in 1994. See *Ross v. Schwarzenegger* (E.D. Cal. 2008) 2008 WL 4937599, at *2 (describing former 15 CCR § 2817).

⁸ 15 CCR § 2840.

⁹ The remaining categories are: people expected to be released within three years; people whose controlling parole-eligible date has already passed; people who will become eligible for parole consideration under any law within three years; and people who already received a commutation during their current term. See 15 CCR § 2843(b).

¹⁰ Id. at §§ 2844, 2848, 2851.

¹¹ Id. at § 2858.

BPH estimates that approximately 2,500 people will be eligible for review when the rule takes effect on October 1, 2026, and that the number will grow to about 4,000 people by 2035.¹²

B. Recall and resentencing recommendations

A court considering recall under Penal Code section 1172.1 must consider specified postconviction factors, including the person's rehabilitation and disciplinary records, age and time served, changes in circumstances since the original sentencing, and other factors relevant to whether continued incarceration remains in the interests of justice.¹³

If the recall referral is from BPH, the court must apply a presumption favoring recall and resentencing, which can only be overcome if it finds the person currently poses an "unreasonable risk of danger to public safety."¹⁴ If resentencing is granted, the court must apply current Judicial Council sentencing rules and any ameliorative changes in sentencing law.¹⁵

Resentencing courts can also vacate the underlying conviction and impose judgment on a necessarily included or lesser related offense.¹⁶ This authority can be particularly significant for people serving life without parole based on special circumstances found true after the enactment of Penal Code section 1385.1 in 1990, which prohibits courts from striking or dismissing a special circumstance.¹⁷ A recent appellate court decision held that section 1385.1 did not prevent a resentencing court from vacating first-degree murder convictions and imposing judgment for second-degree murder, thereby causing the special circumstance findings to fall off by operation of law rather than being dismissed by the court.¹⁸ The court must state on the record its reasons for granting or denying recall.¹⁹

When recall is sought through stipulation of the parties without a hearing, victims must be notified that resentencing is being requested. If a victim wishes to be heard, they must notify the prosecution within 15 days, at which point the court must allow them to be heard.²⁰ Marsy's Law independently guarantees

¹² See BPH RN 25-01 Initial Statement of Reasons, 13.

¹³ Penal Code § 1172.1(a)(5).

¹⁴ Penal Code § 1172.1(b)(2). The public safety risk is the risk of committing a new "super strike" as defined in Penal Code § 1170.18(c).

¹⁵ Penal Code § 1172.1(a)(2).

¹⁶ Penal Code § 1172.1(a)(3)(B).

¹⁷ Penal Code § 1385.1. This section was enacted as part of Proposition 115 in 1990.

¹⁸ *People v. Frederickson*, 116 Cal.App.5th 910 (2025).

¹⁹ Penal Code § 1172.1(a)(7).

²⁰ Penal Code § 1172.1(a)(8)(B).

crime victims the right to be heard “upon request” at any proceeding involving a post-conviction release decision.²¹

C. Commutation recommendations

Unlike recall and resentencing, commutation remains an executive clemency decision committed to the Governor’s discretion. The California Constitution authorizes the Governor to grant commutation “on conditions the Governor deems proper,” and the California Supreme Court has described this as an “act of grace” exercised for reasons of the Governor’s own choosing.²² As a result, decisions to grant or deny clemency are generally not subject to judicial review on the merits.²³ Before the new regulations were adopted, the Penal Code already granted BPH the authority to make clemency recommendations to the Governor.²⁴ However, the new rules formalize the process and *require* BPH to consider whether to make recommendations for eligible incarcerated people.²⁵

If an applicant has two or more felony convictions, however, the Governor may not grant commutation without the concurrence of the majority of the California Supreme Court.²⁶ In addition, Penal Code section 4805 requires the applicant to provide the prosecuting agency at least 10 days’ notice before the Governor takes any action on an application for commutation, after which the prosecutor is required to make reasonable efforts to notify victims and their families, who may then submit written recommendations to the Governor supporting or opposing the request.²⁷

Solitary Confinement and Restricted Housing Units

Restricted housing, also known as solitary confinement or segregated confinement, refers to the maximum-security housing units the California Department of Corrections and Rehabilitation (CDCR) uses to separate vulnerable populations and certain people who violate prison rules from the prison’s general population. People housed in restricted housing have more restrictions and fewer privileges than those in the general population. Research has linked solitary confinement to adverse psychological effects, including depression, anxiety, and psychological distress, as well as an increased risk of self-harm.²⁸ Studies also suggest that social isolation is an important contributor

²¹ Cal. Const. art. I, § 28.

