

Board of Parole Hearings

The California Parole Hearing  
Process Handbook



March 8, 2024

# Parole Hearing Process Handbook

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## INTRODUCTION

This handbook is a comprehensive guide to California’s parole hearing process and is intended for anyone who attends a parole hearing or who simply wants to know more about the process. The California Board of Parole Hearings (Board) is a part of the California Department of Corrections and Rehabilitation (CDCR) and is responsible for California’s parole hearing process. The Board’s mission is to protect and preserve public safety while ensuring due process to all persons who come under the Board’s jurisdiction. The Board strives to carry out its mission by carefully evaluating each person’s risk and by treating incarcerated persons and their family members, victims, and victims’ family members with dignity and respect.

Over the last decade, more than 11,000 people have been safely returned to our communities through the Board’s parole hearing process, the majority of whom were serving sentences of life with the possibility of parole.<sup>1</sup> Reports have consistently shown that 99% of people released after a grant of parole desist from committing any new felony crime involving harm to another person and 97% desist from committing any new crime (misdemeanor or felony).<sup>2</sup>

Since 2017, about one out of every three parole hearings conducted has resulted in a grant of parole. Reports also show that parole hearing outcomes are not impacted by the incarcerated person’s race and ethnicity.<sup>3</sup>

Parole hearings can be extremely difficult for victims<sup>4</sup> and their family members. For this reason, CDCR’s Office of Victim and Survivor Rights & Services (OVSRS) provides comprehensive support services for those who wish to receive notice about or participate in the parole hearing process. For more information, please visit the OVSRS website at <https://www.cdcr.ca.gov/victim-services/>. Additional information about the parole hearing process for victims and their family members is also available at [www.parolejustice.org](http://www.parolejustice.org).

We hope you find this handbook to be helpful and informative. Please note, this handbook provides general information and may not reflect the most current legal developments. The information in this handbook is not intended to be, and must not be taken as, legal advice. We welcome your feedback, which can be sent by email to [BPH.CorrespondenceUnit@cdcr.ca.gov](mailto:BPH.CorrespondenceUnit@cdcr.ca.gov) or by mail to the Board of Parole Hearings, P.O. Box 4036, Sacramento, CA 95812.

Respectfully,

The Board of Parole Hearings

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<sup>1</sup> This figure is based on persons released after a grant of parole in 2014 through 2023.

<sup>2</sup> <https://www.cdcr.ca.gov/research/offender-outcomes-characteristics/offender-recidivism/>.

<sup>3</sup> 2021 Annual Report and Recommendations, Committee on Revision of the Penal Code ([http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC\\_AR2021.pdf](http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf)); 2022 Report of Significant Events, Board of Parole Hearings (<https://www.cdcr.ca.gov/bph/statistical-data/>).

<sup>4</sup> The Board recognizes and respects that many people who have been harmed by violent crime prefer to be referenced as a “survivor” instead of “victim.” However, the term “victim” is the specific term used in the law governing parole hearings, so that is the term used throughout this handbook.

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### SECTION 1: PAROLE ELIGIBILITY AND DATES

#### 1.1 Types of Sentences

The California prison system houses persons with various types of sentences. The following provides a brief description of the four types of prison sentences persons may receive in California and their relationship to the Board's parole hearing process.

- **Determinate Sentence** – Persons with a determinate term are sentenced to serve a fixed period of time (for example, a term of five years) and after completing that term, are automatically released without a parole hearing. However, the law makes some persons with lengthy determinate sentences eligible for a parole hearing before they have served their full sentence. In those cases, they remain in prison for their full term unless they receive a parole grant. If they are found suitable for parole, they will be released before the end of their determinate sentence.
- **Indeterminate Sentence (Life with the Possibility of Parole)** – Persons sentenced to life with the possibility of parole (for example, a term of 25 years to life) are commonly referred to as life-term offenders or “lifers.” They will not be released until the Board grants them parole.
- **Life Without the Possibility of Parole (LWOP)** – Persons sentenced to life without the possibility of parole are not eligible for a parole hearing, with the exception of those who committed their crime while under the age of 18.<sup>5</sup>
- **Condemned** – Persons who are condemned (sentenced to death) are not eligible for a parole hearing.

#### 1.2 Who is Eligible to Receive a Parole Hearing?

Before 2014, only persons serving an indeterminate sentence of “life with the possibility of parole” came before the Board for a parole hearing. However, because of changes in the law, the Board now conducts parole hearings for persons with other types of sentences. A person may be eligible for a parole hearing if they fall under one or more of the following categories:

- **Indeterminately Sentenced Persons** – Persons sentenced to life with the possibility of parole are eligible for a parole hearing once they have served a minimum amount of time based on the sentence imposed by the court. These persons receive a parole hearing based on their **Minimum Eligible Parole Date (MEPD)**, unless they are eligible to receive an earlier hearing based on other laws (such as youth offender law or under the elderly parole program).<sup>6</sup> For more information on parole eligible dates, see section 1.3.
- **Youth Offenders** – Some persons who committed their controlling offense (the crime or enhancement for which they received the longest sentence) when they were under the age of 26 may be eligible under youth offender laws for a parole hearing during their 15<sup>th</sup>, 20<sup>th</sup>,

<sup>5</sup> Pen. Code, § 3051, subd. (b)(4).

<sup>6</sup> Pen. Code, §§ 3041, subd. (a)(2), 3046; Cal. Code Regs., tit. 15, §§ 3043-3043.5.

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or 25<sup>th</sup> year of incarceration.<sup>7</sup> This applies to both determinately and indeterminately sentenced persons. Youth offender laws do not apply to persons if the person: (1) was sentenced to death; (2) received a sentence of life without the possibility of parole for a crime committed while 18 years or older; (3) was sentenced for a second or third strike;<sup>8</sup> or (4) committed another offense after turning age 26 that either includes “malice aforethought” (such as first or second degree murder) or resulted in a life sentence.<sup>9</sup>

In addition to the above, persons sentenced to LWOP may qualify as a youth offender if they committed their controlling offense before they turned age 18.<sup>10</sup>

The date of a parole hearing for people eligible for parole consideration under youth offender laws is usually based on their **Youth Parole Eligible Date (YPED)**.<sup>11</sup> For more information on parole eligible dates, see section 1.3.

- **Elderly Persons** – Persons who have reached a certain age and have been incarcerated for a minimum number of years may be eligible for a parole hearing under an elderly parole program. There are two elderly parole programs:

Statutory Elderly Parole Program:<sup>12</sup> Determinately and indeterminately sentenced persons who are at least 50 years old and have served 20 years of continuous incarceration are eligible to receive a parole hearing under the statutory elderly parole program. A person is excluded from this program if they are: (1) sentenced to LWOP or death; (2) sentenced under California’s “Three Strikes” law<sup>13</sup> for a second or third strike, or (3) convicted of first-degree murder of a peace officer.<sup>14</sup>

Court-Ordered Elderly Parole Program:<sup>15</sup> Determinately and indeterminately sentenced persons who are at least 60 years old and have served 25 years of continuous incarceration are eligible to receive a parole hearing under the court-ordered elderly parole program. Persons sentenced to LWOP or death are excluded. However, unlike the statutory elderly parole program, persons sentenced under California’s Three Strikes law for a second or third strike and persons convicted of first-degree murder of a peace officer are *not* excluded from the court-ordered program.

The date of a parole hearing for people eligible for parole consideration under one of the elderly parole programs is usually based on their **Elderly Parole Eligible Date (EPED)**. For more information on parole eligible dates, see section 1.3.

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<sup>7</sup> Pen. Code, § 3051, subd. (b).

<sup>8</sup> Persons convicted of a one-strike offense are excluded under Penal Code section 667.61 but are currently included for youth offender consideration under *People v. Edwards* (2019) 34 Cal.App.5th 183. This may change, pending the California Supreme Court’s review of *People v. Williams* (2020) 47 Cal.App.5th 475, review granted, July 22, 2020, S262229.

<sup>9</sup> Pen. Code, § 3051, subd. (h); Cal. Code Regs., tit. 15, §§ 2440, 2441.

<sup>10</sup> Pen. Code, § 3051, subd. (b)(4).

<sup>11</sup> Cal. Code Regs., tit. 15, § 2441.

<sup>12</sup> Pen. Code, § 3055.

<sup>13</sup> Pen. Code, §§ 667, subds. (b)-(i), 1170.12.

<sup>14</sup> Pen. Code, § 3055, subds. (g), (h).

<sup>15</sup> *Plata v. Brown*, N.D.Cal., No. 01-1351 TEH, Order Granting in Part and Denying in Part Defendant’s Request for Extension of December 31, 2013 Deadline (ECF No. 2766).

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- **Nonviolent Offenders** – Indeterminately sentenced persons who are not serving a sentence for a violent crime<sup>16</sup> are eligible for a parole hearing once they serve the full term of their primary offense.<sup>17</sup> A person’s primary offense is the crime for which they received the longest sentence, excluding enhancements, alternative sentences, and consecutive sentences.<sup>18</sup> For indeterminately sentenced persons, the full term is the upper term of the range for their nonviolent underlying offense.<sup>19</sup> For example, if a person is sentenced to 25 years to life under the Three Strikes law and the underlying nonviolent offense has a sentencing range of one year (lower term), two years (middle term), or three years (upper term), the full term of the underlying offense is the upper term of three years. The date of a parole hearing for people eligible for parole consideration under the nonviolent offender parole review process (NVPP) is usually based on their **Nonviolent Parole Eligible Date (NPED)**. For more information on parole eligible dates, see section 1.3.

Determinately sentenced persons who are not serving a sentence for a violent crime are also eligible for parole consideration once they have served the full term of their primary offense. These individuals will not receive a hearing; rather, the Board will review the person’s central file<sup>20</sup> and any written statements submitted to the Board and render a written decision. Persons who qualify for parole review as a determinately sentenced nonviolent offender also receive an NPED. NVPP eligibility and parole consideration for determinately sentenced persons are further explained in section 5.4.

- **Commutations** – Under the California Constitution,<sup>21</sup> the Governor has the authority to commute the sentence of an incarcerated person, including persons sentenced to LWOP or death. The Governor may commute a sentence to make someone eligible for a parole hearing, eligible for an earlier parole hearing, or eligible for immediate release without a parole hearing. The date of a parole hearing for people who receive a commutation of sentence is usually based on their **Executive Parole Eligible Date (XPED)**. For more information on parole eligible dates, see section 1.3.

### 1.3 Parole Eligible Dates

CDCR’s Case Records Services determines whether a person will be eligible for a parole hearing and if so, the date the person will be eligible for their first parole hearing. CDCR’s Case Records Services calculates a person’s parole eligible date(s) when they are first admitted to CDCR custody based on the laws applicable to the person’s sentence. If there is a change in the law or the person is resentenced, CDCR’s Case Records Services will recalculate the person’s parole eligible dates, if necessary. In addition, a parole eligible date may be moved up based on credits that may apply to the person’s sentence. Credit-earning is governed by regulations found in Division 3 of Title 15 of the California Code of Regulations and can be changed through the state’s administrative

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<sup>16</sup> This includes any crime or enhancement defined in subdivision (c) of section 667.5 of the Penal Code.

<sup>17</sup> Cal. Const., art. I, § 32, subd. (a)(1).

<sup>18</sup> Cal. Const., art. I, § 32, subd. (a)(1)(A).

<sup>19</sup> *In re Edwards* (2018) 26 Cal.App.5th 1181; Cal. Code Regs., tit. 15, § 3495.

<sup>20</sup> The central file is the master file maintained by CDCR, which contains records about the individual. (Cal. Code Regs., tit. 15, §§ 2000, subd. (b)(17), 3000.)

<sup>21</sup> Cal. Const., art. V, § 8, subd. (a).



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rulemaking process. CDCR notifies the incarcerated person of their parole eligible date(s), and the person may appeal the calculation through CDCR's appeal process if they think there is an error.<sup>22</sup>

If a person has more than one parole eligible date, their "earliest parole eligible date" is the date that gives the person the earliest opportunity for parole consideration or release.<sup>23</sup> Each person's earliest parole eligible date is provided to them and is publicly available on CDCR's website via the California Incarcerated Records and Information Search (CIRIS) application.<sup>24</sup> Here is a summary of each type of parole eligible date.

- **Earliest Possible Release Date (EPRD)** – This date applies only to determinately sentenced persons and reflects the date they will have fully served the sentence imposed by the court, less any applicable credits. Determinately sentenced persons will be released upon reaching their EPRD, although some may be released earlier if they qualify for another parole eligible date and the Board finds them suitable for parole.
- **Minimum Eligible Parole Date (MEPD)** – This date applies to persons with an indeterminate sentence of life with the possibility of parole. The MEPD is the date they are first eligible for release upon being found suitable for parole at a parole hearing. An MEPD is based on the minimum term imposed by the court (such as 25 years for a person sentenced to 25 years to life), less any applicable credits. A person will be scheduled for their first parole hearing at least one year prior to their MEPD if their MEPD is their earliest parole eligible date.<sup>25</sup>
- **Youth Parole Eligible Date (YPED)** – This date applies to qualifying youth offenders. A YPED is calculated based on the law and the sentence imposed by the court.<sup>26</sup> As explained in section 1.2, qualified youth offenders are eligible for a parole hearing during their 15th, 20th, or 25th year of incarceration, depending on their controlling offense. Time spent in custody before being admitted to state prison generally counts toward the person's total time of incarceration. Certain education merit credits, such as those earned for achieving a high school diploma or college degree while in prison, apply to YPEDs for persons with determinate and indeterminate sentences, but not persons sentenced to LWOP. A person will be scheduled for their first parole hearing no later than six months following their YPED, if their YPED is their earliest parole eligible date.<sup>27</sup>
- **Elderly Parole Eligible Date (EPED)** – This date applies to persons who have reached a certain age and have been incarcerated for a minimum number of years. EPEDs are provided to persons who qualify for a parole hearing under the statutory or court-ordered elderly parole program. The EPED is the date a person qualifying for an elderly parole

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<sup>22</sup> Cal. Code Regs., tit. 15, §§ 3480-3485.

<sup>23</sup> For example, an indeterminately sentenced incarcerated person with an NPED that is 7 years away and an MEPD that is 15 years away will be eligible for parole consideration and release based on the earlier NPED.

<sup>24</sup> <https://apps.cdcr.ca.gov/ciris/>

<sup>25</sup> Pen. Code, § 3041, subd. (a)(2). If a person has both a determinate and indeterminate term to serve at the time they are incarcerated, the person will serve the determinate term first and then will begin serving their indeterminate term. If a person is sentenced to a determinate term for an in-prison offense while they are serving their indeterminate term, they may have to serve the determinate term upon being found suitable for parole by the board at a parole hearing. See section 2.31 for more information on serving terms for in-prison offenses.

<sup>26</sup> Pen. Code, § 3051.

<sup>27</sup> Pen. Code, § 3051, subd. (a)(2)(C); Cal. Code Regs., tit. 15, § 2443, subd. (a).

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program meets both the age and length of incarceration requirements for that program. As explained above in section 1.2, under the statutory program, persons who qualify for an elderly parole hearing must be age 50 or older and have served at least 20 years. For the court-ordered program, persons who qualify for an elderly parole hearing must be age 60 or older and have served at least 25 years. Credits do not apply to EPEDs. However, time spent in custody before being admitted to state prison generally counts toward the person's total time of incarceration. A person will be scheduled for their first parole hearing no later than six months following their EPED, if their EPED is their earliest parole eligible date.<sup>28</sup>

- **Nonviolent Parole Eligible Date (NPED)** – This date applies to nonviolent offenders and reflects the date they will have served the full term of their primary offense, as explained in more detail above in section 1.2. Credits do not apply to NPEDs. However, time spent in custody before being admitted to state prison is generally included when determining when the person has served the full term of their primary offense.<sup>29</sup> An indeterminate sentenced nonviolent offender will be scheduled for their first parole hearing no later than six months following their NPED, if their NPED is their earliest parole eligible date.<sup>30</sup>
- **Executive Parole Eligible Date (XPED)** – This date applies to persons who received a commutation of sentence from the Governor. This date is determined by the Governor's order, which may specify immediate release or eligibility for an immediate or future parole hearing.

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<sup>28</sup> Cal. Code Regs., tit. 15, § 2249.41, subd. (b).

<sup>29</sup> Cal. Code Regs., tit. 15, §§ 3490, 3496.

<sup>30</sup> Cal. Code Regs., tit. 15, § 2249.32, subd. (a).

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### SECTION 2: THE PAROLE HEARING PROCESS

This section describes the parole hearing process from start (first meeting with the Board before a hearing) to finish (release on parole). It is divided into three main sections: before a hearing, at a hearing, and after a hearing.

#### Before a Hearing

##### 2.1 Consultations

Persons eligible for a parole hearing receive a consultation with the Board.<sup>31</sup> Generally, a person is scheduled for a consultation during the sixth year before their first parole hearing.<sup>32</sup> However, if there is a change in the law or a person's earliest parole eligible date is recalculated so that they are eligible for their first parole hearing in fewer than two years, they will not be scheduled for a consultation.<sup>33</sup>

A consultation is not a parole hearing; the Board cannot grant parole at a consultation. A consultation is a meeting between an incarcerated person and a Board commissioner or deputy commissioner. The incarcerated person is not represented by an attorney during the consultation; however, any reasonable accommodations the person needs to participate in this meeting under the Americans with Disabilities Act will be provided for the consultation. An interpreter will be available by telephone or video when needed. Because a consultation does not result in a decision whether to release the person, victims, victims' family members, and prosecutors are not notified of a consultation and do not participate in a consultation.

The purpose of a consultation is to provide the incarcerated person with information about the parole hearing process and recommendations on what they need to do to be found suitable for parole at a future parole hearing. The commissioner or deputy commissioner will talk with the person about their conduct in prison and make recommendations for programming, behavior, and release plans based on what the person says during the consultation, as well as information from their central file. If someone chooses not to participate in their consultation, the commissioner or deputy commissioner's findings and recommendations will be based only on the information contained in the person's central file.

Consultations are held by videoconference unless an in-person consultation is necessary for the commissioner or deputy commissioner to communicate effectively with the incarcerated person.<sup>34</sup> Consultations are not recorded or transcribed. The incarcerated person will receive a document (usually immediately after the consultation but no later than 30 calendar days after the consultation) that includes the commissioner or deputy commissioner's findings and recommendations. A person will receive only one consultation during their incarceration.

