



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 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

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.

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

- 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?

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*

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

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

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.

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.

1 Defendant's name: _____

2 CDCR No.: _____

3 Address: _____

4
5 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
6 **FOR THE COUNTY OF _____**
7

8 THE PEOPLE OF THE STATE OF
9 CALIFORNIA,
10 Plaintiff and Respondent,

) Superior Court
) No. _____
)
)
)

11 v.

) **MOTION FOR *FRANKLIN***
) **PROCEEDING, FOR JUDICIAL NOTICE,**
) **AND FOR APPOINTMENT OF**
) **COUNSEL (PEN. CODE, § 1203.01; *IN RE***
) ***COOK* (2019) 7 CAL.5th 439)**
)
)

12 _____,
13 Defendant and Appellant
14 _____

15 **TO THE HONORABLE PRESIDING JUDGE OF THE SUPERIOR**
16 **COURT FOR THE STATE OF CALIFORNIA, COUNTY OF**
17 _____ **AND TO THE DISTRICT ATTORNEY:**
18

19 Defendant, in his in pro per capacity, respectfully moves under the
20 authority of Penal Code section 1203.01 and *In re Cook* (2019) 7 Cal.5th 439
21 (*Cook*) for a proceeding to be held in which defendant may preserve mitigating
22 evidence of youth as described in *People v. Franklin* (2016) 63 Cal.4th 261
23 (*Franklin*) and *Cook* for purposes of defendant's future parole hearing under Penal
24 Code section 3051 (or 3041 et seq.).

25 Defendant additionally requests that this court take judicial notice, under
26 Evidence Code sections 452, subdivision (d) and 453, of the superior court file and
27 records pertaining to this case and requests that counsel be appointed.
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1 This motion is based on the present moving papers, the superior court file
2 and records, and any exhibits attached hereto.

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4 Dated: _____ Respectfully submitted,

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7 Defendant's signature
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1 The Supreme Court in *Cook* clarified that an offender who is entitled to a
2 youth offender parole hearing under Penal Code section 3051 may seek a *Franklin*
3 proceeding, even though the judgment is final, and may do so by motion under
4 Penal Code section 1203.01. (*Cook, supra*, 7 Cal.5th at pp. 451, 458-459.)

5 *Franklin* hearings have also been extended to defendants, who are not
6 statutorily eligible for a youth offender parole hearing under Penal Code section
7 3051, by virtue of Penal Code section 4081, subdivision (c), which was enacted in
8 conjunction with section 3051. (*People v. Delgado* (2022) 78 Cal.App.5th 95, 99,
9 103-104 (*Delgado*) [youthful offenders not eligible under Pen. Code, § 3051 are
10 entitled to a *Franklin* proceeding under the standard rules applicable to all parole
11 hearings; Attorney General conceded].)

12 Penal Code section 1203.01 permits statements of views to be filed
13 concerning a person convicted or sentenced by the judge, district attorney,
14 defendant’s attorney, probation, and law enforcement and provides the statements
15 to be sent to the Department of Corrections and Rehabilitation. The filing of these
16 statements under this section is not exclusive. A defendant may “‘place on the
17 record any documents, evaluations, or testimony (subject to cross-examination)
18 that may be relevant at his eventual . . . parole hearing’” (*Cook, supra*, 7
19 Cal.5th at p. 458, quoting *Franklin, supra*, 63 Cal.4th at p. 284.)

20 Penal Code section 3051, subdivision (a)(1), describes a “youth offender
21 parole hearing” as a “hearing by the Board of Parole Hearings [Board] for the
22 purpose of reviewing the parole suitability of any prisoner who was 25 years of
23 age or younger, or was under 18 years of age as specified in paragraph (4) of
24 subdivision (b), at the time of the controlling offense.” The section “requires the
25 Board to conduct a ‘youth offender parole hearing’ during the 15th, 20th, or 25th
26 year of a juvenile offender’s incarceration.” (*Franklin, supra*, 63 Cal.4th at p. 277,
27 quoting Pen. Code, § 3051, subd. (b)(1).) A controlling offense is defined as “the
28 offense or enhancement for which any sentencing court imposed the longest term
of imprisonment.” (Pen. Code, § 3051, subd. (a)(2).)

1 The 15-year hallmark pertains to a person who was convicted
2 of a controlling offense that was committed at age 25 years or younger and
3 for which a sentence is a determinate sentence. (Pen. Code, § 3051, subd. (b)(1).)

4 The 20-year hallmark pertains to a person who was convicted
5 of a controlling offense that was committed at age 25 years or younger and for
6 which a sentence is a life term of less than 25 years to life. (Pen. Code, § 3051,
7 subd. (b)(2).)