²² Cal. Const., art. V, § 8(a). See also *Santos v. Brown*, 238 Cal.App.4th 398, 419 (2015).

²³ *Id.*

²⁴ See Penal Code §§ 4801, 4812(b).

²⁵ 15 CCR §§ 2841(a), 2844(b)-(c).

²⁶ Cal. Const., art. V, § 8(a).

²⁷ Penal Code § 4805.

²⁸ See Bruce Western et al., *Solitary Confinement and Institutional Harm*, Incarceration, Vol. 3 (1) (2022). See also Andreea Matei, *Solitary Confinement in US Prisons*, Urban Institute (2022).

to these harms, particularly for people with preexisting mental health conditions.²⁹

A. Ashker litigation

In 2015, CDCR entered into a settlement in a federal class action brought on behalf of people who had spent at least a decade in isolation at Pelican Bay State Prison.³⁰ The settlement was intended to end solitary confinement based solely on gang affiliation, limit the length of time a person could remain in solitary confinement, and provide a non-isolating alternative for certain people who continued to violate prison rules on behalf of a gang.³¹ Federal court oversight of the settlement continued for several years after the court found continuing problems with CDCR's compliance, including violations of incarcerated people's due process rights.³²

B. The California Mandela Act and Governor Newsom's veto

Against this backdrop, in 2022, the Legislature passed Assembly Bill 2632, the California Mandela Act, which would have limited the use of segregated confinement in state prisons, county jails, and other detention facilities to no more than 15 consecutive days and no more than 45 days in a 180-day period.³³ CDCR estimated that implementing the bill would require approximately \$1.3 billion in one-time infrastructure costs — equivalent to about 9% of its annual budget at the time — and approximately \$200 million in additional annual staffing costs, or about 1.4% of its annual budget.³⁴ The Senate Appropriations Committee also estimated potential costs to counties in the tens of millions of dollars.³⁵

Although the Legislature passed the bill, Governor Newsom vetoed it.³⁶ In his veto message, the Governor expressed support for limiting the use of segregated

²⁹ Id.

³⁰ Settlement Agreement, *Ashker v. Governor*, No. 4:09-cv-05796-CW (N.D. Cal., Sept. 1, 2015), Dkt. No. 424-2. See also Assembly Committee on Public Safety, Bill Analysis of AB 2632, April 19, 2022; Senate Committee on Public Safety, Bill Analysis of AB 2632, June 28, 2022.

³¹ Id.

³² Order Granting Plaintiffs' Motion to Extend the Settlement Agreement, *Ashker v. Newsom*, No. 4:09-cv-05796-CW (RMI) (N.D. Cal. Jan. 25, 2019), Dkt. No. 1122; Order Extending the Settlement Agreement, *Ashker v. Newsom*, No. 4:09-cv-05796-CW (N.D. Cal. Feb. 2, 2022). See also Assembly Committee on Public Safety, Bill Analysis of AB 2632, April 19, 2022; Senate Committee on Public Safety, Bill Analysis of AB 2632, June 28, 2022.

³³ Assembly Bill 2632 (Holden 2022).

³⁴ See Senate Committee on Appropriations, *Analysis of Assembly Bill No. 2632*. See also Legislative Analyst's Office, *The 2022–23 California Spending Plan: Judiciary and Criminal Justice* (Sept. 26, 2022) (the 2022–23 budget provided \$14.4 billion for CDCR).

³⁵ Senate Committee on Appropriations, Analysis of AB 2632 (July 29, 2022).

³⁶ Governor Newsom veto message re: AB 2632 (Sept. 29, 2022).

confinement, but concluded that the bill's standards were overly broad and could risk the safety of incarcerated people and prison staff.³⁷ After vetoing the bill, the Governor directed CDCR to develop regulations that would restrict the use of segregated confinement to limited circumstances, such as when the individual has been found to have engaged in violence in the prison.³⁸

C. CDCR's 2023 Restricted Housing reforms

In response, CDCR adopted significant regulatory changes that restructured its restricted housing system and aimed to improve conditions within the units and reduce the number of people sent there.³⁹ The regulations consolidated the department's six types of segregated housing units into three categories, based largely on the incarcerated person's mental health level of care.⁴⁰ They also reduced the number of in-prison offenses that could make a person eligible for restricted housing from 32 to 18.⁴¹ The removed offenses were primarily non-violent or lower-level violations, including distribution of controlled substances and less serious acts of violence against other incarcerated people.⁴² The offenses retained on the list included homicide, more serious physical violence between incarcerated people, all violence against staff and non-incarcerated people, and possession of a weapon.⁴³

The regulations also reduced restricted housing terms by approximately half and eliminated the practice of stacking consecutive terms.⁴⁴ Under the new framework, the maximum determinate restricted housing term was changed to 24 months.⁴⁵ In addition, the regulations created an incentive system allowing incarcerated people to earn reductions in their restricted housing terms by participating in voluntary rehabilitative programming, mental health group

³⁷ Id.