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<sup>31</sup> Pen. Code, § 3041, subd. (a).

<sup>32</sup> Pen. Code, § 3041, subd. (a).

<sup>33</sup> A person's earliest parole eligible date is most often recalculated as a result of the person being resentenced by the court, or when an error in the original sentencing document received from the court is corrected and the court issues a new Abstract of Judgment.

<sup>34</sup> Cal. Code Regs., tit. 15, § 2059.

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### 2.2 Scheduling of Hearings

A person's first parole hearing is called an "initial parole hearing." All following parole hearings are called "subsequent parole hearings." A person's parole eligible date will determine when they will be scheduled for their initial parole hearing. If a person has more than one parole eligible date, their initial parole hearing will be scheduled according to their earliest parole eligible date. A person's earliest parole eligible date is the date that will result in the earliest hearing.<sup>35</sup> For example, if a person has a Minimum Eligible Parole Date (MEPD) that is 15 years away and an Elderly Parole Eligible Date (EPED) that is 10 years away, the person will receive their initial parole hearing based on their EPED since it occurs earlier.

#### *Initial Parole Hearings*

Six months before a person's initial parole hearing, CDCR's Case Records Services staff verify the person's parole eligible date(s). Shortly thereafter, the Board schedules the person's initial parole hearing.

Initial parole hearings are scheduled as follows:

- If the person's earliest parole eligible date is a **Minimum Eligible Parole Date (MEPD)**, the person's initial parole hearing will be scheduled to occur no later than one year before their MEPD.<sup>36</sup>
- If the person's earliest parole eligible date is a **Nonviolent Parole Eligible Date (NPED)**, the person's initial parole hearing will generally be scheduled to occur within 60 calendar days after their NPED.<sup>37</sup> This applies only to people sentenced to life with the possibility of parole who are serving a term for offenses that are not violent, as defined in Penal Code section 667.5(c). Determinately sentenced nonviolent offenders whose earliest parole eligible date is their NPED will not be scheduled for a parole hearing, unless they become eligible for a hearing based on another parole eligible date. The Board will instead conduct a paper review and issue a written decision. For more information on the Nonviolent Offender Parole Review Process for determinately sentenced persons, see section 5.4.
- If the person's earliest parole eligible date is a **Youth Parole Eligible Date (YPED)**, the person's initial parole hearing will be scheduled to occur within six months following their YPED.<sup>38</sup> However, determinately sentenced persons will not be scheduled for a hearing if the YPED is within one year of the date they will be released based on their EPRD or if on the date of the hearing, they will be within six months of being released based on their EPRD.<sup>39</sup>
- If the person's earliest parole eligible date is an **Elderly Parole Eligible Date (EPED)**, the person's initial parole hearing will be scheduled to occur within six months following their

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<sup>35</sup> See section 1.3 of this handbook regarding the different parole eligible dates.

<sup>36</sup> Pen. Code, § 3041, subd. (a)(2).

<sup>37</sup> Cal. Code Regs., tit. 15, § 2449.32.

<sup>38</sup> Pen. Code, § 3051, subd. (a)(2)(C).

<sup>39</sup> Cal. Code Regs., tit. 15, § 2443, subd. (d).

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EPED.<sup>40</sup> However, determinately sentenced persons will not be scheduled for a hearing if the EPED is within one year of the date they will be released based on their EPRD, or if on the date of the hearing, they will be within six months of being released based on their EPRD.<sup>41</sup>

- If the person's earliest parole eligible date is an **Executive Parole Eligible Date (XPED)**, the person's initial parole hearing will be scheduled to occur within six months following their XPED.

For more information about parole eligible dates, see section 1.3.

### *Subsequent Parole Hearings*

Once a person receives an initial parole hearing, the person is considered to be in the parole hearing cycle and will continue to receive subsequent parole hearings until they are either granted parole by the Board or, if they are determinately sentenced, they finish serving their sentence. Determinately sentenced persons will not be scheduled for a hearing if their YPED or EPED is within one year of the date they will be released based on their EPRD, or if on the date of the hearing, they will be within six months of being released based on their EPRD.<sup>42</sup>

Subsequent parole hearings are scheduled based on the parole denial length given by the Board at the person's last hearing. The Board may deny a person parole for a period of 3, 5, 7, 10, or 15 years.<sup>43</sup> However, the date of a person's subsequent parole hearing may be moved up through the Board's administrative review process or in response to a petition to advance a parole hearing date filed by the incarcerated person.<sup>44</sup>

For more information about parole denial lengths, the administrative review process, and petitions to advance a parole hearing date, see section 4.

## 2.3 Notifying Participants of Hearing Dates

### *Incarcerated Persons and Their Attorneys*

Approximately four to six months before the scheduled date of a parole hearing, the incarcerated person and their attorney are notified of the date of the hearing and whether it will be held in-person or by videoconference. Institution staff also serves the incarcerated person with a **BPH Form 1002, Notice of Hearing Rights**, which explains their rights through the parole hearing process. The incarcerated person is also served with a **BPH Form 1003, Hearing Rights**, which they should use to tell the Board if they want to attend their hearing, if they have hired a private attorney or do not want to be represented by an attorney, and to request to waive or postpone their hearing. For more information about appointment of counsel, refer to section 2.9. For more information about waivers and postponements, refer to sections 2.16 and 2.18 of this handbook.

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<sup>40</sup> Pen. Code, § 3055; *Plata v. Brown*, N.D.Cal., No. 01-1351 TEH, Order Granting in Part and Denying in Part Defendant's Request for Extension of December 31, 2013 Deadline (ECF No. 2766).

<sup>41</sup> Cal. Code Regs., tit. 15, § 2449.41, subd. (e).

<sup>42</sup> Cal. Code Regs., tit. 15, §§ 2443, subd. (d), 2449.41, subd. (e).

<sup>43</sup> Pen. Code, § 3041.5, subd. (b)(3).

<sup>44</sup> Pen. Code, § 3041.5, subs. (b)(4), (d)(1); Cal. Code Regs., tit. 15, §§ 2150–2157.

## Parole Hearing Process Handbook

### *Registered Victims and Victims' Family Members*

At least 90 calendar days before the date of the hearing, the Board sends notice of the hearing to all victims and victims' family members who have registered with CDCR using the CDCR Form 1707.<sup>45</sup> The notice will include the date of the hearing, the available options for participating in the hearing (by videoconference, by telephone, or in person for hearings conducted in person), and deadlines for confirming their attendance at the hearing.<sup>46</sup> The notice will also include information about the person's right to submit a written or recorded statement for the Board to consider at the hearing.

### *Prosecutors*

Approximately 90 calendar days before the hearing, the Board will send notice of the hearing to the prosecutor of the county from which the incarcerated person was committed.<sup>47</sup>

### *Others*

Approximately 90 calendar days before the hearing, the Board will send written notice of the hearing to the following individuals and entities:<sup>48</sup>

- The attorney who represented the person at trial;
- The law enforcement agency that investigated the case;
- If the person was convicted of the murder of a peace officer, the law enforcement agency that employed the peace officer at the time of the murder; and
- If the person was convicted of the murder of a firefighter, the fire department that employed the firefighter at the time of the murder, if that fire department registers with the Board to receive the notice.<sup>49</sup>

## **2.4 Deadlines for Notifying the Board of Participation at Hearing**

### *Prosecutors*

Prosecutors who want to attend a hearing should notify the Board at least **14 calendar days** before the hearing by emailing [BPHLiferAnalyst@cdcr.ca.gov](mailto:BPHLiferAnalyst@cdcr.ca.gov) and telling the Board how they will participate in the hearing (by videoconference, by telephone, or in person for hearings conducted in person).<sup>50</sup>

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<sup>45</sup> Pen. Code, § 3043. To receive notice, victims and victims' family members must be registered with CDCR's Office of Victim and Survivor Rights and Services (OVSRS). The CDCR Form 1707 is available at <https://www.cdcr.ca.gov/victim-services/application/>. Refer to section 6.2 for more information on how to register.

<sup>46</sup> See section 2.4 of this handbook for more information on the deadlines for confirming attendance at a parole hearing.

<sup>47</sup> Penal Code section 3041.7 requires the Board to send the notice at least 30 calendar days before the date of the hearing. For indeterminate sentenced persons, the Board notifies the prosecutor of the county of commitment for the crime(s) that resulted in a life sentence. For incarcerated persons who have only determinate sentences, the Board notifies the prosecutor of the county of commitment for each determinate sentence.

<sup>48</sup> Penal Code section 3042 requires the Board to send these notices at least 30 calendar days before the date of the hearing.

<sup>49</sup> Fire department notification registration is available on the Board's website at <https://www.cdcr.ca.gov/bph/firedeptnotification/>.

<sup>50</sup> Pen. Code, § 3043, subd. (a)(2).

## Parole Hearing Process Handbook

### *Victims, Victims' Family Members, Representatives, and Support Persons*

Victims, victims' family members, and their representatives and support persons must notify CDCR's Office of Victim and Survivor Rights and Services (OVSRS) of their intent to attend the hearing at least **15 calendar days** prior to the hearing.<sup>51</sup> When notifying OVSRS, victims, victims' family members, and their representatives and support persons should tell OVSRS how they will participate in the hearing (by videoconference, by telephone, or in person for hearings conducted in person). More information regarding victims and the parole hearing process is provided in section 6 of this handbook.

**NOTE:** This deadline does not apply to staff members from OVSRS who attend the hearing as a support person for the victim or victim's family member.<sup>52</sup>

Additionally, in place of or in addition to personally attending the hearing, victims, victims' family members, and their representatives may submit a written or recorded statement for the Board to consider at the hearing. Written statements may be submitted any time before the hearing. Statements that are audiotaped or videotaped will be accepted so long as (1) they are provided to the Board at least **21 calendar days** before the hearing, and (2) a written transcript of the recorded statement is included with the submission.<sup>53</sup>

## **2.5 Videoconference and In-Person Hearings**

### *General Rule and Exceptions*

Parole hearings may be conducted by a panel of two or three hearing officers, also known as a "hearing panel." Most often, a hearing panel has one commissioner and one deputy commissioner. If there are three hearing officers, the hearing panel will be made up of two commissioners and one deputy commissioner.<sup>54</sup> The general rule is that parole hearings are held by videoconference.<sup>55</sup> However, if the Board determines that an in-person hearing is necessary for the hearing panel to communicate effectively with the incarcerated person, the hearing will be conducted in person.

A parole hearing held by videoconference is a hearing where the incarcerated person, or their attorney if the incarcerated person is not present, communicates with the hearing panel by videoconference. A parole hearing is held in person if the incarcerated person, or their attorney in place of the incarcerated person, communicates with the hearing panel while physically present with the hearing panel at the institution where the person is housed.

Based on data, experience, and feedback from hearing participants since March 2020, the Board has identified categories of incarcerated persons who generally require in-person hearings. Thus, the following people are automatically scheduled for an in-person hearing:<sup>56</sup>

- People who are part of CDCR's Developmental Disability Program;

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<sup>51</sup> Pen. Code, § 3043, subd. (a).

<sup>52</sup> Cal. Code Regs., tit. 15, § 2057, subd. (b)(4).

<sup>53</sup> Cal. Code Regs., tit. 15, § 2029, subd. (f).

<sup>54</sup> Pen. Code, § 3041, subd. (a)(2).

<sup>55</sup> Cal. Code Regs., tit. 15, §§ 2053, 5076.1, subd. (d).

<sup>56</sup> Cal. Code Regs., tit. 15, § 2054.

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- People who are part of CDCR’s Disability Placement Program *and* who have a speech or hearing impairment affecting their housing placement;
- People whose primary method of communication is sign language;
- People identified by CDCR as having a learning disability affecting their ability to effectively communicate through videoconference technology; and
- People identified by CDCR as having a medical condition that significantly impacts their ability to understand or communicate with others.

Parole hearings for all other people will be held by videoconference.

### ***Requesting an In-Person Hearing***

If an incarcerated person is scheduled for a videoconference hearing and the Board receives information that an in-person hearing is necessary for the hearing panel to communicate effectively with the person, the Board will reschedule the hearing so it can be held in person. Incarcerated persons and their attorneys should make this request to the Board as soon as possible so the Board can review the information and notify all hearing participants.<sup>57</sup>

### ***Requesting a Videoconference Hearing***

If an incarcerated person is scheduled for an in-person hearing, the incarcerated person or their attorney may request the Board hold the hearing by videoconference. This request must be made at least **100 calendar days** before the hearing so the Board can include the type of hearing in its notice to registered victims, victims’ family members, and prosecutors, which are sent 90 days before the hearing.<sup>58</sup> The request must also state the reason for the request and provide information demonstrating that the hearing panel will be able to communicate effectively with the incarcerated person by videoconference. The Board will review the request and notify all hearing participants if the hearing will be held by videoconference.<sup>59</sup>

### ***Special Circumstances***

In some instances, when an in-person hearing has been scheduled, there may be exigent circumstances (for example, a natural disaster) or other situations beyond the Board’s control (for example, the incarcerated person is housed at a facility outside of California or at a medical facility) preventing the Board from conducting an in-person hearing. In these rare situations, if the person’s attorney recommends it, the hearing may be held by videoconference.<sup>60</sup>

### ***Method of Attendance by Parties***

For **videoconference hearings**, the hearing panel and the incarcerated person communicate by videoconference. They are not physically present together in the same room. The person’s attorney is physically present with the incarcerated person at the institution, unless an exception applies and the Board authorizes the attorney to appear by videoconference. An interpreter, if one is needed

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<sup>57</sup> Cal. Code Regs., tit. 15, § 2054, subd. (c).

<sup>58</sup> Pen. Code, § 3043.

<sup>59</sup> Cal. Code Regs., tit. 15, § 2055.

<sup>60</sup> Cal. Code Regs. tit. 15, § 2056.



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for the incarcerated person, generally appears by videoconference.<sup>61</sup> All other participants, such as the prosecutor, victims, victims' family members, and observers may attend by videoconference or telephone; they may not appear in person for a videoconference hearing. Victims and their family members who need an interpreter should reach out to OVSRS for assistance.

For **in-person hearings**, the hearing panel and the incarcerated person are physically present together in the same room at the institution where the incarcerated person is housed. The incarcerated person's attorney and the interpreter (if one is needed) are physically present with the incarcerated person and the hearing panel, unless an exception applies.<sup>62</sup> All other participants may attend in person, by videoconference, or by telephone. Participants attending in person must follow institution procedures, which include being approved to enter the institution.

For both videoconference and in-person hearings, attorneys representing incarcerated persons are required to be physically present with their client for the hearing at the institution where the person is housed. However, in some cases, when the client consents, attorneys may request to appear by videoconference instead of being physically present with their client. To make such a request, attorneys should consult with their client and submit the **BPH Form, Attorney Appearance Election at Hearing**, which is available on the Board's website and in the appendix of this handbook.<sup>63</sup> Completed forms should be sent by email to [BPHLiferAnalyst@cdcr.ca.gov](mailto:BPHLiferAnalyst@cdcr.ca.gov). Attorneys must be prepared to be physically present with their client for the hearing unless the Board approves their request to appear by videoconference.

### 2.6 Americans with Disabilities Act – Accommodations Before the Hearing

#### *General*

In accordance with the Americans with Disabilities Act (ADA), the Board provides reasonable accommodations to enable incarcerated persons with disabilities to participate in parole proceedings.<sup>64</sup> Attorneys and institutional staff also assist incarcerated persons with understanding, preparing for, and participating in the parole hearing process. This section provides an overview of the accommodations provided *before* a parole hearing. Accommodations provided *at* a parole hearing are discussed in section 2.20 of this handbook.

Once an incarcerated person receives notice that a parole hearing has been scheduled, institutional staff meet with the person to discuss their need for any disability-related accommodations for the hearing. Some examples of accommodations include glasses, magnifying devices, hearing assistive devices, Braille documents, reading assistance for persons with vision impairments, speaking slowly and using simple terms for persons with developmental disabilities, sign language interpretation for persons with hearing impairments, and accessible hearing rooms for persons who have mobility impairments. Institutional staff also assist incarcerated persons with reviewing their central files and understanding their rights during the parole hearing process.

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<sup>61</sup> Cal. Code Regs., tit. 15, § 2057, subd. (a).

<sup>62</sup> Cal. Code Regs., tit. 15, § 2057, subd. (a).

<sup>63</sup> <https://www.cdcr.ca.gov/bph/bph-forms>.

<sup>64</sup> Cal. Code Regs., tit. 15, §§ 2251, 2251.5. See *Armstrong* Board of Parole Hearings Remedial Plan II for the definition of "parole proceeding." (BPH Remedial Plan II at 1.) Parole proceedings include parole hearings, consultations, attorney-client interviews, psychological assessments, etc.

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### ***BPH Form 1073 to Request Reasonable Accommodations at Hearing***

The **BPH Form 1073, *Notice and Request for Assistance at Parole Proceedings***, is a document used to identify any accommodations the incarcerated person may need before and at their hearing. Institutional staff initially identify these accommodations on the BPH Form 1073 after meeting with the person. The Board's ADA Compliance Unit then verifies the requested accommodations listed on the BPH Form 1073, identifies any additional needs, and makes sure proper accommodations are available for the incarcerated person at the hearing. Hearing panels will use the BPH Form 1073 at the hearing to make sure reasonable accommodations are provided to the incarcerated person during the hearing.

### ***BPH 1074 Form to Request Additional Reasonable Accommodations at Hearing***

If an incarcerated person needs additional accommodations related to their disability prior to the hearing that were not provided or are not reflected on the BPH Form 1073, the person, or their attorney, may complete and submit the **BPH Form 1074, *Request for Reasonable Accommodations – Grievance Process***, to the Board for additional assistance.<sup>65</sup> This form is available at each institution's law library or can be provided upon request by institutional staff. It is also available in the appendix of this handbook. The completed form should be sent as soon as possible to the Board at the following address:

**BPH ADA Coordinator**  
P.O. Box 4036  
Sacramento, CA 95812-4036

A written decision will be sent to the incarcerated person within five calendar days from the date the form is received by the ADA coordinator or before the parole hearing, whichever occurs first.

