



Please Note: The information contained in this Guide is not intended as legal advice in any individual's case. There are many exceptions and variations in the parole consideration process. If you have questions, please consult with an experienced parole attorney.

FRANKLIN PROCEEDING FREQUENTLY ASKED QUESTIONS

1. What is a *Franklin* proceeding?

A *Franklin* proceeding is an opportunity for you to go to court in order to present mitigating evidence related to your youthfulness if you were under the age of 26 at the time of your commitment offense.¹ While it is commonly referred to as a “*Franklin* hearing,” the proper term is “proceeding” because a judge is not making a decision based on law or fact in a *Franklin* proceeding, as they might in a hearing.² Rather, the purpose of the proceeding is simply to compile evidence for the Board of Parole Hearings (“the Board”) to consider at your Youth Offender Parole Hearing, where the Board is required to give “great weight” to how your youth factors may have impacted your decision to participate in the commitment offense.

The reason for *Franklin* proceedings is that, in a Youth Offender Parole Hearing, the Board is required to give “great weight” to the “hallmark features of youth” when holding a hearing for someone who was under the age of 26 at the time of their commitment offense. (Penal Code § 4801.) This requirement is based on the landmark United States Supreme Court case, *Miller vs. Alabama*, which established that young people who commit harm must have their sentences considered

¹ *People v. Franklin* (Cal. 2016) 370 P.3d 1053, 1060.

² “*Franklin* processes are more properly called ‘proceedings’ rather than ‘hearings.’ A hearing generally involves definitive issues of law or fact to be determined with a decision rendered based on that determination.” *In re Cook* (2019) 7 Cal.5th 439, 450.

differently from adults because of the “hallmark features” of their youthfulness, such as “recklessness,” “impulsivity,” and vulnerability to “negative influences and outside pressures.”³

Before the *Miller* decision, people did not necessarily have an opportunity to present mitigating evidence related to their youthfulness to a judge and so evidence of someone’s youth was not always available in the record. In California, *Franklin* proceedings provide the opportunity to gather and present that evidence to a court and the Board after the fact.

A *Franklin* proceeding is **not**:

- A new trial
- An opportunity to be resentenced
- A hearing that results in the judge making a ruling (this is why it is called a *proceeding* and not a *hearing*.)

The purpose of a *Franklin* proceeding is ultimately very limited: to build a record of your youthfulness at the time of the commitment offense so that it may be considered as mitigating evidence by the Board at your parole hearing.

2. Who is eligible for a *Franklin* proceeding?

You are eligible for a *Franklin* proceeding if you:

- Were under the age of 26 at the time of your commitment offense
- Are entitled to a Youth Offender Parole Hearing; and
- Did not have mitigating evidence related to your youthfulness considered at your trial

3. What is the procedure for obtaining a *Franklin* proceeding?

³ *Miller v. Alabama* (2012) 567 U.S. 460, 471, 477.

The procedure for obtaining a *Franklin* proceeding is outlined in *In re Cook* and the Penal Code. The first step is to file a motion under the original caption and case number in the original sentencing court.⁴ The motion should cite the authority of Penal Code § 1203.01 (which governs the process for “statements of views” regarding people who have been convicted or sentenced) and the *Cook* decision (which details the process for pursuing a *Franklin* proceeding.)⁵ The motion must set forth your eligibility for a *Franklin* proceeding:

- That you were under the age of 26 at the time of the commitment offense;
- That you are entitled to a Youthful Offender Parole Hearing under California Penal Code §§ 3051 and 4801;
- When the hearing is scheduled to take place, or if one or more hearings has already occurred; and
- That the trial court failed to consider youth-related mitigating evidence at your sentencing hearing.

4. What happens in a *Franklin* proceeding?

Procedures look different depending on the county. In some counties, there are opportunities to provide testimony in a courtroom. In other counties, the court simply appoints a forensic psychologist or social worker to gather information and write a report.

The court has discretion to decide whether testimony is appropriate or if other ways of submitting evidence will be enough. Especially for people who have spent decades in prison, a court may consider whether the passage of time has made it less likely that a *Franklin* proceeding is likely to produce useful evidence, and may decide that Comprehensive Risk Assessments and other more recent reports provide enough information for the Board.

⁴ *In re Cook* (2019) 7 Cal.5th 439, 458.

⁵ See the enclosed template, prepared by Appellate Defenders, Inc.

Regardless of the format of the proceeding, you will be appointed counsel to represent you. This attorney should collect documentation about your youth, your commitment offense, and your post-conviction record. These documents should include the full record on appeal, including the full original trial documents, the Probation Officers' Report, education records, dependency and delinquency records, medical records, and your C-File.

Some experts in this process believe that central to the *Franklin* proceeding is a comprehensive psycho-social life history, which can be written by a social worker, attorney, investigator, law student, academic, etc. The attorney can even seek the appointment of experts.

Prior to the *Franklin* proceeding, the attorney might typically file a statement in mitigation that provides context for the evidence in terms of the five *Miller* factors at the time of the commitment offense: (1) your age and immaturity; (2) family home environment; (3) circumstances of the offense, including the role you had in the offense and any influence of peer pressure; (4) the "incapacities of youth" that may have disadvantaged you in dealing with the justice system (for example, challenges dealing with police or participation in court); and (4) your potential for rehabilitation. The attorney may also include how you have transformed since the commitment offense. Additionally, the attorney might attach the social history and expert report as attachments.

Note that this proceeding is *adversarial*, meaning that a prosecutor may oppose the proceeding, make arguments against your evidence, make objections, and even put forward their own evidence.

5. What should I do next if I am interested in having a *Franklin* proceeding?

If you believe you are eligible for a *Franklin* proceeding and would like to have one, your next step should be to contact the Public Defenders' office in your county of conviction.