³⁸ Id.

³⁹ CDCR, *Notice of Change to Regulations No. 23-15, Restricted Housing Units* (December 15, 2023).

⁴⁰ CDCR consolidated six former types of segregated housing — Administrative Segregation Units, Security Housing Units, Psychiatric Services Units, Administrative Segregation Unit EOP Hubs, Short-Term Restricted Housing, and Long-Term Restricted Housing — into three categories: General Population Restricted Housing Units for people who are not part of CDCR's Mental Health Services Delivery System; Correctional Clinical Case Management System (CCCMS) Restricted Housing Units for people with diagnosed psychiatric disorders who do not require a higher level of care; and Enhanced Outpatient Program (EOP) Restricted Housing Units for people who require more intensive mental health treatment. Office of the Inspector General, *Special Review: CDCR's Implementation and Compliance With Reforms Governing Restricted Housing Units*, No. SR-25-01, 3–4 (May 2026) ("OIG Report").

⁴¹ OIG Report at 3.

⁴² Id. at 17.

⁴³ Id. at 3, 49–50 (Appendix B).

⁴⁴ Id. at 4.

⁴⁵ Id.

treatment, therapeutic programming, or social life skills programs.⁴⁶ For every 20 hours of qualifying programming completed, incarcerated people may earn a five-day reduction in their restricted housing term, up to a maximum of 25 percent of the imposed term.⁴⁷ Finally, the regulations standardized out-of-cell time by requiring a minimum offering of 20 hours per week and expanded access to rehabilitative programming.⁴⁸

These regulations became effective November 1, 2023.

D. CDCR's 2026 Emergency Regulations

In May 2026, citing increases in institutional violence and drug overdoses following implementation of the reforms, CDCR filed emergency regulations to modify the restricted housing system.⁴⁹ In the rulemaking notice accompanying the proposal, CDCR stated that it “must dial back reforms made in the previous regulations.”⁵⁰ Among other changes, the emergency regulations restored restricted housing eligibility for distribution of controlled substances and certain repeated batteries against incarcerated people without serious injury, increased the length of restricted housing terms for several serious violations, and permitted staff to temporarily restrict tablet communication and entertainment services for minor misconduct without issuing a formal rules violation report.⁵¹

E. Office of the Inspector General Review

Around the same time as CDCR filed the emergency regulations, the Office of the Inspector General — an independent state agency that provides some oversight of CDCR — issued a Special Review evaluating implementation of the restricted housing reforms at four institutions between November 2021 and December 2025.⁵² The review found that incidents of violence, staff use of force, and rules violations had increased following implementation of the reforms, while also documenting substantial compliance problems with several of the new

⁴⁶ Id. at 5.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ California Department of Corrections and Rehabilitation, *Initial Statement of Reasons, Restricted Housing Units and Incarcerated Person Privilege Groups*, NCR No. 26-04, 1 (May 22, 2026). The initial regulations expired in October 2026 but were renewed through December 2026. See State of California Office of Administrative Law, Notice of Emergency Regulatory Action, OAL Matter Number 2026-0917-05, October 6, 2026.

⁵⁰ California Department of Corrections and Rehabilitation, *Initial Statement of Reasons, Restricted Housing Units and Incarcerated Person Privilege Groups*, NCR No. 26-04, 1 (May 22, 2026).

⁵¹ 15 CCR § 3337(g); CDCR, *Initial Statement of Reasons, Restricted Housing Units and Incarcerated Person Privilege Groups* (May 22, 2026).

⁵² OIG Report.

requirements.⁵³ For example, some restricted housing units — particularly those housing incarcerated people receiving mental health services — frequently failed to provide the required minimum out-of-cell time and therapeutic programming.⁵⁴ The report also identified deficiencies in recordkeeping, delays in required administrative reviews and classification hearings, and continuing overcrowding and transfers involving restricted housing units.⁵⁵

Although the Inspector General concluded that changes to the restricted housing regulations likely contributed to the increase in violence, the report cautioned that multiple factors — including the prison drug trade and changes in the incarcerated population — may also have played a role and that with only two years of data, it was difficult to determine whether the increase would continue.⁵⁶ Notably, rule violations were rising before the regulations were changed, and increased for both offenses removed from the restricted housing term matrix and offenses that remained after the change.⁵⁷

Rules violation reports, November 2021–October 2025

On November 1, 2023 CDCR regulations went into effect that removed restricted housing as a punishment for 14 rules violations. 18 other rules violations continued to allow such punishment.