### ***Attorneys Representing Incarcerated Persons with Disabilities***

An attorney representing an incarcerated person at a parole hearing is expected to review all available information regarding the person's disabilities prior to meeting with them. The attorney is also required to make an entry into the Board's Disability & Effective Communication System (DECS) regarding any accommodations provided during their meetings or that will be needed during the person's Comprehensive Risk Assessment (CRA) interview or during the person's parole hearing. If the person does not require any accommodations, the attorney must make an entry in DECS documenting that no accommodations are required. Attorneys should also inform the Board as soon as possible if the person's hearing needs to be rescheduled as an in-person or videoconference hearing so the hearing panel can communicate effectively with the person.

Attorneys do not receive automatic access to an incarcerated person's health records. To obtain access, the attorney must submit a **CDCR Form 7385, *Authorization for Release of Information*** signed by the incarcerated person to the chief medical officer at the institution where the person is housed. This form is available on the Board's website.<sup>66</sup>

Attorneys representing incarcerated persons have the right to meet and speak with their clients to prepare for and attend parole hearings. If a disabled incarcerated person refuses or is unable to

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<sup>65</sup> Cal. Code Regs., tit. 15, §§ 2251.5–2251.7.

<sup>66</sup> <https://www.cdcr.ca.gov/bph/bph-forms/>.

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leave their cell to meet and speak with their attorney, institution staff are instructed to escort the attorney to the person's cell for a cell-side attorney visit and to let the attorney communicate confidentially with their client.

Any disability-related questions regarding the Board's hearings should be directed to the Board's ADA coordinators by calling (279) 300-5720 or (279) 300-5755, or by emailing [BPH.ADAUnit@cdcr.ca.gov](mailto:BPH.ADAUnit@cdcr.ca.gov).

### *Accommodations Not Related to a Parole Hearing*

If an incarcerated person requires an accommodation at an institution that is not related to a parole hearing, the person or their attorney should submit a **CDCR Form 1824, Request for Reasonable Accommodation**, to the institution where the person is housed. Incarcerated persons can obtain this form by contacting their correctional counselor, and forms are located in the institution's housing units and libraries. Forms are also available on the Board's website and in the appendix of this handbook.<sup>67</sup>

## 2.7 Post-Conviction Report

Between two to five months before an incarcerated person's initial parole hearing, a correctional counselor creates a "post-conviction report," which provides a snapshot of the person's central file. This includes a summary of the person's institutional misconduct (if any), work assignments, programming, and other case factors since entering prison, which for many people includes records from many years ago, when prison records were maintained in paper files. The incarcerated person is provided a copy of the post-conviction report, and a copy is placed in the person's central file and made available to the hearing panel. Post-conviction reports are not created for subsequent parole hearings because relevant information concerning a person's misconduct, work assignments, programming, and other case factors since 2013 can be extracted electronically from CDCR's main computer systems.

## 2.8 Incarcerated Person's Right to Attend and Participate

An incarcerated person has the right to attend their parole hearing, ask and answer questions, and speak on their own behalf.<sup>68</sup> An incarcerated person may waive this right. If an incarcerated person does not attend their hearing, the person's attorney will advocate on their behalf (unless the person also waived their right to an attorney), and the hearing panel will make a decision.<sup>69</sup>

## 2.9 Incarcerated Person's Right to an Attorney

Incarcerated persons have a right to be represented by an attorney at their parole hearing.<sup>70</sup> Approximately five months before the date of the hearing, the Board will automatically appoint an attorney to represent the incarcerated person at the state's expense. All state-appointed attorneys receive training about the parole hearing process from an independent nonprofit organization and learn how to effectively prepare for and represent people at parole hearings. Incarcerated persons may not choose or change their state-appointed attorney.

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<sup>67</sup> <https://www.cdcr.ca.gov/bph/ada-overview>

<sup>68</sup> Pen. Code, § 3041.5, subd. (a)(2).

<sup>69</sup> Cal. Code Regs., tit. 15, § 2247.

<sup>70</sup> Pen. Code, § 3041.7; Cal. Code Regs., tit. 15, § 2256.

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If the incarcerated person does not want a state-appointed attorney, the person may hire a private attorney at their own expense or waive attorney representation altogether by completing **BPH Form 1003, *Hearing Rights***. If the incarcerated person initially chooses to be represented by a state-appointed attorney but later hires a private attorney, the incarcerated person or the private attorney should notify the Board by submitting an updated and signed BPH Form 1003 as soon as possible so the Board can make sure the private attorney is prepared to move forward with the hearing on the date it is scheduled and dismiss the state-appointed attorney.

Some incarcerated persons are not allowed to waive attorney representation under the ***Armstrong Board of Parole Hearings Remedial Plan (Armstrong Remedial Plan II)*** and must have an attorney present at the hearing. The following individuals must be represented by an attorney at the hearing, and the Board is not permitted to approve a request to waive their attorney representation:

- Persons under CDCR's Mental Health Services Delivery System (MHSDS) at the Enhanced Outpatient Program (EOP) or Mental Health Crisis Bed (MHCB) level of care;
- Persons in a licensed Psychiatric Inpatient Program under the care of CDCR or the Department of State Hospitals;
- Persons identified by CDCR as being part of the Developmental Disability Program (DDP);
- Persons with a reading level of 4.0 or below; and
- Persons designated by CDCR as having a learning disability.

For persons in CDCR's MHSDS at the Correctional Clinical Case Management System (CCCMS) level of care, which is the basic level of care in MHSDS, the Board will presume that the person requires an attorney, unless documentation or other reliable information shows that an attorney is not needed.

### 2.10 Incarcerated Person's Right to Review Non-Confidential Documents

#### *Non-Confidential Documents*

At least 10 calendar days before the date of their parole hearing, incarcerated persons have the right to review all non-confidential documents the Board will consider at the hearing.<sup>71</sup> The file considered by the hearing panel generally includes all letters submitted to the Board in advance of the hearing and everything in the person's central file except for any confidential documents.<sup>72</sup>

An incarcerated person's review of their central file before a hearing is called an *Olson* review.<sup>73</sup> Approximately 150 calendar days before the hearing, a correctional counselor will give notice to the incarcerated person about their right to an *Olson* review. The person will sign a **CDCR Form 128B Chrono** acknowledging whether they want an *Olson* review. If the person wants an *Olson* review, the review will take place at least 60 calendar days before the hearing.

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<sup>71</sup> Pen. Code, § 3041.5, subd. (a)(1); Cal. Code Regs., tit. 15, § 2247.

<sup>72</sup> Cal. Code Regs., tit. 15, § 3321, subd. (a). The central file is the master file maintained by CDCR, which contains records about the individual. (Cal. Code Regs., tit. 15, §§ 2000, subd. (b)(17), 3000.)

<sup>73</sup> *In re Olson*, (1974) 37 Cal. App.3d 782.

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Approximately 160 calendar days before the hearing, all non-confidential documents of the central file are made available to the incarcerated person's attorney and the prosecutor. Approximately 80 calendar days before the hearing, the Board will provide a "master packet," to the hearing panel, the person's attorney, and the prosecutor. Master packets are provided to the incarcerated person if they will be representing themselves at the hearing. The master packet includes select non-confidential documents in the incarcerated person's central file. At least 10 calendar days before the hearing, the Board will provide a "10-day packet" to the hearing panel, the incarcerated person, their attorney, and the prosecutor. The "10-day packet" contains any non-confidential documents received by the Board after the master packet was distributed. The Board will also provide copies of any voided Rules Violation Reports and Rules Violation Reports documenting charges for which the person was found not guilty, that may be considered by the hearing panel.<sup>74</sup>

Information contained in a person's central file is not available to the public without consent from the incarcerated person or as expressly authorized by law (such as by a valid subpoena). Prosecutors and attorneys representing incarcerated individuals cannot disclose information contained in a central file or the Board's hearing packets except as needed during a parole hearing and as otherwise expressly authorized by law. Furthermore, central file information obtained for purposes of representing an incarcerated person or the People at a parole hearing cannot be used for other purposes without authorization from the incarcerated person or as expressly authorized by law.

### *Confidential Documents*

CDCR regulations define what constitutes confidential information.<sup>75</sup> Common examples of confidential information include personal information about victims or witnesses, security threat group<sup>76</sup> debrief reports, information provided and classified confidential by another governmental agency, information CDCR has determined would endanger the safety of a person or the security of an institution, and investigations conducted by the Board's Offender Investigations and Screening Division (OISD).

Incarcerated persons are not permitted to view confidential documents in their central file. However, there are several documents that provide some information about the confidential information contained in their central file. One form is the **CDCR Form 810, Confidential Information Listing**, which provides a list of all the confidential information in an incarcerated person's central file. Another form is the **Confidential Information Disclosure Form** (formerly known as the CDCR Form 1030), which is served on an individual if confidential information is used in a prison disciplinary or security threat group process.

Additionally, before a parole hearing, CDCR staff will review the confidential section of the person's file and provide a **Notice of Confidential Information Disclosure in Advance of Parole Hearing Memorandum (NCID)** to the incarcerated person at least 10 calendar days before the

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<sup>74</sup> Pen. Code, § 2081.5. Cal. Code Regs., tit. 15, § 2402, subs. (a), (c), and (d); *In re Prather* (2010) 50 Cal.4th 238, 254; *In re Minnis* (1972) 7 Cal.3d 639, 645.

<sup>75</sup> Cal. Code Regs., tit. 15, § 3321, subd. (a).

<sup>76</sup> "Security Threat Group (STG)" means any ongoing formal or informal organization, association, or group of three or more persons, which has a common name or identifying sign or symbol whose members and/or associates, individually or collectively, engage or have engaged, on behalf of that organization, association or group, in two or more acts which include, planning, organizing, threatening, financing, soliciting or committing unlawful acts, or acts of misconduct. (Cal. Code Regs., tit. 15, § 3000.)

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hearing. The NCID provides notice of confidential memoranda and confidential CDCR Form 128B's in the person's central file that are dated within 10 years of the person's hearing. The NCID includes the document's date and a brief description of its contents.

### 2.11 Documents Submitted by the Incarcerated Person or Their Attorney

Incarcerated persons are not required to submit documents to the Board for their parole hearing, but they may submit any document that will assist the hearing panel in evaluating their change and suitability for parole.<sup>77</sup> Documents submitted by the incarcerated person or their attorney will be forwarded to the prosecutor and may be discussed on the record at the hearing and in the public transcript. If an incarcerated person chooses to submit documents to the Board for their parole hearing, the hearing panel will likely question the person about the content of those documents at the hearing.

#### *General Guidelines for Submitting Documents*

- Incarcerated persons should seek their attorney's guidance and feedback on documents before submitting them to the Board.
- ***Documents should be brief and to the point and should not repeat what is in the record.*** Hearing panels are required to review many pages of records for each hearing. If an incarcerated person or their attorney submits lengthy, confusing, difficult to read, or repetitive documents, the Board may have to postpone the hearing to give the hearing panel additional time to review the documents before the hearing. A postponement could result in the parole hearing being delayed for up to six months.
- ***Documents should be typed or clearly written.*** Typed documents should be in 10-point font or larger. Handwritten documents must be legible. Emailed statements should be submitted as a Microsoft Word document, Portable Document Format (PDF), or similar compatible format. Do not submit documents in Joint Photograph Experts Group (JPEG) format.
- ***Documents should be relevant to the incarcerated person's change and suitability for parole.*** As explained in section 3 of this handbook, hearing panels use the Board's Structured Decision-Making Framework (SDMF) to determine whether an incarcerated person is suitable for parole. Most of the information hearing panels must consider when using the SDMF is available in the person's central file. As explained in more detail below, documents that are most helpful to the hearing panel discuss the mitigating factors of youth, the incarcerated person's understanding of the reasons they chose to commit crimes, how the incarcerated person has addressed those issues, and their strategies and support to be successful on release to the community.

#### *Things to Avoid:*

- ***Do not submit documents from the central file.*** Documents already in the incarcerated person's central file will not be accepted. Hearing panels, attorneys representing incarcerated persons, and prosecutors already have access to this information.

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<sup>77</sup> Cal. Code Regs., tit. 15, § 2249.

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- ***Do not submit duplicate documents.*** Submitting the same document more than once creates more work for everyone in the hearing process and can create confusion at the parole hearing. Incarcerated persons and their attorneys are expected to coordinate with one another when submitting documents to the Board. Both are also expected to know the contents of the documents being submitted and make sure documents are not submitted more than once. Attorneys representing incarcerated persons are expected to review the central file and any Board hearing packets to ensure that duplicates are not being submitted.
- ***Do not submit generic templates or documents written by another person.*** Documents should be specific to the incarcerated person seeking parole.
- ***Do not submit lengthy documents.*** It is most helpful to the hearing panel if documents written and submitted by the incarcerated person include only the information that is most important to suitability. As a general guideline, 20 pages (single-sided and single-spaced) of personal writings by the incarcerated person will be sufficient. Letters of support, job offers, offers for transitional housing, and certificates of completion for non-CDCR programs (i.e., correspondence courses) do not count toward the 20 single-sided page guideline. Written objections to the person's Comprehensive Risk Assessment (CRA) also do not count toward the page guideline and should be submitted separately, following the process outlined in section 2.15.

**It is most helpful if documents submitted by an incarcerated person or their attorney focus on how the person's thinking and behavior has changed over time. They should also focus on the tools the person has learned to handle stress, negativity, or challenges.**

***Documents Likely to Be Relevant to Parole Suitability.*** Although an incarcerated person is not required to submit documents to the Board for their parole hearing, if they choose to do so, the hearing panel may ask the person questions about the content of those documents at the hearing. When submitting documents, it is **strongly recommended** that the information be limited to one or more of the following documents:

**Statement of Personal Change** – This is a document written by the incarcerated person that demonstrates how the person's thinking and behavior have changed since committing the crime(s) for which they are incarcerated. It should explain what was going on in the person's life at the time that led them to use violence or commit crimes (such as substance abuse, negative friend group, anger, mental health issues, etc.). It should demonstrate that the incarcerated person takes responsibility for their past and present actions. It should also explain how the person has changed, with specific examples, and the steps the person will take in the community to make sure they will not turn to violence or crimes if they are released. It does not need to explain the person's history, childhood, etc., unless it helps to explain who the person was when they were violent or committed crimes and how they are different today. **Statements of personal change should be 3 pages or less, single-sided and single-spaced.**

**Apology Letters and Victim Impact Letters** – These are letters addressed to the persons harmed by the incarcerated person's behavior and crime(s). They generally focus on the incarcerated person's feelings of remorse and explain how their actions impacted their victim(s) and their family. Writing letters to entities, such as a police department or a

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community or city may help an incarcerated person better understand the full impact of their behavior and crime(s), but hearing panels rarely rely on them when determining a person's suitability for parole, so they **should not** be submitted to the Board. OVSRS also maintains an Accountability Letter Bank (ALB)<sup>78</sup> in which some incarcerated persons may submit apology letters to the victims of their crime. All letters are reviewed by program facilitators to help ensure the letter is not harmful to the victim. **Apology letters and victim impact letters should be 1 page or less each, single-sided and single-spaced.**

**Programming Information** – Programming information is information that shows the incarcerated person completed educational, vocational, rehabilitative, or self-help courses. Information about courses taken and completed through CDCR are already documented in the incarcerated person's central file and **should not** be submitted to the Board. However, certificates showing that a person completed a program offered by an organization outside of CDCR (such as a course offered online or by mail/correspondence) may be submitted to the Board if they are relevant to the person's suitability for parole. Certificates of completion offered by an entity outside of CDCR do not count toward the recommended 20 single-sided page guideline.

Incarcerated persons may also submit information about relevant book reports or workbooks they have completed, but only if they explain what they learned from the book/workbook and how it applies to their individual situation. Listing or summarizing the contents of a book the person read or a workbook the person filled out is generally not helpful to hearing panels. **Relevant programming information should be summarized in a document that is a total of 5 pages or less, single-sided and single-spaced.**

**Release and Relapse Prevention Plans** – Release and relapse prevention plans are documents that describe how a person plans to successfully transition to life outside of prison. For example, these plans may include where the person plans to live, how they will financially support themselves, people and organizations who will help support them in the community, and how they will prevent themselves from “relapsing” or doing the same things they did before that resulted in their negative behavior and crime(s). Release and relapse prevention plans should be realistic and individual to the person. If the person has multiple risk factors, they should have a separate relapse prevention plan for each risk factor that remains currently relevant. For example, if the person's risk factors are negative peer association (such as gangs) and substance abuse, the person should have a relapse prevention plan addressing negative peer association and another relapse prevention plan addressing substance use.

Here are some things to keep in mind when writing release and relapse prevention plans:

- CDCR's Division of Adult Parole Operations (DAPO) will work with incarcerated persons prior to release to ensure that they have appropriate housing. The Board or DAPO require most people to go to **transitional housing** for at least six months as a condition of their release. Transitional housing is usually a place where several formerly incarcerated people live and where there is a staff person on-site 24 hours a day. Transitional housing often offers a sober living environment with additional programming and support in the community to help people who have been in prison

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<sup>78</sup> <https://www.cdc.ca.gov/victim-services/alb/>.



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for a long time successfully transition to parole. Incarcerated persons do not pay for transitional housing offered by DAPO. The state pays for it.

- **Incarcerated persons do not need to get letters from transitional housing facilities before their parole hearing.** However, if an incarcerated person is involved in a program while in prison that offers private transitional housing in the community where they want to live if they are released, they should include that information in their release and relapse prevention plans. If a person plans to go to a transitional housing program offered by DAPO (which most people do), they **do not** need to submit a letter from the transitional housing program. In general, all persons should think about where and what kind of housing would best set them up for success, both in the short term and long term.
- Relapse prevention plans should include the person's planned access to treatment programs or services they may need in the community (such as Alcoholics Anonymous, Narcotics Anonymous, SMART Recovery, etc.), and specific plans to manage situations that will be high-risk for the person, based on their past behavior and crime(s). The most effective relapse prevention plans explain what the person's triggers are for negative behavior and criminality (i.e., their current risk factors) and how they plan to address those issues in the short term and long term.
- Persons who have an immigration hold or immigration detainer are encouraged but not required to develop two release plans—one for the country they may be deported to and one for California if they are not deported.

**A person's Release and Relapse Prevention Plans combined should be a total of 10 pages or less, single-sided and single-spaced.**

**Letters of support** – Letters of support for the incarcerated person are letters from others offering housing, employment, financial assistance, or general support in the community for the incarcerated person if they are released. Letters of support should include the following: (1) the date the letter was written, (2) the relationship between the person writing the letter and the incarcerated person, (3) how long the writer has known the incarcerated person, (4) the type of support being offered, and (5) the writer's name and, if possible, their signature. Letters of support do not need to be notarized. Letters of support, job offers, and transitional housing letters do not count toward the 20 single-sided page guideline, but **these letters should generally be no more than 1 page each, single-sided and single-spaced.** Supporters may also submit their letters directly to the Board.