8 The 25-year hallmark pertains to a person who was convicted
9 of a controlling offense that was committed at age 25 years or younger and for
10 which a sentence is a life term of 25 years to life. (Pen. Code, § 3051, subd.
11 (b)(3).)

12 The 25-year hallmark also pertains to a person who was convicted of a
13 controlling offense that was committed before the person turned 18 years of age
14 and for which the sentence is life without the possibility of parole (LWOP). (Pen.
15 Code, § 3051, subd. (b)(4).)

16 Penal Code section 3051, subdivision (f)(1), describes the
17 varying evidence that can be introduced on behalf of a defendant at a parole
18 hearing. It provides:

19 In assessing growth and maturity, psychological evaluations and risk
20 assessment instruments, if used by the board, shall be administered by
21 licensed psychologists employed by the board and shall take into
22 consideration the diminished culpability of youth as compared to that of
23 adults, the hallmark features of adults, the hallmark features of youth, and
24 any subsequent growth and increased maturity of the individual.

25 Under Penal Code section 3051, subdivision (f)(2), defendant is also
26 afforded the opportunity to submit statements to the board from “[f]amily
27 members, friends, school personnel, faith leaders, and representatives from
28 community-based organizations with knowledge about the individual before the
crime or the individual’s growth and maturity since the time of the crime. . . .”

1 Consistent with Penal Code section 3051, subdivision (f)(1), Penal Code
2 section 4801, subdivision (c) requires the Board to “great weight to the diminished
3 culpability of youth as compared to adults, the hallmark features of youth, and any
4 subsequent growth and increased maturity of the prisoner in accordance with
5 relevant case law” Penal Code section 4801, subdivision (c) applies any time
6 the Board is conducting a parole hearing for a person who committed their
7 controlling offense, as defined in Penal Code section 3051, subdivision (a), when
8 they were 25 years of age or younger. Penal Code section 4801, subdivision (c)
9 applies to all parole hearings, not just youth offender parole hearings. (*Delgado*,
10 *supra*, 78 Cal.App.5th at p. 103; *People v. Howard* (2021) 74 Cal.App.5th 141,
11 147 [“For youth offenders, the Board must consider youth-related factors at all
12 parole hearings, not just youth offender parole hearings.”].)

13 **3. Defendant Qualifies For A *Franklin* Proceeding.**

14 Here, defendant was _____ years of age when the controlling
15 offense(s) of _____
16 was or were committed. Defendant was sentenced to _____
17 _____. Defendant’s
18 parole hearing is expected to take place on or about _____.

19 The exclusions under Penal Code section 3051, subdivision (h), do not
20 apply to defendant, because defendant was not sentenced pursuant to the Three
21 Strikes law (Pen. Code, §§ 1170.12, 667, subs. (b)-(i)); defendant did not receive
22 a One-Strike sentence (Pen. Code, § 667.61); defendant was not sentenced to
23 LWOP for an offense committed after attaining 18 years of age; and defendant has
24 not committed a subsequent crime after attaining 26 years of age for which malice
25 aforethought is an element of the crime or for which a sentence to life in prison
26 was ordered.

27 Or, although defendant is not expressly eligible for a youth offender parole
28 hearing under Penal Code section 3051, because defendant falls under one of the

1 exclusions, defendant nonetheless is entitled to a *Franklin* proceeding under Penal
2 Code section 4801, subdivision (c) and *Delgado, supra*, 78 Cal.App.5th 95.

3 At his sentence hearing, defendant had no opportunity to present mitigation
4 evidence for use at a future parole hearing. Defendant should be granted the
5 chance to supplement the record with information relevant to his or her youth at
6 the time of the offense(s). (*Cook, supra*, 7 Cal.5th at pp. 446-447; *Franklin, supra*,
7 63 Cal.4th at p. 284.)

8 **B. Defendant Requests Judicial Notice Of The Superior Court File**

9 In order for this court to fully examine the motion for a *Franklin*
10 proceeding and to assist it in determining defendant's eligibility for appointment
11 of counsel, defendant requests this court to take judicial notice of the superior
12 court file pertaining to this case under Evidence Code section 452, subdivision (d)
13 ["records of (1) any court of this state . . . "] and section 453. Section 453 requires
14 the trial court to take judicial notice of any mater specified in section 452 if a party
15 requests it and the party gives notice of the request through the pleading (here the
16 present moving papers which are being served on the District Attorney) and
17 provides the court with sufficient information (here the superior court file and
18 records readily accessible by this court) to enable it to take judicial notice.

19 **C. Conclusion**

20 Based on the forgoing, defendant requests that this motion for a *Franklin*
21 proceeding, for judicial notice, and for appointment of counsel be granted.

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23 Dated: Respectfully submitted,

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25 _____
26 Defendant's signature
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PROOF OF SERVICE

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