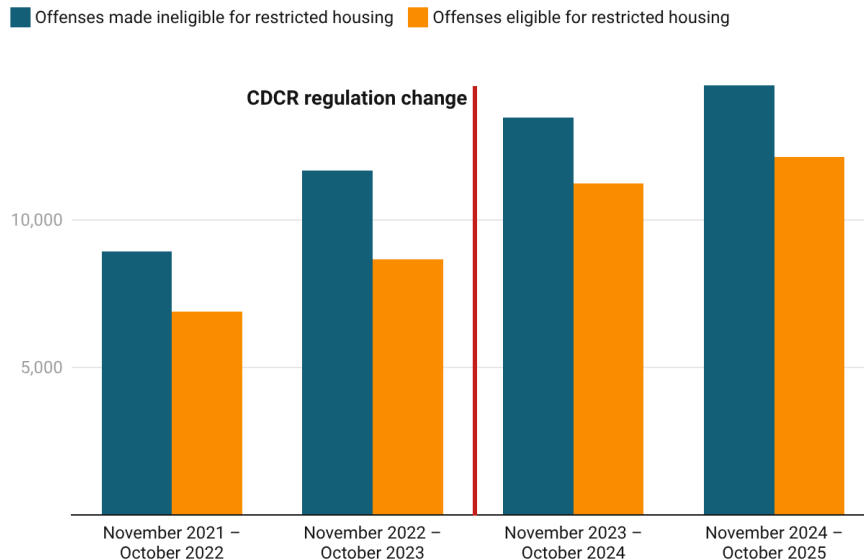


Chart: Committee on Revision of the Penal Code • Source: Office of the Inspector General, Special Review: The California Department of Corrections and Rehabilitation's Implementation and Compliance With Reforms Governing Restricted Housing Units, Table 3 (May 2026) • Created with Datawrapper

⁵³ Id. at 14–15, Figure 4 (use-of-force incidents rose from a low of 86 in November 2022 to 174 by June 2025); 15–16, Table 2 (force and violence incident reports at the four reviewed prisons rose from 3,259 from November 2021 to October 2023 to 4,800 from November 2023 to October 2025; 18, Table 3 (violations for the 14 removed offenses rose from 8,939 to 14,563, a 63% increase). Violations for the 18 retained offenses rose from 6,885 to 12,130, a 76% increase.

⁵⁴ Id. at 24, 26, 32–33.

⁵⁵ Id. at 34–39.

⁵⁶ Id. at 13, 17, 19.

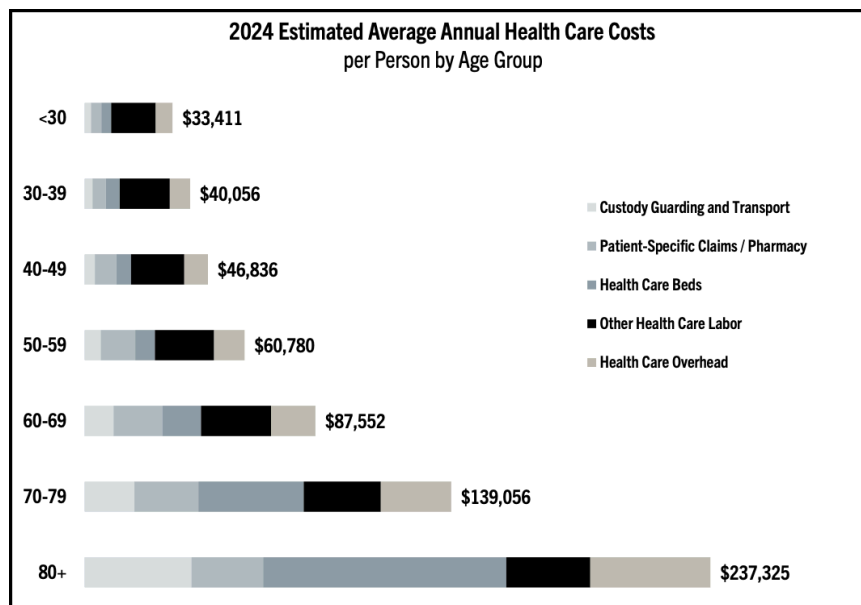
⁵⁷ Id. at 17–18.