### ***Photographic and Artistic Materials***

Photographic and artistic materials, such as photographs of family members and transitional housing facilities, creative writing, or artwork are rarely relevant to determining a person's suitability for parole and should not be submitted.

### ***Franklin Hearing Documents for Youth Offenders***

Penal Code section 4801, subdivision (c) requires the Board to give great weight to the youth offender factors, which are the diminished culpability of youth as compared to adults, the hallmark

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features of youth, and any subsequent growth and increased maturity of the incarcerated person.<sup>79</sup> In *People v. Franklin* (2016) 63 Cal.4th 261, the court held that the defendant should have sufficient opportunity to make a record of relevant information regarding the youth offender factors before the trial court.<sup>80</sup> Accordingly, if a defendant did not have such an opportunity, they can request the sentencing court to give them a “*Franklin* hearing” and present information relevant to the youth offender factors.

Incarcerated persons or their attorneys may submit to the Board documents presented at a *Franklin* hearing. These documents should be limited to information relevant to youth offender factors. Hearing panels will consider relevant *Franklin* materials when giving great weight to the youth offender factors. *Franklin* materials that provide a concise summary of relevant information regarding youth offender factors are most helpful to the Board when determining parole suitability. *Franklin* hearing materials should be submitted to the Board as early as possible, even before a parole hearing is scheduled. *Franklin* hearing documents do not count toward the 20 single-sided page guideline.

### ***Deadlines for Submitting Documents***

As a general rule, documents should be submitted to the Board as soon as possible once a parole hearing has been scheduled. Incarcerated persons who have not yet been scheduled for a parole hearing should wait until their parole hearing is scheduled before submitting documents to the Board.

**Incarcerated persons and their attorneys should submit relevant documents to the Board, postmarked or emailed at least 20 calendar days before the hearing.** This allows the Board to receive and process the documents and incorporate them into the packets provided to the hearing panel before the hearing. This also allows the hearing panel to properly review all the documents. A copy of all documents submitted will be provided to the prosecutor as well.<sup>81</sup>

If documents are not timely submitted or are submitted on the day of the hearing, the hearing panel may ask why the documents were not submitted earlier. Incarcerated persons and their attorney should be prepared to explain why the documents could not have been submitted earlier. A hearing may be postponed if the hearing panel determines it needs more time to review any relevant documents.

### ***How to Submit Documents to the Board***

Documents should be emailed to [BPH.CorrespondenceUnit@cdcr.ca.gov](mailto:BPH.CorrespondenceUnit@cdcr.ca.gov) or mailed to the Board of Parole Hearings at P.O. Box 4036, Sacramento, CA 95812. Documents submitted will not be returned, so individuals are encouraged to make copies before submitting documents.

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<sup>79</sup> Pen. Code, § 4801, subd. (c); Cal. Code Regs., tit. 15, § 2446, interpreting *Graham v. Florida* (2010) 560 U.S. 48, *Miller v. Alabama* (2012) 567 U.S. 460, *People v. Caballero* (2012) 55 Cal.4th 262, *Moore v. Biter* (9th Cir. 2013) 725 F.3d 1184, *Roper v. Simmons* (2005) 543 U.S. 551, *People v. Franklin* (2016) 63 Cal.4th 261, and *Montgomery v. Louisiana* (2016) 577 U.S. 190.

<sup>80</sup> *People v. Franklin* (2016) 63 Cal.4th 261, 284.

<sup>81</sup> Cal. Code Regs., tit. 15, § 2030, subd. (c).

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### 2.12 Documents Submitted by the Prosecutor

Prosecutors have a right to attend a parole hearing, and the Board welcomes prosecutors' input. To comply with the law and to ensure the input is submitted timely to the hearing panel, the Board proposes these general guidelines. Prosecutors are not required to submit documents to the Board for a parole hearing, but they may do so if they have documents that are reliable and relevant to a parole suitability determination.<sup>82</sup> Most relevant law enforcement and court documents such as arrest reports, minute orders, abstracts of judgment, and probation officer reports are submitted to CDCR when a person is first admitted to state prison so they are already in the person's central file. Prosecutors are expected to review the incarcerated person's central file and the Board's hearing packet to determine if a document they believe is relevant has already been submitted to CDCR. **Any additional documents submitted should be brief, clearly written, and relevant to the person's suitability for parole.** To make sure documents submitted are properly considered by the hearing panel, prosecutors submitting documents should follow these guidelines:

#### *Do Not Submit Documents from the Person's Central File*

Documents already in the incarcerated person's central file will not be accepted. This includes arrest reports, minute orders, abstracts of judgment, and probation officer reports. Hearing panels already have access to this information.

#### *Submit Documents That Are Typed or Clearly Written*

Typed documents should be in 10-point font or larger. Handwritten documents must be legible. Emailed documents should be submitted as a Microsoft Word document, Portable Document Format (PDF), or similar compatible format. Do not submit documents in Joint Photograph Experts Group (JPEG) format.

#### *Do Not Submit Lengthy Documents*

The Board's regulations specifically allow prosecutors to submit relevant documents, including court documents.<sup>83</sup> Prosecutors should include a summary of law enforcement and court documents submitted, explaining how each document is relevant to the person's suitability for parole and provide cites to specific pages the hearing panel should review. In addition, highlighting or underlining relevant text, especially in scanned documents, is encouraged.

#### *Do Not Submit Duplicate Documents*

Documents previously submitted by the prosecutor's office or the court will not be accepted. As noted above, most relevant arrest reports, minute orders, abstracts of judgment, and probation officer reports are submitted to CDCR when a person is first admitted to state prison. In addition, the Board will request copies of critical law enforcement documents when preparing the person's Comprehensive Risk Assessment and those documents will be added to the person's central file. Prosecutors are expected to review the incarcerated person's central file and the Board's hearing packet to determine if a document they believe is relevant has already been submitted to CDCR.

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<sup>82</sup> Cal. Code Regs., tit. 15, § 2030, subd. (c).

<sup>83</sup> Cal. Code Regs., tit. 15, § 2030, subd. (c).

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### *Photographic Materials*

The Board is tasked with determining whether the person before them poses a current, unreasonable risk of danger to society. In making this determination, the Board must consider all relevant, reliable evidence and uses the SDMF, which is consistent with empirical research, governing statutes, regulations, and caselaw. Determining the manner in which factors relevant to parole suitability are considered lies within the discretion of the Board.<sup>84</sup> Relevant information for a parole hearing is defined as “evidence which proves or disproves an issue or fact in dispute.”<sup>85</sup>

The Board accepts the incarcerated person’s conviction as true and is not re-litigating the commitment offense at a parole hearing. Accordingly, hearing panels do not need to consider every piece of evidence presented at trial, including photographic materials. The Board already receives many documents containing information about the crime, which includes documents from courts, prosecutors, probation officers, the incarcerated person, and victims and their family members. Hearing panels review these documents for the hearing and are familiar with the facts of the commitment offense. If there are disputes regarding the commitment offense that need to be resolved, such as an incarcerated person’s implausible denial of the crime, the hearing panel is usually able to resolve these disputes based on materials already in the record. If the hearing panel determines that photographs or other documents are necessary for them to reach a decision on the incarcerated person’s parole suitability, they can postpone or continue the hearing so the additional information can be gathered.

Photographic materials, such as crime scene or autopsy photos, are often very graphic and may contain images of a deceased victim’s unclothed body. When these items are received, they may be scanned and uploaded to the person’s central file, which is accessible to the incarcerated person and CDCR employees statewide.<sup>86</sup> Crime scene and autopsy photos are also generally duplicative of evidence already contained in the record.

For these reasons, the Board will not accept photographs, including crime scene and autopsy pictures. The Board continues to welcome prosecutors’ submission of written documents in compliance with this section.

### *Deadline for Submitting Documents*

Prosecutors should submit documents to the Board as soon as possible after a parole hearing is scheduled. These documents should be postmarked or emailed to the Board at least **20 calendar days** before the date of the parole hearing to allow time for hearing panels to review the information. The incarcerated person has a right to review documents submitted by the prosecutor at least 10 calendar days before the hearing, and the Board will not accept documents submitted by a prosecutor within 10 calendar days of the hearing.<sup>87</sup> The only exception is that a prosecutor may forward to the Board at any time victim impact statements, as described in sections 2.13 and 6.6.

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<sup>84</sup> *In re Shaputis II* (2011) 53 Cal.4th 192, 201.

<sup>85</sup> Cal. Code of Regs., tit. 15, § 2000, subd. (b)(91).

<sup>86</sup> Pen. Code, § 2081.5.

<sup>87</sup> Pen. Code, § 3041.5, subd. (a)(1).

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### *How to Submit Documents*

Prosecutors who wish to submit documents to the Board should send them by email to [BPH.CorrespondenceUnit@cdcr.ca.gov](mailto:BPH.CorrespondenceUnit@cdcr.ca.gov) or by mail to the Board of Parole Hearings at P.O. Box 4036, Sacramento, CA 95812. Documents submitted will not be returned, so prosecutors are encouraged to make copies before submitting documents.

### **2.13 Statements Submitted Before the Hearing by Victims, Victims' Family Members, and Victim Representatives**

The Board appreciates and values participation in the parole hearing process by victims, victims' family members, and victim representatives (collectively referred to as "victims and victims' family members" in this section). The decision to participate and the level of participation is a personal decision. Victims and their family members are encouraged to make this decision based on their individual circumstances, which can vary greatly from one person to another. Regardless of whether victims or their family members appear at the parole hearing, any statements submitted to the Board in advance of the hearing will be considered by the hearing panel.

Victims and victims' family members are not required to submit a written statement. However, they have a right to submit a written statement if they want to. Those who have registered with OVSRS to receive notice of parole hearings **do not** have to submit a statement prior to the hearing to attend the hearing or to make a statement at the hearing.

It can be difficult for some victims and victims' family members to describe in words how the incarcerated person's crime(s) has affected them. If a victim or victim's family member would like to submit a written statement to the Board, it is recommended the written statement address their views about the crime(s) and the person responsible, the effect of the crime(s) on them, and the suitability of the incarcerated person for parole.<sup>88</sup>

Sometimes the Board receives written statements that are very long or difficult for hearing panels to properly review before the hearing, especially when received close to or on the day of the hearing. To make sure written statements submitted are timely considered by the hearing panel, it is recommended victims and victims' family members follow these guidelines:

#### ***Written, Audiotaped, or Videotaped Statements***

Typed statements should be in 10-point font or larger. Handwritten statements should be legible. The victim's or victim's family member's contact information (address, phone number, and email address) **should not** be included on the written statement. Emailed statements should be submitted as a Microsoft Word document, Portable Document Format (PDF), or similar compatible format. Do not submit documents in Joint Photograph Experts Group (JPEG) format. A victim's or victim's family member's written statement is typically 2 to 4 pages, single-sided, and single-spaced.

The statement may also be audiotaped, videotaped, or stored on any recording medium (such as a DVD or CD-ROM) accepted by the Board.<sup>89</sup> Statements that are audiotaped or videotaped will be

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<sup>88</sup> Pen. Code, §§ 3043(b)(1), 3043.2(a)(1).

<sup>89</sup> Pen. Code, § 3043.2, subs. (a), (b); Cal. Code Regs., tit. 15, § 2029, subd. (f).

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accepted so long as (1) they are provided to the Board at least **21 calendar days** before the hearing and (2) a written transcript of the recorded statement is included with the submission.<sup>90</sup>

### *Confidentiality of Statements*

Statements submitted to the Board may be read at a parole hearing or referred to at a hearing. This means the statement will be part of the transcript that is provided to the incarcerated person, their attorney, the prosecutor, and is available to the public upon request. A statement deemed confidential by CDCR will not be read at a parole hearing or provided to the public or the hearing participants. However, the statement may be reviewed by the hearing panel and by the Board and the Governor if the decision is reviewed.

A statement submitted by the victim or victim's family member may be kept confidential upon request if CDCR determines that the written statement meets the criteria for confidentiality.<sup>91</sup> The following criteria suggest that a statement opposing a person's release be deemed confidential: (1) the victim or victim's family member requests the statement be deemed confidential; and (2) the statement contains information or material that, if known by the incarcerated person, could reasonably be expected to incite animosity or potentially endanger the victim or the victim's family.

When submitting the statement to the Board, the words "CONFIDENTIAL" or "REVIEW BY HEARING PANEL ONLY" should be placed at the top of the statement or email to the Board. Victims and victims' family members should be aware that statements determined not to meet the criteria for confidentiality will be made available to the incarcerated person and may be read at the parole hearing and become part of the public transcript of the hearing.

### *Deadline for Submitting Statements*

Victims and victims' family members may submit their written statements at any time before the hearing. However, victims and victims' family members submitting a confidential written statement should submit their statement at least **10 calendar days** prior to the hearing for CDCR to determine if the statement meets the criteria for confidentiality and for the hearing panel to be provided with the statement. If a statement is audiotaped, videotaped, or stored on another recording medium (such as a DVD or CD-ROM), a written transcript of the recording must also be provided to the Board, and both must be submitted at least **21 calendar days** before the hearing.<sup>92</sup>

### *How to Submit Statements*

Victims and victims' family members who wish to submit statements should send them by email to [BPH.CorrespondenceUnit@cdcr.ca.gov](mailto:BPH.CorrespondenceUnit@cdcr.ca.gov) or by mail to the Board of Parole Hearings at P.O. Box 4036, Sacramento, CA 95812. Please note that statements submitted will not be returned, so individuals are encouraged to make copies before submitting their statements.

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<sup>90</sup> Cal. Code Regs., tit. 15, § 2029, subd. (f).

<sup>91</sup> Cal. Code Regs., tit. 15 § 3321.

<sup>92</sup> Pen. Code, § 3043.2, subd. (b); Cal. Code Regs., tit. 15, § 2029, subd. (f).

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### 2.14 Written Statements Submitted by the Public

Any member of the public may submit information concerning the incarcerated person and the crime(s) they committed.<sup>93</sup>

Sometimes the Board receives written statements that are very long or difficult for hearing panels to properly review before the hearing. To make sure written statements submitted can be properly considered by the hearing panel, it is recommended that statements submitted by the public follow these guidelines:

#### *Submit Statements That Are Typed or Clearly Written*

Typed statements should be in 10-point font or larger. Handwritten statements should be legible. The writer's contact information (address, phone number, and email address) **should not** be included on the written statement. Emailed statements should be submitted as a Microsoft Word document, Portable Document Format (PDF), or similar compatible format. Do not submit documents in Joint Photograph Experts Group (JPEG) format or photographs.

#### *Suggested Length of Statements*

Written statements from members of the public are typically 1 to 2 pages, single-sided, and single-spaced.

#### *Avoid Submitting Form Letters and Petitions*

The California Supreme Court has held that the Board must determine a person's suitability for parole based on whether the person poses a current, unreasonable risk of danger to the public. In making this determination, the Court has held that the Board may not consider "public outcry."<sup>94</sup> For this reason, although form letters and signed petitions will be made part of the official record of the hearing, a hearing panel cannot rely on them when determining the person's suitability for parole. Information from members of the public who have personal information about the incarcerated person or their crime(s) that is relevant to determining the person's current risk are most helpful when determining the person's suitability for parole.

#### *Confidentiality of Written Statements*

Written statements submitted to the Board may be read or referred to at a parole hearing. This means the statement may be part of the transcript that is provided to the incarcerated person, their attorney, the prosecutor, and is available to the public upon request. A statement deemed confidential by CDCR will not be read at a parole hearing or provided to the public or hearing participants. However, the statement may be reviewed by the hearing panel and by the Board and the Governor if the decision is reviewed.

A statement submitted by a member of the public may be kept confidential upon request of the writer if CDCR determines the letter meets the requirements for confidentiality.<sup>95</sup> The following criteria suggest that a statement opposing a person's release be deemed confidential: (1) the writer requests the statement be kept confidential; and (2) the statement contains information or material

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<sup>93</sup> Pen. Code, §§ 3042, 3043.5; Cal. Code Regs., tit. 15, § 2028.

<sup>94</sup> *In re Vicks* (2013) 56 Cal.4th 274, 310.

<sup>95</sup> Cal. Code Regs., tit. 15, § 3321.

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that, if known by the incarcerated person, could reasonably be expected to incite animosity or potentially endanger the writer. When submitting the statement to the Board, the words “CONFIDENTIAL” or “REVIEW BY HEARING PANEL ONLY” should be placed at the top of the statement or email to the Board. Individuals should be aware that statements determined not to meet the criteria for confidentiality will be made available to the incarcerated person and may be read at the parole hearing and become part of the public transcript of the hearing.

### *Deadline for Submitting Written Statements*

Information from the public should be submitted at least **20 calendar days** before the date of the parole hearing to allow time for hearing panels to review the information. The incarcerated person has a right to review material the Board will consider at the hearing at least 10 calendar days prior to the date of the hearing. For this reason, the Board will not consider statements submitted within 10 calendar days of a hearing unless the incarcerated person or their attorney allows the information to be considered by the hearing panel; otherwise, the information will be kept in the incarcerated person’s file to be considered by future hearing panels.

### *How to Submit Written Statements*

Members of the public who wish to submit written statements should send them by email to [BPH.CorrespondenceUnit@cdcr.ca.gov](mailto:BPH.CorrespondenceUnit@cdcr.ca.gov) or by mail to the Board of Parole Hearings at P.O. Box 4036, Sacramento, CA 95812. Statements submitted will not be returned, so individuals are encouraged to make copies before submitting their documents.

## **2.15 Comprehensive Risk Assessments**

A Comprehensive Risk Assessment (CRA) is generally prepared for a parole hearing scheduled for an incarcerated person who is housed in California. A CRA will only be prepared for a parole hearing if it is the person’s initial parole hearing (because they will not have a prior CRA) or if the person’s last CRA will be more than three years old on the date of their hearing.

The Board prepares CRAs for hearing panels to assist them in understanding an incarcerated person’s risk for future violence and factors that may reduce their risk if released to the community. A CRA is prepared by a forensic clinical psychologist (“psychologist”) in the Board’s Forensic Assessment Division. The Board’s psychologists use evidence-based risk assessment tools<sup>96</sup> to guide their structured professional judgment or expert opinion concerning the person’s risk for future violence.

After reviewing a person’s prison records and criminal history, the psychologist will interview the person and prepare a written CRA. The CRA will include an evaluation of the person’s personal history and family background, juvenile and adult criminal history, commitment offense(s), rehabilitative programming, disciplinary history in prison, mental health, substance abuse history, parole plans, their past and present mental state, and an analysis of their historical and current risk factors.

A CRA is not final until the Board’s chief psychologist or one of the Board’s senior psychologists has reviewed it and finds the psychologist’s opinions are based on adequate scientific foundation.<sup>97</sup>

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<sup>96</sup> Psychologists administer the HCR-20, version 3; PCL-R; and the Static 99 (if applicable).

<sup>97</sup> Cal. Code Regs., tit. 15, § 2240, subd. (c)(1).



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A CRA is final on the date it is first approved by the Board's chief psychologist or one of the Board's senior psychologists. In most cases, a new CRA will be prepared if more than three years have passed since the most recent CRA became final.<sup>98</sup> A CRA is required to be provided to the incarcerated person no later than 60 calendar days before the parole hearing.<sup>99</sup>

### *CRA Interviews*

Approximately three to four months before the hearing, one of the Board's psychologists will interview the incarcerated person for purposes of preparing a CRA for the hearing panel to consider at the hearing. CRA interviews usually last two to three hours.

Prior to the CRA interview, the psychologist will review the person's central file to determine whether the person has any disabilities that need to be accommodated so that the psychologist can effectively communicate with the person. If accommodations are necessary, the psychologist will work with institution and Board staff to make the accommodations available for the interview. For example, if an incarcerated person is deaf or hard of hearing, the psychologist may use a sign language interpreter to communicate with the incarcerated person. Similarly, if an incarcerated person does not speak fluent English, the psychologist may use a foreign language interpreter to communicate with the person.

Incarcerated persons can choose to not be interviewed by the psychologist for their CRA. However, the psychologist will still complete the CRA based on a review of the person's central file, prior CRAs (if any), and other relevant information.

### *Objections to the CRA*

Upon receiving their CRA, the incarcerated person or their attorney may submit written objections to the Board's chief counsel if they believe there are factual errors in the CRA. The objections must be submitted at least **30 calendar days** before the parole hearing and should be clearly marked: "Attention: BPH Chief Counsel/Risk Assessment Objection."<sup>100</sup>

A factual error is an untrue circumstance or event. Examples of factual errors that may be raised as part of the Board's pre-hearing objection process include: a disagreement with a statement attributed to the incarcerated person, a misquoted statement from a document in the incarcerated person's central file, or something that can be proven incorrect by documentation available to the Board.

A disagreement with clinical observations, opinions, or diagnoses is not a factual error.<sup>101</sup> This means an incarcerated person or their attorney **should not** write to the Board objecting to the risk rating or the clinician's opinions concerning the person's risk for violence. Objections to clinical observations, opinions, and diagnosis can only be raised at the hearing.

The pre-hearing CRA objection process is not meant for the incarcerated person to provide additional information to explain a statement they made in the CRA. The incarcerated person should provide this additional information to the hearing panel at the hearing. For example, if the CRA states that the incarcerated person has not participated in programming and the incarcerated

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<sup>98</sup> Cal. Code Regs., tit. 15, § 2240, subs. (c)(2), (d)(1).

<sup>99</sup> Cal. Code Regs., tit. 15, § 2240, subd. (d)(2).

<sup>100</sup> Cal. Code Regs., tit. 15, § 2240, subd. (e)(1), (3).

<sup>101</sup> Cal. Code Regs., tit. 15, § 2240, subd. (e)(2).

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person wants to further explain why they did not participate in programming, this explanation should be raised directly with the panel at the hearing.

If the objections are timely submitted, the Board's chief counsel will review the objections and determine whether the CRA contains a factual error. If the Board's chief counsel finds that there is no factual error, the Board will issue a response to the incarcerated person and their attorney explaining its decision. If the Board's chief counsel finds the CRA contains a factual error, the chief counsel will refer the error to the Board's chief psychologist to revise the CRA accordingly and prepare an addendum explaining whether correcting the error materially impacted the overall risk rating. The Board will also issue a miscellaneous decision that provides rulings on each objection. The Board will respond to the incarcerated person at least 10 calendar days before the parole hearing.<sup>102</sup>

If the objections are submitted fewer than 30 calendar days before the hearing, the Board's chief counsel will determine whether there is enough time to review and respond to the objections at least 10 calendar days before the parole hearing.<sup>103</sup> If the chief counsel determines there is not enough time, the objections will be forwarded to the hearing panel. The hearing panel will determine if there was a good reason (i.e., "good cause") for the untimely submission and if the panel finds good cause, the panel will review and respond to the objections at the hearing. If the panel does not find good cause, the panel may decline to hear the objections.

If an incarcerated person or their attorney raises an objection to the CRA based on a factual error for the first time at the parole hearing, the hearing panel will determine if the person had a good reason (i.e., "good cause") for not bringing it to the Board's attention before the hearing, as required. The hearing panel may decide to overrule the objection for lack of good cause or find there was good cause and allow the incarcerated person or their attorney to present their objection at the hearing; the hearing panel will then rule on the objection.<sup>104</sup>

If the panel determines at the hearing that the CRA may contain a factual error, the panel will refer it to the Board's chief counsel for review. The panel may still conduct the parole hearing if there is sufficient information to determine the person's suitability for parole. The hearing panel may, however, choose to continue or postpone the hearing if additional information is needed to determine the person's suitability for parole.<sup>105</sup>

If the Board determines there is a factual error in a CRA, the CRA will be revised. When this happens, the prior version of the CRA will be removed from the incarcerated person's file.<sup>106</sup>

### **2.16 Postponing or Waiving the Hearing (Before Week of the Hearing)**

The Board recognizes that the rights and interests of all persons appearing at a parole hearing are best served when hearings are conducted as scheduled. However, some circumstances may require a scheduled hearing to be postponed. In addition, the law allows an incarcerated person to waive their hearing.<sup>107</sup>

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<sup>102</sup> Cal. Code Regs., tit. 15, § 2240, subd. (f)(1), (2).

<sup>103</sup> Cal. Code Regs., tit. 15, § 2240, subd. (h).

<sup>104</sup> Cal. Code Regs., tit. 15, § 2240, subd. (i)(1).

<sup>105</sup> Cal. Code Regs., tit. 15, § 2240, subd. (i)(2)(A)-(B).

<sup>106</sup> Cal. Code Regs., tit. 15, § 2240, subd. (g)(3).

<sup>107</sup> Cal. Code Regs., tit. 15, § 2253.

## Parole Hearing Process Handbook

### *Postponing a Parole Hearing (Before Week of the Hearing)*

Postponing a hearing means moving the hearing to a later date. A parole hearing may need to be postponed for many reasons.<sup>108</sup> For example, a parole hearing may need to be postponed if one member of the hearing panel is sick or otherwise not available on the day of the hearing. A parole hearing may need to be postponed if important documents are missing or if documents were not provided timely as required. A parole hearing may also be postponed if an incarcerated person's disability requires an accommodation that has not been provided or if there are exigent circumstances, such as an incarcerated person or their attorney is ill, there has been a natural disaster, or an emergency at the institution where the person is housed.

An incarcerated person or their attorney may also request to postpone the hearing to resolve matters relevant to the parole hearing. Requests will be approved only if the requestor shows there is a good reason (i.e., "good cause") for the postponement and the reason for the postponement was not and could not have been known any earlier than when the request was made. Incarcerated persons may postpone their hearing for no more than 11 months. Postponement requests should be submitted to the Board as soon as possible by completing the **BPH Form 1003, Hearing Rights**, which is available at the incarcerated person's institution, on the Board's website, and in the appendix of this handbook.<sup>109</sup> Hearings that are postponed will be scheduled as soon as possible, usually within six months, and all parties entitled to receive notice of the hearing will receive notice of the new scheduled date.

### *Waiving a Parole Hearing (Before Week of the Hearing)*

Waiving a hearing means the incarcerated person is waiving their right to have a parole hearing for one, two, three, four, or five years. The Board generally approves an incarcerated person's timely request to waive their hearing. If the Board approves a waiver request, the Board will not conduct the parole hearing as originally scheduled but instead will schedule the person's next hearing in one, two, three, four, or five years, based on the number of years the person has waived their right to have a hearing. An incarcerated person may waive their hearing no more than three times in a row.<sup>110</sup>

An incarcerated person's attorney may also request to waive a hearing after consulting with their client. If the attorney is unable to consult with the incarcerated person, the attorney must affirm that the waiver is in the best interest of their client and provide the reasons the attorney could not consult with their client before requesting that their client's hearing be waived.

Requests to waive a parole hearing should be submitted at the earliest possible date. Requests that are submitted at least **45 calendar days** before the hearing are presumed to be valid<sup>111</sup> and are usually approved. Requests submitted fewer than 45 calendar days before the hearing are presumed to be invalid and will be denied unless the incarcerated person or their attorney can show there is a good reason (i.e., "good cause") for the waiver and that the reason was not known and could not reasonably have been known to the incarcerated person more than 45 calendar days before the hearing. If a waiver request is submitted and approved, the Board will notify any registered victims,

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<sup>108</sup> Cal. Code Regs., tit. 15, § 2253, subd. (d).

<sup>109</sup> <https://www.cdcr.ca.gov/bph/bph-forms/>.

<sup>110</sup> Cal. Code Regs., tit. 15, § 2253, subd. (b).

<sup>111</sup> Cal. Code Regs., tit. 15, § 2253, subd. (b).

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victims' family members, and the prosecutor's office that received notice of the hearing as soon as possible.

Incarcerated persons and their attorneys may request a waiver by submitting a completed **BPH Form 1003, *Hearing Rights***, which is available at the incarcerated person's institution, on the Board's website, and in the appendix of this handbook.<sup>112</sup>

**NOTE:** If a hearing is waived or postponed, the Board will not advance the person's next hearing date under the Board's administrative review process or in response to an incarcerated person's petition to advance their next hearing date. For more information about the Board's administrative review process and petitions to advance an incarcerated person's next hearing date, see section 4.

### 2.17 Persons Appearing at the Hearing

Parole hearings are conducted by a two- or three-person panel comprised of one or two commissioners and no more than one deputy commissioner. Most hearings are conducted by one commissioner and one deputy commissioner. If there are three hearing officers, the hearing panel will be made up of two commissioners and one deputy commissioner.<sup>113</sup> Others who may participate in the hearing include the incarcerated person, the person's attorney, the prosecutor, and victims, victims' family members, and their representatives and support persons.<sup>114</sup> A staff assistant or a language interpreter may be present if needed by the incarcerated person. Correctional officers will be present in the hearing room where the incarcerated person is located for security purposes. How hearing participants may appear at the hearing (in person, by videoconference, or by telephone) depends on whether the hearing is held in person or by videoconference, which is further explained in section 2.5.

The Board's Executive Officer or a designee may authorize members of the public to observe a parole hearing to learn more about the parole hearing process.<sup>115</sup> Observers cannot have a personal or professional interest in the case, nor may they know the incarcerated person, a victim, a victim's family member, or any other hearing participant. The only exception is for persons who are being trained to participate in parole hearings as an attorney, supervised law student, prosecutor, or victim's support person or representative. The Executive Officer or a designee may also authorize credentialed members of the media to observe a parole hearing. Persons authorized to observe a parole hearing may not participate in the hearing.

Requests to observe a hearing for educational and informational purposes should be emailed to [BPHHearingObservations@cdcr.ca.gov](mailto:BPHHearingObservations@cdcr.ca.gov). The request must be for a hearing occurring at least two weeks in the future. The Board will randomly assign the observer to a hearing unless the observation is for training purposes as described above or the request is from a credentialed member of the media. To process the request, personal information (for example, social security number, date of birth, driver's license, or passport) may be required. Credentialed members of the media should submit their request to observe a hearing to CDCR's Office of Public and Employee

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<sup>112</sup> <https://www.cdcr.ca.gov/bph/bph-forms/>.

<sup>113</sup> Cal. Code Regs., tit. 15, §§ 2053, 5076.1, subd. (d).

<sup>114</sup> Victim participation is further discussed in section 6. Victims and victims' family members may also contact CDCR's Office of Victim and Survivor Rights and Services for more information by calling 1-877-256-6877 or emailing [victimservices@cdcr.ca.gov](mailto:victimservices@cdcr.ca.gov).

<sup>115</sup> Cal. Code Regs., tit. 15, §§ 2031, 2032.

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Communications via the website at <https://www.cdcr.ca.gov/about-opec/https://www.cdcr.ca.gov/about-opec/> or by calling (916) 445-4950.

### 2.18 Postponing or Waiving the Hearing (Week of the Hearing)

#### *Postponing the Hearing (Week of the Hearing)*<sup>116</sup>

Generally, requests to postpone a hearing should be submitted to the Board as early as possible once the reason for the postponement is known. However, the reason may not be known until the week of the hearing. Requests submitted the week of the hearing will be reviewed by the hearing panel at the hearing. Requests will only be approved if the requestor shows there is a good reason (i.e., “good cause”) for the postponement and the reason for the postponement was not and could not have been known any earlier than when the request was made.

The hearing panel may also determine that a postponement is necessary to resolve issues that may arise at the hearing, such as when a member of the hearing panel is unavailable due to illness or other emergency, because the hearing panel needs more information to determine if the person is suitable for parole, or if the incarcerated person’s disability requires an accommodation that has not been provided.

If the hearing is postponed during the week of the hearing, the prosecutor and any victims, victims’ family members, and their representatives will have the opportunity to make a statement on the record that will be considered by future hearing panels. Postponed hearings will be rescheduled as soon as possible, usually within six months, and all parties entitled to receive notice of the hearing will receive notice of the new scheduled date.

#### *Waiving the Hearing (Week of the Hearing)*<sup>117</sup>

An incarcerated person’s request to waive their hearing should be submitted at least **45 calendar days** before the hearing date. If the person submits a waiver request the week of the hearing or at the hearing, the hearing panel will determine whether to approve the request at the hearing. If requested at the hearing, the incarcerated person or their attorney should make the request at the start of the hearing, before the hearing panel begins discussing the case. The request will be presumed invalid unless the person can show there is a good reason (i.e., “good cause”) for the waiver that was not and could not reasonably have been known to the person more than 45 calendar days before the hearing. An incarcerated person may waive their hearing for one, two, three, four, or five years, and may waive their hearing no more than three times in a row. If the hearing panel approves the waiver request during the week of the hearing, the prosecutor and any victims, victims’ family members, and their representatives will have the opportunity to make a statement on the record to be considered by future hearing panels.

**NOTE:** If a hearing is waived or postponed, the Board will not advance the person’s next hearing date under the Board’s administrative review process or in response to an incarcerated person’s petition to advance their next hearing date. For more information about the Board’s administrative review process and petitions to advance an incarcerated person’s next hearing date, see section 4.

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<sup>116</sup> Cal. Code Regs., tit. 15, § 2253, subd. (d). For information on postponing before the hearing, see section 2.16.

<sup>117</sup> Cal. Code Regs., tit. 15, § 2253, subd. (b). For more information on waiving before the hearing, see section 2.16.

## Parole Hearing Process Handbook

### 2.19 Stipulating to Unsuitability

A stipulation is an agreement between the Board and an incarcerated person in which the incarcerated person agrees they are not currently suitable for parole. This means the incarcerated person is requesting to be denied parole without the Board conducting a parole hearing. The incarcerated person may offer to stipulate to being unsuitable for parole for a period of 3, 5, 7, 10, or 15 years.<sup>118</sup>

An offer to stipulate should be made to the hearing panel before the start of the hearing on the day of the hearing. The hearing panel will consider statements from the prosecutor, victims, victims' family members, and their representatives before deciding to accept or reject the offer. If the offer is accepted, the hearing panel will decide whether the incarcerated person will be denied parole for 3, 5, 7, 10, or 15 years, and the parole hearing will not be held. If the offer is rejected, the hearing panel will conduct the hearing as scheduled.

**NOTE:** If an incarcerated person stipulates to unsuitability, the Board will not review the decision to advance the person's next hearing date under its administrative review program.<sup>119</sup> However, the person may submit a petition to advance their next hearing date. For more information about the Board's administrative review program and petitions to advance an incarcerated person's next hearing date, see section 4.

### 2.20 Americans with Disabilities Act – Accommodations at the Hearing

At the start of the hearing, the hearing panel will review the incarcerated person's **BPH Form 1073, *Notice and Request for Assistance at Parole Proceeding***, which outlines the person's known disabilities, requests for assistance, and necessary accommodations, if any. If additional necessary accommodations are requested or discovered during the person's ADA review, the hearing panel will work with institution staff to provide reasonable accommodations. The incarcerated person's attorney is expected to ensure their client's disabilities are properly accommodated throughout the hearing. If, at any point, an incarcerated person or their attorney believes that a disability is not being properly accommodated, the person or their attorney must notify the panel immediately so the panel may determine what reasonable accommodations should be provided.

Under the *Armstrong* Remedial Plan II, certain incarcerated persons with disabilities are required to have an attorney and they may not waive their attorney's representation at the hearing.<sup>120</sup> In these "mandatory attorney" cases, the attorney makes sure that the incarcerated person is able to effectively communicate with the hearing panel to the best of their ability, throughout the hearing.

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<sup>118</sup> Cal. Code Regs., tit. 15, § 2253, subd. (c).

<sup>119</sup> Cal. Code Regs., tit. 15, § 2154, subd. (b).

<sup>120</sup> See section 2.9 of this handbook. Under the *Armstrong* Remedial Plan II, the following persons must be represented by an attorney: (1) persons under CDCR's Mental Health Services Delivery System (MHSDS) at the Enhanced Outpatient Program (EOP) or Mental Health Crisis Bed (MHCB); (2) persons in a licensed Psychiatric Inpatient Program under the care of CDCR or the Department of State Hospitals; (3) persons identified by CDCR as being part of the Developmental Disability Program; (4) persons with a reading level of 4.0 or below; and (5) persons designated by CDCR as having a learning disability. For incarcerated persons in the Correctional Clinical Case Management System (CCCMS) level of care in the MHSDS, it is presumed that the person needs an attorney, unless documentation or other reliable information shows that an attorney is not needed.