Older Adults and Medically Vulnerable Individuals

A. California's aging prison population

California's prison population has grown substantially older over the past decade, creating new challenges for the state's correctional system. As of December 2025, approximately 20% of incarcerated people were 55 or older, compared with only about 7% in 2010 — even as there are about 75,000 fewer people in prison overall.⁵⁸ Older incarcerated people also account for a disproportionate share of correctional health care costs. According to CDCR, individuals 60 and older comprised approximately 14% of the prison population in 2024 but accounted for 27% of health care expenditures.⁵⁹

This chart, prepared by CDCR as part of a recent report ordered by the Legislature, shows health care costs by age group in 2024⁶⁰:



Recognizing these trends, the Legislature has increasingly examined alternatives to incarceration for individuals who are advanced in age, disabled, or have significant medical needs. Although California has established several mechanisms intended to allow appropriate individuals to complete their sentences outside prison or obtain earlier release, each program has distinct eligibility requirements and practical limitations.

⁵⁸ See CDCR *Alternatives to Incarceration for Individuals Who Are Advanced in Age, Disabled, or Have Significant Medical Needs*, 2 (March 2026) (“SB 108 Report”).

⁵⁹ Id. at 3.

⁶⁰ Id., Figure 1.

B. Elderly parole

California's Elderly Parole Program allows certain older incarcerated people to receive parole consideration after serving lengthy prison terms. The program currently operates under two separate eligibility standards.

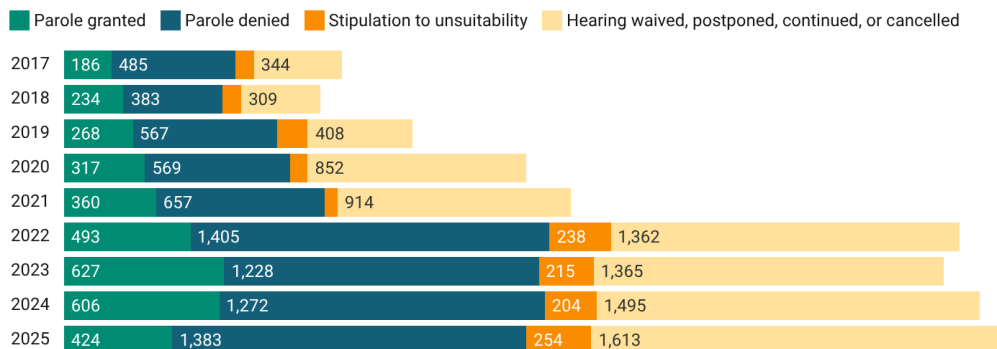
The broader statutory program, codified in Penal Code section 3055, generally provides parole consideration for individuals who are at least 50 years old and have served at least 20 years of continuous incarceration, but excludes people sentenced under the Three Strikes law, those sentenced to life without the possibility of parole or death, and people convicted of first-degree murder of a peace officer.⁶¹

People excluded from the statutory program may still be eligible for parole consideration under an earlier court-ordered process established by the federal three-judge court in the *Plata* and *Coleman* litigation, which requires an individual to be at least 60 years old and to have served at least 25 years.⁶²

Release is not automatic under either pathway. Eligible individuals must still demonstrate to BPH that they no longer pose an unreasonable risk to public safety.⁶³ The parole board must “give special consideration to whether age, time served, and diminished physical condition, if any, have reduced the elderly inmate’s risk for future violence.”⁶⁴

Between 2017 and 2025, more than 20,000 people were eligible for an elderly parole hearing; 3,515 people were granted elderly parole, a grant rate of 16%.

Results of scheduled elderly parole hearings, 2017–2025



Effective 2021, eligibility for elderly parole was expanded by AB 3234. Newly-eligible people were required to have a hearing by the end of 2022, which accounts for the large increase in scheduled hearings beginning in 2022.

Chart: Committee on Revision of the Penal Code • Source: Board of Parole Hearings, Report of Significant Events reports for 2017–2025 • Created with Datawrapper

⁶¹ See Penal Code § 3055.

⁶² See *Coleman v. Brown*, 90-CV-00520, February 10, 2014 order, ¶ 4(e).

⁶³ 15 CCR § 2449.42(c); Penal Code § 3055(c).

⁶⁴ Penal Code § 3055(c). These factors are not entitled to “great weight,” like similar age-related factors are in youth offender parole hearings. 15 CCR 2447(a).