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For example, the attorney may check to see if the incarcerated person understands what the hearing panel is saying and ensure they are giving appropriate responses to questions. The attorney may also notify the hearing panel if the incarcerated person shows any signs of distress, inattentiveness, or confusion. For those who are not required to have an attorney under the *Armstrong* Remedial Plan II, the panel may still require an attorney to be present if it will help the panel to communicate effectively with the incarcerated person.

A CDCR staff assistant may attend the hearing to help the hearing panel communicate effectively with the incarcerated person. Staff assistants are automatically provided for all incarcerated persons who have been identified by CDCR as having a developmental disability.<sup>121</sup> For all other incarcerated persons, the hearing panel may request a staff assistant be present if they determine that one is necessary to help the panel effectively communicate with the person.<sup>122</sup>

After the hearing, the hearing panel will document on the **BPH Form 1073, *Notice and Request for Assistance at Parole Proceedings***, all the accommodations provided to the incarcerated person during the hearing.

### 2.21 Criteria for Parole Suitability

The purpose of a parole hearing is to decide whether an incarcerated person should be released from prison and placed on parole in the community. The legal standard for making this decision is provided by the Penal Code,<sup>123</sup> the Board's regulations,<sup>124</sup> and court cases.<sup>125</sup> In sum, hearing panels apply the following legal standard at parole hearings:

A hearing panel must grant parole at a parole hearing, unless it determines the incarcerated person currently poses an unreasonable risk of danger to society if released from prison.

When deciding if a person currently poses an unreasonable risk of danger to society, hearing panels weigh factors relevant to predicting whether the person will commit more antisocial acts, such as crimes of violence, causing personal or financial harm to others, or failing on parole through noncompliance with the reasonable restrictions imposed by their parole agent.<sup>126</sup>

Hearing panels use an assessment tool called the Structured Decision-Making Framework (SDMF) to analyze the person's risk factors and determine whether the person can live in society without committing more crimes. The SDMF requires hearing panels to consider evidence-based risk factors and the law. The SDMF is intended to produce parole decisions that are structured,

<sup>121</sup> *Armstrong* Remedial Plan II at 8.

<sup>122</sup> *Armstrong* Remedial Plan II at 4, 6.

<sup>123</sup> Pen. Code, § 3043, subd. (b).

<sup>124</sup> Cal. Code Regs., tit. 15, §§ 2281, subd. (a), 2402, subd. (a).

<sup>125</sup> *In re Lawrence* (2008) 44 Cal.4th 1181, 1205; see also section 8 of this handbook.

<sup>126</sup> *In re Lawrence* (2008) 44 Cal.4th 1181, 1205-06, quoting *In re Rosenkrantz* (2002) 29 Cal.4th 616, 655; *In re Reed* (2009) 171 Cal.App.4th 1071, 1081.

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transparent, and focused on a person's current risk of dangerousness. To that end, **hearing panels generally focus on how the incarcerated person has changed since coming to prison.**

For more information on the criteria for determining parole suitability, including the SDMF and how it is applied at parole hearings, see section 3.

### 2.22 General Hearing Procedures

In considering the incarcerated person's suitability for parole, the hearing panel will apply the SDMF and the applicable legal standards outlined in section 3 of this handbook. Every hearing is unique based on the incarcerated person's case, and the length of hearings varies. The average length of a hearing is two and a half hours. Also, while all hearings are guided by the same laws and regulations, some hearing procedures may vary depending on the hearing panel. Generally, participants can expect the following at a hearing:

#### *Preliminary Matters*

All parole hearings are audio recorded and transcribed. Therefore, one of the first things a hearing panel will do is have all persons attending the hearing identify themselves for the record. The hearing panel will also place the incarcerated person under oath, and interpreter if there is one, and review any accommodations they may need under the Americans with Disabilities Act. This is also the time when the incarcerated person can offer to stipulate to being unsuitable for parole, make objections, or bring up any issues relevant to the hearing.

#### *Information Considered*

The purpose of a parole hearing is to determine whether an incarcerated person currently poses an unreasonable risk of danger to society if released from prison. In making this determination, the hearing panel considers all relevant and reliable information available to the panel, including the incarcerated person's central file, medical and mental health records, substance use and treatment records, the Board's Comprehensive Risk Assessment, the incarcerated person's testimony, statements from other hearing participants, and statements and documents submitted before the hearing.

#### *Board's Review and Consideration of Substance Use Treatment Records*

The Board is obligated to review all relevant, reliable information when deciding a person's parole suitability.<sup>127</sup> This includes the person's medical treatment records, such as participation in the Integrated Substance Use Treatment (ISUDT) program and use of Medication Assisted Treatment (MAT).<sup>128</sup> If substance use issues contributed to the circumstances that led to the person's commitment offense or other criminal behavior, the hearing panel will want to know what caused the person to use substances, how the person has addressed the issue, and what tools they have to manage the issue in the community.

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<sup>127</sup> Cal. Code Regs., tit. 15, §§ 2281, 28402.

<sup>128</sup> The Board has legal authority to access medical records of incarcerated persons for parole consideration purposes. (*Seaton v. Mayberg* (9th Cir. 2010) 610 F.3d 530, 534; see 45 C.F.R. § 164.512, subds. (a), (f) (regarding exemptions under the Health Information Portability and Accountability Act); Civ. Code § 56.10, subd. (b)(9) (requiring disclosure of medical records "[w]hen otherwise specifically required by law"); see also Pen. Code § 2081.5 (requiring the incarcerated person's case record, including diagnostic findings and treatment, be made available to the Board).)



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Participating in treatment shows that the person is willing to get help and learn ways to deal with their substance use issues, which helps them become more suitable for parole. Hearing panels view a person's participation in ISUDT and use of MAT as a positive thing.

Some common questions hearing panels may ask those in ISUDT or using MAT are:

- What is your substance use history?
- When did you last use?
- How did your substance use impact your actions and your beliefs in the past?
- How did your substance use affect others?
- What are some of the circumstances that led to your substance use in the past?
- Do you understand why you turned to substances? What were the underlying issues or trauma that caused you to turn to substances?
- Have you addressed the underlying issues or trauma so that you have a positive way of responding to similar situations in the future without turning to substances or violence?
- Are you able to openly seek help from others when needed?
- Do you have a relapse prevention plan you use today that works for you? How will this plan need to be modified when you are in the community?
- What will you do in the community when you want to use substances again?
- If you are receiving MAT, what has been your experience with MAT? Have you been compliant with taking the medication? Do you plan on continuing to use it – why or why not?
- If you relapsed, what circumstances led to your relapse? Have you learned different ways of addressing those circumstances in the future?

### ***Discussion with the Incarcerated Person***

Once preliminary issues are considered and resolved and it is determined the hearing will go forward, the hearing panel will review relevant information and ask the incarcerated person questions. This may include questions regarding the person's criminal and parole history, factors that led to the person committing their crime(s), the person's programming and behavior in prison, changes in their thoughts and behavior since they committed their crime(s), their release plans, and other case-specific factors. For more information about the factors the hearing panel may discuss at the hearing, see section 3.

### ***Clarifying Questions***

The prosecutor will have an opportunity to request that the hearing panel ask the incarcerated person questions to clarify relevant information.<sup>129</sup> These questions are directed to the hearing panel, and the incarcerated person will be instructed to answer or not by the hearing panel.

The incarcerated person's attorney will also have an opportunity to directly ask the incarcerated person questions to clarify relevant information.

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<sup>129</sup> Cal. Code Regs., tit. 15, § 2030, subd. (d)(2).

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### *Closing Statements*

The prosecutor, the attorney for the incarcerated person, and the incarcerated person will have an opportunity to make a closing statement. Closing statements should summarize the person's view on the incarcerated person's suitability for release. The hearing panel will often limit the length of closing statements.

### *Victim Impact Statements*

Victims, victims' family members, and their representatives have the right to make a statement at the hearing.<sup>130</sup> They also have the right to speak last and uninterrupted at the hearing.<sup>131</sup> Like most rights, however, these rights are not without limits. Those speaking will be instructed to direct their statements to the hearing panel, not the incarcerated person. In addition, the hearing panel is required to maintain appropriate decorum throughout the hearing. For this reason, there may be rare occasions when a hearing panel will interrupt a victim, victim's family member, or their designated representative. Such interruptions are expected to be brief and will occur only when necessary to redirect the person's comments to the hearing panel or to maintain appropriate decorum. For more information on who may make a statement and the scope of statements, see section 6.

### *Deliberation and Decision*

After the hearing panel has reviewed the relevant documents, questioned the incarcerated person, and heard from all hearing participants, the panel will deliberate privately in closed session. If the hearing is conducted by videoconference, the hearing panel will deliberate in a separate virtual "room" and return to the main hearing room screen to announce its decision. If the hearing is being conducted in person, the hearing panel will excuse the participants from the room to deliberate, then ask the participants to return to announce its decision and provide the reasons for their decision.

## **2.23 Hearing Result**

### *Grant Parole*

If the hearing panel finds the person suitable for parole, they will grant parole. The panel will explain the reasons for the grant and will impose any necessary special conditions of parole that are reasonably related to the person's commitment offense or are reasonably related to deterring future criminality.<sup>132</sup> These special conditions of parole must be followed while the person is on parole. The incarcerated person is also subject to all the general conditions of parole that will be imposed by CDCR's Division of Adult Parole Operations. The parole grant is a proposed decision subject to review by the Board's legal division and Governor.

### *Deny Parole*

If the hearing panel finds the person unsuitable for parole, they will deny parole. The panel will articulate the reasons for the denial and will announce the length of the denial. Persons may be

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<sup>130</sup> Pen. Code, § 3043.

<sup>131</sup> Pen Code, §§ 3043, subds. (c), (d), 3043.6.

<sup>132</sup> Pen. Code, § 3042, subd. (e); *People v. Lent* (1975) 15 Cal.3d 481.

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denied parole for a period of 3, 5, 7, 10, or 15 years.<sup>133</sup> The panel is also required to recommend things the person should do to be found suitable for parole in the future.<sup>134</sup> The parole denial is a proposed decision subject to review by the Board's legal division and Governor.

### *Continue the Hearing*

In some cases, the hearing panel may need to continue a hearing to a future date after the hearing has started.<sup>135</sup> Generally, hearings will be continued if the hearing is already substantially underway, and an issue arises that requires resolution before the hearing can move forward. The hearing panel will continue a hearing only if there is a good reason (i.e., "good cause") for the continuance. If a continuance is requested, the panel will consider the reason for the continuance and whether it was unknown or could not reasonably have been known prior to the start of the hearing. The hearing panel will also weigh the interests of the Board, CDCR, and the hearing participants, and continue the hearing to a future date if it would best serve the interest of justice.<sup>136</sup>

If a hearing is continued, the prosecutor and any victim, victim's family members, and their representatives will have the opportunity to make a statement on the record to be considered by the hearing panel when the hearing resumes at a later date.

Hearings that are continued will be rescheduled as soon as the reason for the continuance has been resolved, usually within six months. The Board will make every effort to schedule the same hearing panel to finish the case. If the same panel is scheduled, the hearing will resume from where it left off. However, sometimes it is not possible to schedule the hearing with the same panel. When this happens, a new hearing panel will start over and conduct a new full hearing.

### *Tie Vote*

Sometimes a case results in a tie vote, also known as a "split decision." This occurs when the members of a two-person hearing panel do not agree on whether the incarcerated person is suitable for parole or they do not agree on the length of the denial period (3, 5, 7, 10, or 15 years). Tie votes or split decisions do not happen often. In the event there is a tie vote or split decision, each panel member will announce their proposed decision at the hearing, and the case will be forwarded to a panel of commissioners for review at a future monthly executive board meeting. A panel of a majority of commissioners will vote at the monthly executive board meeting to grant or deny parole, or to decide the length of the denial period. This review by a panel of commissioners is also referred to as an "en banc review," which is explained further in section 7 of this handbook.

## After a Hearing

### 2.24 Hearing Transcript

The Board is required to audio record and transcribe parole hearings.<sup>137</sup> Hearing transcripts are available for release no later than 30 calendar days after the hearing. The Board will send a printed copy to the incarcerated person.<sup>138</sup>

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<sup>133</sup> Pen. Code, § 3041.5, subd. (b)(3).

<sup>134</sup> Pen. Code, § 3041.5, subd. (b)(2).

<sup>135</sup> Cal. Code Regs., tit. 15, § 2253, subd. (e).

<sup>136</sup> Cal. Code Regs., tit. 15, § 2253, subd. (e)(1).

<sup>137</sup> Pen. Code, § 3042, subd. (b).

<sup>138</sup> Pen. Code, §§ 3041.5, subd. (a)(4), 3042, subd. (b); Cal. Code Regs., tit. 15, § 2255.

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Victims and victims' family members have a right to receive a copy of the hearing transcript, upon request.<sup>139</sup> The general public may also request a hearing transcript.<sup>140</sup> Some transcripts require additional review and may not be available to the public within 30 calendar days after the hearing. Electronic transcripts are provided free of charge via email. Printed transcripts are available for a fee to cover the cost of printing and postage. The Board will notify the requesting party of the total number of pages and the cost of postage. More information is available on the Board's website.<sup>141</sup>

### 2.25 Americans with Disabilities Act – Grievance Process After the Hearing

If an incarcerated person or their attorney has concerns regarding the disability-related accommodations that were provided or denied at a parole hearing, they should submit a **BPH Form 1074, Request for Reasonable Accommodations – Grievance Process**, to the Board. Incarcerated persons may ask their attorney or institutional staff for assistance in filling out the form. The Board will respond to the grievance within 30 calendar days from the date it is received by the Board.

### 2.26 Post-Board Unit Classification Committee

Within 15 calendar days of an incarcerated person's parole hearing, the person will appear before CDCR's Post-Board Unit Classification Committee. The purpose of this meeting is to go over any recommendations made by the hearing panel. For example, the hearing panel may recommend the person comply with prison rules (i.e., remain "disciplinary free"), attend relevant programming, or pursue vocational opportunities. The classification committee reviews these recommendations with the person and helps them understand what actions to take to meet the Board's recommendations. The Post-Board Unit Classification Committee will occur only after a parole hearing that results in a grant, denial, or stipulation. If a hearing results in a tie vote, the Post-Board Unit Classification Committee will occur once there is a final decision (after "en banc" review by a panel of commissioners at a monthly executive board meeting).

### 2.27 Board's Review of Hearing Panel's Decision

#### *Parole Hearing Decisions Become Final within 120 Calendar Days*

All decisions by a hearing panel at a parole hearing are proposed decisions, meaning they are not final. Proposed decisions will become final within 120 calendar days from the date of the parole hearing.<sup>142</sup> During the 120 calendar days following a parole hearing, the audio recording of the hearing will be transcribed, and the decision may be reviewed by the Board's legal division.

A parole hearing that results in a tie vote will be reviewed by a panel of commissioners at the Board's monthly executive board meeting. The panel of commissioners will break the tie. For this reason, hearings resulting in a tie vote become final within 120 calendar days from the date the panel of commissioners considers the case at the Board's executive board meeting. See section 7.3 for more information about tie-vote cases.

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<sup>139</sup> Pen. Code, §§ 3041.5, subd. (a)(4).

<sup>140</sup> Pen. Code, § 3042, subd. (b).

<sup>141</sup> <https://www.cdcr.ca.gov/bph/psh-transcript/>

<sup>142</sup> Pen. Code, § 3041, subd. (b)(2); Cal. Code Regs., tit. 15, § 2041.

## Parole Hearing Process Handbook

### *Review by Legal Division*

The Board's legal division may review any parole hearing decision, but it is required to review all decisions resulting in a grant of parole.<sup>143</sup> Decisions are reviewed to determine if the panel made an error of law, if the panel's decision was based on an error of fact, or when there is new information, any of which when corrected or considered by the Board has a substantial likelihood of resulting in a substantially different decision if there was a new hearing.<sup>144</sup> If the chief counsel finds an error of law, error of fact, or new information substantially likely to result in a substantially different decision, the chief counsel will refer the case for review by a panel of commissioners. This review by a panel of commissioners occurs at one of the Board's monthly executive board meetings and is also referred to as an "en banc review," which is explained further in section 7 of this handbook.

### *Requesting Review of a Decision*

Any person may request review of a parole decision. In addition to reviewing all decisions resulting in a grant of parole, the Board's legal division may also review a decision that resulted in a denial of parole. Decisions are reviewed to determine if the panel made an error of law, the panel's decision was based on an error of fact, or there is new information, any of which when corrected or considered by the Board has a substantial likelihood of resulting in a substantially different decision if there was a new hearing.<sup>145</sup>

Requests to have a decision reviewed should be submitted as early as possible to ensure there is enough time to refer the case for review by a panel of commissioners en banc at the next monthly executive board meeting. Requests to review decisions should be submitted within 60 calendar days of the date of the hearing. See section 7 for more information about the Board's en banc review process.

### *Request for Review by Hearing Panel*

A commissioner or deputy commissioner who was on the hearing panel may also refer a decision for review by a panel of commissioners because they feel they erred in issuing the decision.<sup>146</sup> This review will occur at one of the Board's monthly executive board meetings and is also referred to as an "en banc review," which is explained further in section 7 of this handbook.

## **2.28 Governor's Review of Hearing Panel's Decision**

At any time before an incarcerated person's release from prison, the Governor may review a parole hearing decision. After reviewing the decision, the Governor may reverse the decision (in some cases), modify the decision (in some cases), or refer the decision for an en banc review by a panel of commissioners.<sup>147</sup>

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<sup>143</sup> Cal. Code Regs., tit. 15, § 2041, subd. (h).

<sup>144</sup> Cal. Code Regs., tit. 15, §§ 2041, 2042.

<sup>145</sup> Cal. Code Regs., tit. 15, §§ 2041, 2042.

<sup>146</sup> Cal. Code Regs., tit. 15, § 2044, subd. (a).

<sup>147</sup> Pen. Code, § 3041.1.

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### *Murder Cases*

In cases where the incarcerated person was convicted of murder, the Governor has an additional 30 calendar days after the Board's 120-day period for reviewing the decision has ended to review the parole decision.<sup>148</sup> The Governor may decide to take no action and allow the decision to stand, reverse the decision, modify the decision, or refer the decision to a panel of commissioners for review and vote ("en banc").<sup>149</sup> If the Governor takes no action on a decision to grant parole, the incarcerated person will be scheduled for release so long as their earliest parole eligible date has passed (unless they have an outstanding warrant, hold, or detainer from another law enforcement agency, or they have an additional term to serve for a crime they committed while in prison).<sup>150</sup> If the Governor reverses a decision granting parole, the person will be scheduled for a new parole hearing within 18 months from the date of the person's last parole hearing.