According to CDCR, the three-year reconviction rate for individuals released through the Elderly Parole Program in fiscal year 2019–20 was approximately 1.8% — meaning 4 people had been reconvicted of a new offense out of 221 people who had been released.⁶⁵

The Elderly Parole Program has also faced renewed legislative scrutiny. Following several parole decisions involving individuals convicted of sexual offenses against children, lawmakers introduced multiple bills during the 2025–2026 Legislative Session that would have narrowed eligibility for elderly parole by increasing the minimum age and years served or by restricting eligibility for certain offenses. One measure, Assembly Bill 2727 (Nguyen), was enacted and signed by the Governor.⁶⁶ Beginning in 2027, it will require people convicted of specified sexual offenses to be at least 65 years old and have served at least 25 years of continuous incarceration to qualify for elderly parole.⁶⁷ Other proposals would have increased the minimum age or years served more broadly or excluded additional categories of offenses, but did not pass.⁶⁸

C. Compassionate release

Penal Code section 1172.2 authorizes courts to recall a sentence of an incarcerated person who is terminally ill or permanently medically incapacitated when specified statutory criteria are met.⁶⁹ For terminal illness, the person must have a serious and advanced illness with an end-of-life trajectory, and the court must presume that recall and resentencing are appropriate unless it finds that the person poses an unreasonable risk of danger to public safety based on their current physical and mental condition.⁷⁰ For permanent medical incapacitation, the person must have a medical condition or functional impairment that permanently prevents them from performing basic activities of daily living, or progressive end-stage dementia, provided the incapacitation did not exist at the time of sentencing, and the court must likewise apply the presumption favoring recall and resentencing.⁷¹ The statute also requires CDCR to submit medical evaluations and a postrelease plan as part of its recommendation to the court.⁷²

⁶⁵ CDCR, *Recidivism Rates for Individuals Released Through Board of Parole Hearings Processes in Fiscal Year 2019–20*, 6, Table 4 (July 2025).

⁶⁶ AB 2727 (Nguyen 2026).

⁶⁷ Id.

⁶⁸ See SB 356 (Jones 2026); AB 2570 (Lackey & Hoover 2026); SB 1278 (Niello & Jones 2026); AB 47 (Nguyen 2026); SB 286 (Jones 2025).

⁶⁹ Penal Code § 1172.2. The program was first enacted in 1997. See generally *People v. Loper*, 60 Cal.4th 1155, 1160–1161 (2015). People sentenced to life without parole or death are not eligible. Penal code § 1172.2(o).

⁷⁰ Penal Code § 1172.2(b)(1). See also *People v. Multani*, 106 Cal.App.5th 1334, 1343–1345 (2024).

⁷¹ Penal Code § 1172.2(b)(2).

⁷² Penal Code § 1172.2(h).

In practice, compassionate release is used relatively infrequently because applicants must satisfy narrow statutory requirements and often face practical barriers, including the availability of appropriate housing and medical placements following release.⁷³

In 2023 and 2024 combined, CDCR referred 238 people to superior courts for compassionate release. Of those referrals, 174 were granted, 43 were denied, 18 people died before the court acted on the referral, and three remained pending at the time of the respective reports.⁷⁴

D. Medical parole

Medical parole was established by SB 1399 in 2010, while California was facing federal litigation over constitutionally inadequate medical care and prison overcrowding.⁷⁵ At the time the Legislature considered the bill, a federal three-judge court in the *Plata/Coleman* litigation had ordered California to reduce its prison population, and that order was pending before the U.S. Supreme Court.⁷⁶ In 2014, the same three-judge court ordered the state to expand the medical parole program, creating what is now known as “expanded medical parole.”⁷⁷

Medical parole authorizes the placement of certain permanently medically incapacitated incarcerated people in licensed health care facilities in the community while they remain under the jurisdiction of CDCR.⁷⁸ Unlike compassionate release, medical parole does not terminate the underlying sentence.⁷⁹ The implementation of medical parole has been complicated by conflicts between correctional supervision requirements and health care facility licensing rules, as well as limitations on federal reimbursement for individuals who remain legally incarcerated.⁸⁰

CDCR reported in March 2026 that its expanded medical parole program had been suspended.⁸¹

⁷³ See *SB 108 Report*, 14.

⁷⁴ Judicial Council of California, *Report on the Compassionate Release Program*, 1–3 (February 26, 2026); Judicial Council of California, *Report on the Compassionate Release Program*, 1–3 (January 1, 2024). Note that these reports exclude people never referred to court because they lacked a postrelease plan required by statute. Penal Code § 1172.2(h).

⁷⁵ Senate Bill 1399 (Leno, 2010).

⁷⁶ See Assembly Committee on Public Safety, *Analysis of Senate Bill No. 1399*, 6–8 (June 23, 2010).

⁷⁷ See CDCR, *Medical Parole*.

⁷⁸ See Penal Code § 3550

⁷⁹ Penal Code § 3550(h).

⁸⁰ See *SB 108 Report*, 15–16.

⁸¹ *Id.* at 15.

E. Alternative Custody Program

CDCR also operates an Alternative Custody Program (ACP), which allows eligible incarcerated people to serve up to the final 12 months of their sentence in the community under electronic monitoring and parole supervision.⁸² Participants may reside in a private residence, transitional care facility, or residential treatment program.⁸³

Eligibility generally limits participation to individuals serving determinate sentences who pose a low risk to public safety. Individuals with current serious or violent felony convictions, sex offender registration requirements, or a high assessed risk of committing a violent offense are ineligible, while prior serious or violent felony convictions are considered on a case-by-case basis.⁸⁴

The Alternative Custody Program has become increasingly integrated with CDCR's Male Community Reentry Program (MCRP) and Female Community Reentry Program (FCRP).⁸⁵ Recent CDCR population reports indicate that participation in the traditional Alternative Custody Program has declined substantially over the past several years, while participation in MCRP and FCRP has increased.⁸⁶ This is in part because under current rules, an incarcerated person can only get into an ACP by applying from an MCRP or FCRP.⁸⁷ However, the Penal Code provides that ACP is only available to people who are not currently serving a sentence for a serious or violent felony, and have not been convicted of an offense which requires registration as a sex offender, which significantly limits who the program reaches.⁸⁸

F. Senate Bill 108 Report

In 2024, Senate Bill 108 directed CDCR to prepare a report for the Legislature on alternatives to incarceration for individuals who are advanced in age, disabled, or have significant medical needs.⁸⁹ CDCR submitted the report in March 2026.

⁸² See Penal Code § 1170.05; 15 CCR §§ 3078.2(b) & 3078.5(a)–(b).

⁸³ See Penal Code § 1170.05(b); 15 CCR § 3078.1(a)(1).

⁸⁴ Penal Code § 1170.05(c)–(d); 15 CCR §§ 3078.2, 3078.3(a)–(b).

⁸⁵ CDCR, *Alternative Custody Program*.

⁸⁶ See CDCR Office of Research, *Weekly Report of Population*, reports dated July 13, 2022, March 20, 2024, February 4, 2025, October 15, 2025, April 1, 2026.

⁸⁷ See CDCR, *Alternative Custody Program*.

⁸⁸ Penal Code § 1170.05(d)(1)–(3).

⁸⁹ Senate Bill 108 (Wiener) (Item 5225-002-0001, Provision 10) (“The Department of Corrections and Rehabilitation shall work in collaboration with other state agencies, community-based service providers, and other stakeholders as determined by the department, to develop a report focused on alternatives to incarceration for individuals who are advanced in age, disabled, or have significant medical needs. Alternatives may include identifying community correctional reentry centers, Medi-Cal offset possibilities, and the development of new community-based programs, among other alternatives as determined by the department. The report may also

The report identified approximately 9,300 incarcerated people falling within this focus population.⁹⁰ More than three-quarters were 65 or older, most had multiple chronic medical conditions, nearly half had diagnosed mental illness, and more than half had a physical disability.⁹¹ At the same time, the report observed that many members of this population remain ineligible for existing release mechanisms because of their commitment offenses or statutory exclusions. Approximately 86% had been convicted of a violent offense, and nearly half were subject to sex offender registration requirements — two factors that the report identified as significant barriers to community placement.⁹²

The report also described practical obstacles that continue to limit the use of existing release mechanisms. These include difficulty securing appropriate housing and medical placements, challenges identifying community providers willing to accept formerly incarcerated individuals with significant medical needs, and statutory eligibility requirements that exclude some individuals who otherwise appear to present a low risk of reoffending.⁹³ The report includes several anonymized case studies illustrating situations in which incarcerated people appeared to satisfy the policy objectives underlying compassionate release or other alternatives to incarceration but remained in prison because they did not meet the technical statutory requirements or lacked an appropriate release plan.⁹⁴

Rather than recommending specific legislative changes, the report identifies several broad areas for legislative consideration:⁹⁵

- Addressing barriers to placement for people required to register as sex offenders.
- Increasing transitional housing.
- Incentivizing long-term care facilities to accept justice-involved patients.

identify potential changes the department has or is considering to existing programs, such as the compassionate release, medical parole, and elderly parole programs, to the extent any changes are considered, and any limitations to changes considered. The alternatives shall address the growing number of incarcerated individuals who are advanced in age, disabled, or have significant medical needs. In evaluating the alternatives, the department shall assess the potential to reduce departmental costs, provide the appropriate treatment settings required, challenges faced, and recommendations for accompanying statutory or policy changes that would facilitate the alternatives explored. The department shall provide the report to the Legislature on or before March 1, 2026.”).