### *Non-Murder Cases*

For cases where the incarcerated person was not convicted of murder, the Governor's review generally occurs within the Board's 120-day period for reviewing the parole decision. Upon reviewing a hearing panel's parole decision, the Governor may decide to take no action and allow the decision to stand or refer the decision for an en banc review by a panel of commissioners. If the Governor takes no action on a parole grant, the incarcerated person will be scheduled for release so long as their earliest parole eligible date has passed (unless they have an outstanding warrant, hold, or detainer from another law enforcement agency, or they have an additional term to serve for a crime they committed while in prison).

## 2.29 En Banc Review

The Board holds an executive board meeting each month, which is open to the public. The meetings are conducted over two or more days. Members of the public may attend in person, by video, or by phone, as indicated on the meeting agenda. The meeting agenda, including all the decisions or "cases" that will be considered at the meeting, is posted on the Board's website at least 10 calendar days before the date of the meeting.<sup>151</sup> **For all cases listed on the agenda, the Board notifies the incarcerated person, their attorney, the prosecutor, and any registered victims and victims' family members.**

At the monthly executive board meeting, panels of commissioners hear public comment on the cases. Comments may be submitted in writing to the Board before the meeting. Those who want to speak during the meeting may attend the meeting and provide their comments. Comments are generally limited to two minutes per speaker. Once public comments have been received, the Board goes into closed session to deliberate and vote on each case.

The Board's decisions from the monthly executive board meeting are posted within 24 hours of the meeting at the Board's main office located at 1515 K Street in Sacramento, and are also posted

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<sup>148</sup> Pen. Code, § 3041.2.

<sup>149</sup> Pen. Code, § 3041.2.

<sup>150</sup> *In re Thompson* (1985) 172 Cal.App.3d 256; see also section 2.31 of this handbook, "A Note on Holds, Warrants, and Detainers."

<sup>151</sup> <https://www.cdcr.ca.gov/bph/executive-board-meetings-overview/meeting-agenda/>

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on the Board's website.<sup>152</sup> A copy of the decision is sent to the incarcerated person. For more information on the Board's monthly executive board meetings, see section 7.

### 2.30 Rescission Hearings

The Board may decide at an executive board meeting to refer a grant of parole for a rescission hearing if the case was referred en banc by the Governor or if more than 120 days has passed since the date of the parole decision.<sup>153</sup> If the Board decides en banc to refer a grant of parole for a rescission hearing, the hearing will be scheduled within four months after the executive board meeting. At a rescission hearing, the hearing panel determines whether there is good cause to take away a grant of parole.<sup>154</sup> The panel will review new information indicating there is good cause to rescind the parole grant or determine whether the hearing panel that granted parole made a fundamental error and the grant of parole was improper.<sup>155</sup> A rescission hearing is conducted by a panel of three members made up of two commissioners and a deputy commissioner or three commissioners.<sup>156</sup>

The incarcerated person is provided an attorney for the rescission hearing. If the rescission hearing is based on new information, the incarcerated person may request to have witnesses attend to provide relevant evidence. A prosecutor, and registered victims, victims' family members, and their representatives will be notified of the hearing and may participate.<sup>157</sup>

If the hearing panel determines that there is no good reason (i.e., "good cause") to rescind the grant of parole, then the incarcerated person will be released<sup>158</sup> (unless they have an outstanding hold, warrant, or detainer from another law enforcement agency, or they have an additional term to serve for a crime they committed while in prison). If the hearing panel finds good cause to rescind the grant, the incarcerated person will not be released, and a new parole hearing will be scheduled within 18 months.

### 2.31 Release from CDCR Custody

If a hearing panel's decision to grant parole is upheld after review by the Board and the Governor, the incarcerated person will be scheduled for release from CDCR custody, so long as their earliest parole eligible date has passed. Most people are released to parole supervision by CDCR's Division of Adult Parole Authority (DAPO) in the community. However, an incarcerated person may not be released to the community if they have an outstanding warrant, hold, or detainer from another law enforcement agency, or they have an additional term to serve for a crime they committed while in prison.

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<sup>152</sup> <https://www.cdcr.ca.gov/bph/executive-board-meetings-overview/enbanc/>

<sup>153</sup> Cal. Code Regs., tit. 15 § 2450 et seq.

<sup>154</sup> Cal. Code Regs., tit. 15 § 2450.

<sup>155</sup> *In re Caswell* (2001) 92 Cal.App.4th 1017, 1026.

<sup>156</sup> Cal. Code Regs., tit. 15 § 2467, subd. (b).

<sup>157</sup> Cal. Code Regs., tit. 15, §§ 3041.7, 3043.

<sup>158</sup> Cal. Code Regs., tit. 15, § 2450.

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### *Confirmation of Parole Plans*

For persons who are going to be released to parole supervision in the community, DAPO will confirm the incarcerated person's parole plans before they are released, including verifying any individual requirements (for example, registration requirements or ADA needs) and where the person will live when released. This usually also involves a parole agent confirming there is space available for the person in a transitional housing program. Prior to being released from custody, the incarcerated person will receive their conditions of parole, be assigned a parole agent, and be notified of their approved parole plans.

For persons who have an outstanding hold, warrant, or detainer from another law enforcement agency, CDCR will confirm whether the hold, warrant, or detainer remains active. For more information, see "*A Note on Holds, Warrants, and Detainers*" below. Persons who were convicted of a crime they committed while in prison may be required to serve the sentence imposed for that crime. For more information, see "*A Note on Thompson Terms and Tate Terms*" below.

### *Release Memorandum ("Memo")*

Once DAPO confirms where the person will live after release, the Board's legal division will issue a release memo to the CDCR institution or facility where the person is housed. The release memo orders CDCR to release the person. It provides a summary of the incarcerated person's case factors. It also lists any special conditions of parole the hearing panel imposed and any additional parole conditions the Board recommends that DAPO impose.<sup>159</sup> The release memo also confirms the date that the person shall be released from CDCR custody.

If the person has at least one parole eligible date in the past (such as a past MEPD, YPED, EPED, NPED, or XPED), the person can be released from prison unless they have an outstanding hold, warrant, or detainer from another law enforcement agency, or an additional term to serve for a crime they committed while in prison. If the incarcerated person only has a future parole eligible date, the Board will monitor the case and issue a release memo just before the parole eligible date. CDCR's Case Records Services will continue to audit the future parole eligible date to ensure that any applicable credits are applied and the parole date calculation is correct. If additional credits are applied, the parole eligible date (and the person's release) may move up in time.

Once the Board issues a release memo, institution staff processes the person for release from CDCR custody, which generally happens within five business days.<sup>160</sup> Notice of the release memo is provided to the incarcerated person, their attorney, the prosecutor's office, registered victims and victims' family members, and the Office of Victim and Survivor Rights and Services (OVSRS). For security reasons, CDCR cannot provide the public with the date of a person's release.

### *A Note on Holds, Warrants, and Detainers*

Upon a grant of parole, the Board's Offender Investigations and Screening Division (OISD) will check whether the incarcerated person has an outstanding hold, warrant, or detainer from another law enforcement agency. This includes detainers from the U.S. Immigration and Customs

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<sup>159</sup> The incarcerated person is also subject to all the general conditions of parole imposed by DAPO.

<sup>160</sup> Cal. Code Regs., tit. 15, § 3371.1, subd. (e)(3).



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Enforcement or from a jurisdiction where the incarcerated person committed a crime. If there is an outstanding hold, warrant, or detainer, CDCR's Division of Adult Institutions is required to reach out to the issuing jurisdiction to determine whether it intends to extradite or pick up the incarcerated person from CDCR custody. If the jurisdiction decides not to extradite or pick up the individual, the person will be released as described above under "**Release Memo**." However, if the jurisdiction chooses to extradite or pick up the person, the person will be transferred to that jurisdiction.

### *A Note on Thompson Terms and Tate Terms*

In some cases, an incarcerated person may have an additional term to serve for a crime they committed while in prison. These consecutive determinate sentences are also known as *Thompson* terms for people who were in prison for an indeterminate sentence at the time of the prison offense,<sup>161</sup> and *Tate* terms for persons who were in prison for a determinate sentence at the time of the prison offense.<sup>162</sup> If a person has a *Thompson* or a *Tate* term, they will remain in prison and will be released upon serving the additional determinate sentence, less any applicable credits. Certain incarcerated persons do not have to serve their *Thompson* or *Tate* terms and will be released upon being found suitable for parole by the Board at a parole hearing. The following persons will **not** serve their *Thompson* or *Tate* terms:

- Qualified youth offenders;<sup>163</sup>
- Persons found suitable for parole under an elderly parole program (under the statutory or court-ordered program),<sup>164</sup> and
- Indeterminately sentenced nonviolent offenders.<sup>165</sup>

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<sup>161</sup> *In re Thompson* (1985) 172 Cal.App.3d 256.

<sup>162</sup> *In re Tate* (2006) 135 Cal.App.4th 756.

<sup>163</sup> *In re Trejo* (2017) 10 Cal.App.5th 972.

<sup>164</sup> *In re Hoze* (2021) 61 Cal.App.5th 309.

<sup>165</sup> Cal. Code Regs., tit. 15, § 2449.32, subd. (e).

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### SECTION 3: CRITERIA FOR DETERMINING PAROLE SUITABILITY

#### 3.1 Legal Standard

The Board conducts parole hearings to decide whether an incarcerated person should be released from prison and placed on parole in the community. A hearing panel of one or two commissioners and a deputy commissioner makes this decision. The hearing panel is required to apply relevant statutes, regulations, and court decisions when making a parole decision.

California Penal Code section 3041 is the main statute governing parole decisions. It states a hearing panel shall grant parole “unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of public safety requires a more lengthy period of incarceration for [the] individual.” In other words, this statute *requires* a hearing panel to grant parole to an incarcerated person, unless it determines that consideration of the public safety requires a longer period of incarceration for the person.<sup>166</sup>

The Board’s regulations explain how the Board applies Penal Code section 3041. The regulations require hearing panels deny parole if the incarcerated person will pose an unreasonable risk of danger to society if released from prison.<sup>167</sup> The Board’s regulations also list several factors “tending to show” an incarcerated person’s suitability and unsuitability for release.<sup>168</sup> The California Supreme Court has determined the statute and the Board’s regulations require hearing panels provide an individualized assessment of an incarcerated person’s *current* dangerousness.<sup>169</sup>

In sum, hearing panels apply the following legal standard at parole hearings:

A hearing panel must grant parole at a parole hearing, unless it determines the incarcerated person currently poses an unreasonable risk of danger to society if released from prison.

The California Supreme Court has held that a hearing panel’s primary concern is public safety<sup>170</sup> and the incarcerated person’s current *risk* to society. Hearing panels weigh factors relevant to predicting whether the person can live in society without committing antisocial acts, such as crimes of violence, causing personal or financial harm to others, or failing on parole through noncompliance with the reasonable restrictions imposed by their parole agent.<sup>171</sup> Hearing panels use a Structured Decision-Making Framework (SDMF) to analyze a person’s risk factors and

<sup>166</sup> Pen. Code, § 3041, subd. (b)(1).

<sup>167</sup> Cal. Code Regs., tit. 15, §§ 2281(a), 2402(a).

<sup>168</sup> Cal. Code Regs., tit. 15, §§ 2281, 2401.

<sup>169</sup> *In re Lawrence* (2008) 44 Cal.4th 1181, 1205.

<sup>170</sup> *In re Lawrence* (2008) 44 Cal.4th 1181, 1205.

<sup>171</sup> *In re Lawrence* (2008) 44 Cal.4th 1181, 1205-06, quoting *In re Rosenkrantz* (2002) 29 Cal.4th 616, 655; *In re Reed* (2009) 171 Cal.App.4th 1071, 1081.

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determine whether they can live in society without committing more crimes. Hearing panels generally focus on how the incarcerated person has changed since coming to prison.

### 3.2 Structured Decision-Making Framework

#### 3.2.1 Background of the SDMF

Hearing panels use the SDMF to assess an incarcerated person's risk to society. The SDMF is a tool that provides hearing panels with a structured and evidence-based approach for making a parole decision. It requires hearing panels to consider evidence-based risk factors and the law. The SDMF is intended to produce parole decisions that are structured, transparent, and focused on a person's current risk of dangerousness. Additionally, it promotes consistency in parole decisions and efficiency in parole hearings.

The SDMF was initially developed by and for the National Parole Board of Canada over a period of several years and, as of 2023, has been implemented in at least nine states in the United States. In 2018, the National Institute of Corrections (NIC) chose California as one of two states to receive assistance in evaluating the state's chances of successfully implementing the SDMF. The NIC sent teams of experts to California multiple times. The teams reviewed the state's parole hearing process, including the state's laws, computer systems, risk assessment tools, and available support for implementing the SDMF. In addition, members of the Board's executive team traveled to Connecticut, one of the first states to implement the SDMF, to observe parole hearings and gather more information about the SDMF.

The Board worked with one of the people who developed the SDMF (Dr. Ralph Serin<sup>172</sup>), the NIC, the Board's attorneys, and attorneys from the California Department of Justice (DOJ) to make changes to the SDMF so it could be better applied to people who have served long sentences and to make sure it was consistent with California law.

In April 2019, experts from NIC, Dr. Serin, the Board's attorneys, DOJ attorneys, and the Board's forensic psychologists, commissioners, and deputy commissioners met for three days of SDMF training. The Board then implemented the SDMF in California's parole hearing process over a period of several months.

As mentioned above, the Board's regulations list several factors "tending to show" an incarcerated person's suitability and unsuitability for release.<sup>173</sup> These factors are reflected in the SDMF.

#### 3.2.2 How Hearing Panels Use the SDMF

The SDMF is a tool that helps guide a hearing panel's analysis of a person's current risk. The SDMF requires hearing panels consider seven areas, or "domains," when deciding if an incarcerated person should be released. It also requires a hearing panel to consider additional information the law states the Board must consider in some cases. An example is the youth offender factors the Board must consider when deciding if a person who was younger than 26 when they committed their crime should be released.<sup>174</sup> The SDMF does not produce a numerical

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<sup>172</sup> Dr. Ralph Serin, Ph.D., Professor, Department of Psychology, and Director of the Criminal Justice Decision Making Laboratory at Carleton University in Ottawa, Canada.

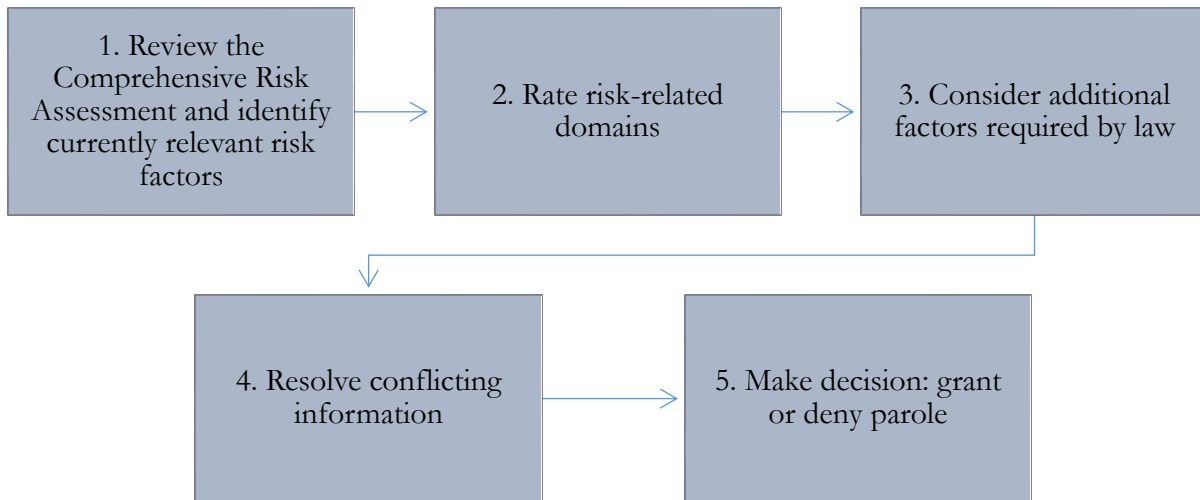
<sup>173</sup> Cal. Code Regs., tit. 15, §§ 2281, subd. (c), 2240.

<sup>174</sup> Pen. Code § 4801.

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score and does not tell hearing panels if a person should be released. The SDMF gives hearing panels the ability to weigh all relevant and reliable information when making their decision.

The following illustrates the general process hearing panels follow when using the SDMF to decide if an incarcerated person is suitable for parole. Each step is further explained in section 3.2.3.



### 3.2.3 The SDMF Steps

Hearing panels review all available relevant and reliable information when applying the SDMF. This information generally includes the incarcerated person's central file, medical and mental health records, documents or statements submitted by hearing participants and the public, and the incarcerated person's testimony at the hearing. For more information on the materials considered by hearing panels, see section 2.22.

#### ***Step 1: Hearing Panel Reviews the Comprehensive Risk Assessment and Identifies Currently Relevant Risk Factors***

Under the SDMF, hearing panels begin their analysis of an incarcerated person's risk by reviewing the person's most recent Comprehensive Risk Assessment (CRA), if one is available. A Board forensic clinical psychologist prepares a CRA in advance of a hearing. In the CRA, the psychologist uses a structured professional judgment model of risk assessment and provides an overall rating of the person's risk of future violence. The psychologist interviews the incarcerated person and incorporates structured risk assessment instruments, like the HCR-20-V3 and STATIC-99R, to assess the person as having an overall risk rating of low, moderate, or high. The CRA is generally 10 to 15 pages long and identifies the current relevant risk factors for that person. For more information on CRAs, see section 2.15.

Hearing panels review the CRA to identify the incarcerated person's overall risk rating, the risk factors listed as currently relevant to the person, and circumstances that would increase or decrease the person's risk if released to the community. A hearing panel should clearly articulate the rationale for their decision if they are going to deny parole to someone with a low CRA risk rating or grant parole to someone with a high CRA risk rating. Such rationale may include identifying new information or explaining what circumstances have changed since the CRA.

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The Board prepares a new CRA before an incarcerated person's parole hearing, unless a prior CRA already exists and is fewer than three years old.<sup>175</sup> In some cases, a hearing is conducted without a CRA. When this happens, the hearing panel begins their SDMF analysis by going straight to Step 2 (rating risk-related domains). A CRA is a valuable tool to help hearing panels make informed parole-release decisions, but it is not required.