⁹⁰ *SB 108 Report*, 5.

⁹¹ *Id.* at 5–6.

⁹² *Id.* at 6.

⁹³ *Id.* at 11–14.

⁹⁴ *Id.* at 12, 14, 16 (Patient Stories A, B, and C).

⁹⁵ *Id.* at 12–16.

- Revising medical parole to address placement and federal funding barriers and additional resources needed by the Board of Parole Hearings and Division of Adult Parole Operations

G. CalAIM and community-based health care

Recent changes to Medi-Cal may help address some of the barriers to community placement identified in the SB 108 report. As part of California Advancing and Innovating Medi-Cal (CalAIM) — a Department of Health Care Services initiative to better coordinate care for Medi-Cal members with complex needs — the state has expanded Medi-Cal services for people transitioning from incarceration.⁹⁶ Assembly Bill 133 (2021) required counties to establish a pre-release Medi-Cal enrollment process for people in county jails and youth correctional facilities.⁹⁷ California later obtained federal approval to provide certain Medi-Cal services to eligible people in state prisons, county jails, and youth correctional facilities during the 90 days before their release.⁹⁸ The CalAIM Justice-Involved Reentry Initiative is now operational at all 31 state prisons.⁹⁹

CalAIM also provides Enhanced Care Management (ECM) to Medi-Cal members transitioning from incarceration who have complex health or social service needs.¹⁰⁰ ECM assigns a lead care manager to coordinate physical and behavioral health care, substance-use treatment, social services, and other health-related needs.¹⁰¹ Care management can begin before release to connect the individual to community-based providers and ensure continuity of care after release. People may also be eligible for other Medi-Cal Community Supports that address health-related social needs.¹⁰²

These developments may be particularly relevant to older adults and medically vulnerable individuals who could otherwise be appropriate for release but require substantial medical care and assistance in the community. Although CalAIM does not expand eligibility for elderly parole, compassionate release, medical parole, or other release mechanisms, its expanded coverage and care-coordination services may provide additional options for developing viable release plans for medically complex individuals.

⁹⁶ See generally Welfare and Institutions Code §§ 14184.100–14184.900.

⁹⁷ Assembly Bill 133 (Committee on Budget 2021). See also Welfare and Institutions Code § 14184.800; Penal Code § 4011.11.

⁹⁸ California Department of Health Care Services, *From Incarceration to Care: California's Medi-Cal Reentry Initiative*, 2 (March 2026).

⁹⁹ *Id.* at 3.

¹⁰⁰ California Department of Health Care Services, *Enhanced Care Management Policy Guide*, 31–32 (2026).

¹⁰¹ California Department of Health Care Services, *Justice-Involved Reentry Initiative: Resources*.

¹⁰² California Department of Health Care Services, *Enhanced Care Management and Community Supports*.

Staff Recommendations

- **Continue studying recent changes to solitary confinement.**
CDCR's 2026 emergency regulations significantly changed reforms that had been in effect for only a few years, and important questions remain about the causes of increased violence and the effects of both the earlier reforms and the recent changes. If the Committee is interested, staff can continue monitoring implementation and return to the issue next year.
- **Expand the Alternative Custody Program.**
Give CDCR greater flexibility to determine eligibility for the Alternative Custody Program. Current law categorically excludes broad groups of incarcerated people based on their conviction or sentence, even when CDCR might otherwise determine that an individual can be safely placed in the community. The Legislature should remove or narrow these categorical exclusions and allow CDCR greater discretion to determine eligibility based on individualized assessments of public safety risk and suitability for community placement.

Conclusion

The issues examined in this memorandum reflect ongoing questions about how California manages incarceration over time — from conditions within prison, to reconsideration of lengthy sentences, to alternatives to incarceration for people whose age or medical condition has substantially changed. The perspectives of incarcerated people, together with the Committee's discussion of these issues, will help inform whether additional legislative changes are warranted.

Respectfully submitted,

Thomas M. Nosewicz
Legal Director

Rick Owen
Senior Staff Counsel