If a CRA exists that is more than three years old, the hearing panel may still consider the information contained in that CRA, but the psychologist's opinion about what risk factors remain "currently relevant" for that person will carry less weight due to the passage of time.

### ***Step 2: Hearing Panel Rates the Risk-Related Domains***

Hearing panels use the CRA and all other relevant, reliable information to determine if factors present within each of the seven SDMF domains increase, decrease, or have no impact on the person's overall risk of committing a new crime, if released. The seven SDMF risk areas or "domains" are: (1) criminal history, (2) self-control, (3) programming, (4) institutional behavior, (5) personal change, (6) release plan, and (7) case-specific factors.

Based on the presence or absence of certain factors within each domain, hearing panels rate each domain as aggravating, mitigating, or neutral. A domain is *aggravating* if the factors within that domain increase the incarcerated person's risk of committing a new crime if released. A domain is *mitigating* if the factors within that domain lower the person's risk of committing a new crime if released. A domain is *neutral* if the factors within that domain do not increase or decrease the person's risk of committing a new crime if released. For additional details about each domain, including the relevant factors in each domain and how they are rated, see section 3.2.4.

### ***Step 3: Hearing Panel Considers Additional Factors***

After rating each of the seven domains, panel members consider four additional categories of factors, as required by law. The additional factors are: (1) information from victims and prosecutors,<sup>176</sup> (2) youth offender factors, (3) elderly parole factors, and (4) any evidence of intimate partner violence. Hearing panels rate information by prosecutors and victims. With the other three factors, the panel considers the factors that are present and gives weight to those factors as required by law.<sup>177</sup> For more detail about the additional factors and the legal requirements, see section 3.2.5.

### ***Step 4: Hearing Panel Resolves Conflicting Information***

The hearing panel identifies any conflicting information that must be considered prior to making a release decision, such as differences between a particular document and other sources of information. The panel will decide which source of information they find credible. The panel will consider why it is choosing to reject one piece of information in support of another. For example,

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<sup>175</sup> Cal. Code Regs., tit. 15, § 2240, subd. (d)(1).

<sup>176</sup> This includes statements by the victims, victims' family members, and their representatives.

<sup>177</sup> By law, hearing panels are required to give great weight to youth offender factors (Pen. Code, § 4801, subd. (c); Cal. Code Regs., tit. 15 § 2245, subd. (b)), special consideration to elderly parole factors (Pen. Code § 3055, subd. (c); Cal. Code Regs., tit. 15, § 2449.42, subd. (b)), and great weight to evidence of intimate partner violence (Pen. Code, § 4801, subd. (c)).

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when a person's CRA risk rating appears inconsistent with the panel's decision, the panel should acknowledge the discrepancy and clearly articulate the rationale for their decision.

### ***Step 5: Hearing Panel Decides to Grant or Deny Parole***

After completing steps 1 through 4, the hearing panel decides whether the incarcerated person currently poses an unreasonable risk of danger to society. If not, the panel grants parole, and if so, the panel denies parole. In making this decision the hearing panel determines what evidence is credible, and then assigns the appropriate weight to the evidence.

### **3.2.4 Seven SDMF Domains**

#### ***Criminal History***

The criminal history domain focuses on trends and patterns in an incarcerated person's criminal behavior prior to their current commitment offense. The hearing panel considers all relevant and reliable information available regarding the person's previous arrests, convictions, or other crimes. The domain includes, but is not limited to, consideration of the following factors:

- Whether the person started committing crimes at the age of 11 or younger;
- The number and variety of crimes the person committed before their current commitment offense;
- The density of crimes, specifically the length of time between arrests, parole or probation violations, and parole or probation revocations;
- The extent the person's prior crimes were increasing or decreasing in seriousness before their current commitment offense;
- The person's performance on prior probation or parole terms; and
- The overall seriousness of the person's crimes.

The domain is rated as *aggravating* when an incarcerated person began committing crimes when they were age 11 or younger, committed multiple crimes close in time to one another, committed crimes that increased in seriousness, or if they had multiple parole violations or revocations. The domain is rated as *mitigating* if the person has no prior criminal history, or if the person has minor past offenses with long periods between them. The domain is rated as *neutral* if an incarcerated person has multiple past crimes, but they were minor with no increase in severity and there were long periods between them.

The risk factors considered under this domain are past, or historical, risk factors that, for most people who have a parole hearing, happened a long time ago. That means they are less likely to affect the incarcerated person's risk today.

#### ***Self-Control***

The self-control domain focuses on factors that hindered, or reduced, an incarcerated person's ability to act in a controlled and pro-social manner at the time of their commitment offense or during their prior criminal behavior. In other words, when one or more of these factors were

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present, the incarcerated person was less likely to be able to stop themselves from engaging in criminal behavior.

The factors considered in each case vary because each incarcerated person has different factors that led them to engage in crime. Identifying the self-control factors present at the time of the person's commitment offense is a critical step when using the SDMF because, in other domains, hearing panels will consider whether the factors identified in this domain are still present today. When there is a Comprehensive Risk Assessment, hearing panels will use it as a starting point for identifying a person's self-control factors.

The self-control domain includes, but is not limited to, consideration of the following factors:

- Use of drugs or alcohol (substance use);
- Antisocial reactions to feelings of anger, jealousy, rejection, and anxiety, or other poor problem-solving skills;
- Acting disproportionately (or overreacting) to a perceived threat;
- Impulsivity that limited or eliminated the incarcerated person's ability to recognize or think of the consequences of their actions and contributed to their criminal behavior;
- Associating with others engaged in criminal or substance use behavior, who may have contributed to, or encouraged, the incarcerated person's commission of offenses;
- Sexual deviance, defined as having a diagnosis of a sexual psychiatric disorder, including, but not limited to, pedophilia or paraphilia; and
- Criminal attitudes at the time of the commitment offense and prior criminal offenses, which led to and sustained the person's criminal behavior, including callousness.

The domain is rated as *aggravating* if an incarcerated person had poor self-control at the time of their crime or crimes, as indicated by the presence of one or more self-control factors. The domain is rated as *mitigating* if an incarcerated person did not reflect poor self-control at the time of their crime or crimes. The domain is rated as *neutral* if self-control factors that were present at the time of the crime or crimes do not raise serious concern about the person's lack of self-control *or* reduce confidence in their ability to maintain self-control at the time of their crime or crimes.

The risk factors considered under this domain are past, or historical, risk factors that, for most people who have a parole hearing, happened a long time ago. That means they are less likely to affect the incarcerated person's risk today.

### ***Programming***

The programming domain focuses on an incarcerated person's participation in and completion of programming designed to address their needs and the risk factors that led them to commit crimes. Hearing panels look at whether the person has taken programming to address the factors identified in the self-control domain. The programming domain includes, but is not limited to, consideration of the following factors:

- The extent a person completed programs targeted at teaching them how to address each of their self-control factors;

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- Whether the intensity and amount of programming is consistent with the person's risk or need level;
- Whether the programming received is research-based and uses a skill-based cognitive behavioral or social learning model; and
- The extent the person has completed educational or vocational study, or work assignments, that increase their ability to avoid committing crimes if released.

The domain is rated as *aggravating* if one or more self-control factors remain currently relevant to the incarcerated person's risk and they have not completed programs based on that risk. The domain is rated as *mitigating* if the incarcerated person has completed programming to address all self-control factors identified in the self-control domain that remain currently relevant, or when no unaddressed self-control factors remain currently relevant to the person's risk. The domain is rated as *neutral* if some self-control factors identified in the self-control domain remain currently relevant, and the person has completed *some* programs to address those factors, but the programming is not yet enough to sufficiently address them.

### ***Institutional Behavior***

The institutional behavior domain focuses on an incarcerated person's conduct in prison during their current term. This domain includes, but is not limited to, consideration of the following factors:

- The extent the person engaged in serious misconduct while incarcerated;
- The extent the person engaged in recent misconduct, regardless of severity;
- The frequency of the person's institutional misconduct;
- If there is misconduct in prison, whether the same self-control factors that contributed to prior criminality also contributed to the misconduct in prison, showing a pattern of behavior; and
- The extent the person demonstrated positive behavior above and beyond compliance with prison rules (i.e. meritorious behavior).

Parole panels will balance the severity of the misconduct (serious versus nonserious), the frequency (infrequent versus persistent), and recency (within last 3-5 years versus greater than 10 years ago). Of particular concern is, if the person has misconduct, what were the circumstances and how the person is different now, in terms of skills and attitudes.

In general, the domain is rated as *aggravating* if the incarcerated person has had serious misconduct within the last three years. The domain is rated as *mitigating* if the incarcerated person does not have serious misconduct during their current period of incarceration, nor any recent misconduct regardless of severity, and they have meritorious behavior that is above and beyond expected rule compliance. The domain is rated as *neutral* if the person's record shows they have not engaged in serious misconduct within the last three years, nor in any recent misconduct regardless of severity, but there is no indication of meritorious behavior.

### ***Personal Change***

The personal change domain focuses on the extent the incarcerated person shows change in their thinking, behavior, motivation, self-regulation, and ways of dealing with risk situations. The domain includes, but is not limited to, consideration of the following factors:



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- The extent the person accepts responsibility for the crime and crime-related behavior (note: this does not apply to people who claim they are innocent of the crime for which they were convicted; see section 3.4.2.);
- The extent the person shows they understand how relevant self-control factors (such as substance abuse, negative peer pressure, impulsivity, poor problem solving, sexual deviance, or criminal attitudes) contributed to their commitment offense and criminal behavior in general;
- The extent the person shows they understand the consequences of their behavior;
- The extent the person shows the ability to use cognitive skills and consider consequences before making decisions;
- The extent the person shows pro-social behaviors and thinking;
- The extent the person shows an increase in pro-social motivation and a decrease in criminal thinking;
- The extent programming has helped the person understand high-risk situations for their re-involvement in crime and has developed improved skills to deal with risk situations upon release; and
- The extent the person's actions show they reject the need for change or that they continue to express views or engage in conduct that shows a lack of change despite relevant programming.

The domain is rated as *aggravating* if the incarcerated person's record and testimony at the hearing indicate they have rejected the need for change, have refused programs or been asked to leave programs due to noncompliance, or, despite programming, continue to express views that show a lack of change. The domain is rated as *mitigating* if the person's record and testimony at the hearing show a clear change, regardless of whether they have completed relevant programming to address all identified self-control factors. The domain is rated as *neutral* if the person's record and testimony at the hearing show there has been some change since the commitment offense, but the change is not substantial, clear, or consistent over time.

When assessing suitability for an incarcerated person who is a youth offender, some of the factors listed above may also serve as evidence of the person's growth and maturity. For more information on the youth offender factors and their impact on parole hearings, see section 3.2.5.

### ***Release Plan***

The release plan domain focuses on the incarcerated person's understanding of the factors that will help them successfully transition to the community and avoid committing new crimes. The domain includes, but is not limited to, consideration of the following factors:

- The extent the person has developed concrete, realistic parole plans addressing community stability factors including, but not limited to, stable housing, prospective employment or income, prosocial support, access to any appropriate treatment programs or services, and specific plans to manage high-risk situations;

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- The extent the person’s parole plans create a situation in the community that is generally different from the one that led to the person’s prior criminal behavior;
- The extent the person has developed realistic plans to manage their risk factors in the community including, but not limited to, relapse prevention, mental health treatment, and transitional programming; and
- The person’s motivation to continue engaging in programming or other development on parole.

The domain is *aggravating* if the incarcerated person lacks a concrete, realistic parole plan, and there is a connection between the lack of a parole plan and their current dangerousness. The domain is *mitigating* if the person has a concrete, realistic parole plan addressing most of the community stability factors. The domain is *neutral* if the incarcerated person has a concrete, realistic parole plan addressing some community stability factors, but other factors are not adequately addressed.

It is common for the Board to order an incarcerated person to serve six months to a year in transitional housing upon release. Most people are placed in a transitional housing program paid for by the state. As a result, when evaluating this domain, the hearing panel will generally focus on the person’s long-term plans, after they have completed transitional housing.

### *Case-Specific Factors*

The case-specific factors domain focuses on factors unique to the incarcerated person that are not included within the other six domains but should be considered by the hearing panel when deciding a person’s parole suitability. For example, under this domain, a hearing panel may consider a person’s medical or physical limitations, mental health issues, or developmental disabilities and the impact they may have on their risk to commit future crimes. The panel will review the person’s central file and prison health records.

This domain is rated as *aggravating* if there is a unique case-specific factor that increases the incarcerated person’s current dangerousness. This domain is rated as *mitigating* if there is a unique case-specific factor that decreases the person’s current dangerousness. This domain is rated as *neutral* if there are no unique case-specific factors affecting the person’s current dangerousness or the unique factors that exist do not affect the person’s current dangerousness.

### **3.2.5 Four Additional Factors**

#### *Victim<sup>178</sup> and Prosecutor Information*

Victims, victims’ family members, and their representatives (collectively referred to as “victims and victims’ family members” in this section) have a right to appear, personally or by counsel, at a parole hearing and adequately and reasonably express their views concerning the incarcerated person and the case.<sup>179</sup> Alternatively, they may submit written or oral statements to the Board in advance of an incarcerated person’s hearing.<sup>180</sup> A hearing panel is required to consider these

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<sup>178</sup> This includes victim, victims’ next of kin, victims’ family members, and their representatives.

<sup>179</sup> Pen. Code, §§ 3043, subd. (b)(1), 3043.6; Cal. Code Regs., tit. 15, § 2029, subd. (a).

<sup>180</sup> Pen. Code, § 3043.2, subd. (a)(1); Cal. Code Regs., tit. 15, § 2029, subd. (f).

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statements before making a parole decision.<sup>181</sup> For more information on how victims and their family members can participate in the parole hearing process, see sections 2.13 and 6.

In addition, the prosecutor's office that prosecuted the incarcerated person can participate in the parole hearing, speak about the facts of the case, and give an opinion about whether the person should be granted parole.<sup>182</sup> The prosecutor may also submit written information to the Board for consideration at a person's hearing.<sup>183</sup>

While hearing panels are required to consider statements from victims and their family members and prosecutors, they may only rely on their statements to make a parole decision if the statements contain relevant and reliable information about an incarcerated person's *current risk to public safety*. The Supreme Court of California has stated that a hearing panel cannot base a parole decision on "victims' opinions or public outcry."<sup>184</sup>

The hearing panel will rate this factor as *aggravating* if the victim or their family members or the prosecutor provided reliable information indicating the incarcerated person poses a current risk of dangerousness. The hearing panel will rate this factor as *mitigating* if the victim or their family members or the prosecutor provided reliable information indicating the person does not pose a current risk of dangerousness. The hearing panel will rate this factor as *neutral* if the victim or their family members or the prosecutor did not provide information relevant to the incarcerated person's current dangerousness. A hearing panel may initiate an investigation by law enforcement officials to confirm statements concerning actual threats to a victim or their family member's safety or statements about recent events that are relevant to determining the incarcerated person's current dangerousness.

### ***Youth Offender Factors***

The United States Supreme Court, the California Supreme Court, and the California Legislature have recognized, based on scientific studies of adolescent brain development, that (1) youth (as a category) are less culpable for criminal choices; (2) youth are more impulsive and reckless, more susceptible to negative peer and family influences and outside pressures, and less able to appreciate the consequences of their actions; and (3) youth have a great capacity for growth and maturity.<sup>185</sup> As a person ages, maturity can lead to reflection that is the foundation for remorse, renewal, and rehabilitation.<sup>186</sup>

A hearing panel is required to give *great weight* to "youth offender factors" if the incarcerated person committed their "controlling offense" while under the age of 26.<sup>187</sup> A controlling offense is the single crime or enhancement for which any sentencing court imposed the longest term of imprisonment.<sup>188</sup> A hearing panel must grant parole to a person who committed their controlling

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<sup>181</sup> Pen. Code, §§ 3043, subd. (d), 3043.2, subd. (a)(3).

<sup>182</sup> Pen. Code, § 3041.7; Cal. Code Regs., tit. 15, § 2030, subd. (d)(2).

<sup>183</sup> Pen. Code, § 3042; Cal. Code Regs., tit. 15, § 2030, subd. (c).

<sup>184</sup> *In re Vicks* (2013) 56 Cal.4th 274, 310.

<sup>185</sup> See *Roper v. Simmons* (2005) 543 U.S. 551; *Graham v. Florida* (2010) 560 U.S. 48; *Miller v. Alabama* (2012) 132 S.Ct. 2455; *People v. Caballero* (2012) 55 Cal.4th 262, 282 P.3d 291; *People v. Gutierrez* (2014) 58 Cal.4th 1584; *People v. Franklin* (2016) 63 Cal.4th 261; Penal Code §§ 3051, 4801.

<sup>186</sup> *Graham v. Florida* (2010) 560 U.S. 48, 79.

<sup>187</sup> Pen. Code, § 4801, subd. (c).

<sup>188</sup> Pen. Code, § 3051, subd. (a)(2)(B); Cal. Code Regs., tit. 15, § 2440, subd. (c).

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offense while under the age of 26, unless the panel determines, even after giving great weight to the youth offender factors, the person remains a current, unreasonable risk to public safety.<sup>189</sup>

The youth offender factors that a hearing panel must consider are the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the person.<sup>190</sup> The Board's regulations define each of the youth offender factors using language from relevant court cases.<sup>191</sup> Each factor is discussed below.

When giving great weight to these youth offender factors, the hearing panel will consider the incarcerated person's testimony at the hearing and the record. The panel will also consider relevant *Franklin* hearing documents as described in section 2.11.

### **(1) Diminished Culpability of Youth**<sup>192</sup>

The Board's regulations define the "diminished culpability of youth as compared to adults" as including, but not limited to, consideration of the following factors:

- The ongoing development in a youth's thoughts, behavior, and brain function;
- The impact of a youth's negative, abusive, or neglectful situation;
- A youth's limited control over their own environment or surroundings;
- The limited ability of youths to remove themselves from dysfunctional or crime-producing environments or surroundings;
- A youth's reduced susceptibility to deterrence; and
- The disadvantages to youths in criminal proceedings.

### **(2) Hallmark Features of Youth**<sup>193</sup>

The Board's regulations define "hallmark features of youth" as including, but not limited to, consideration of the following factors:

- Immaturity;
- An underdeveloped sense of responsibility;
- Impulsivity or impetuosity;
- Increased vulnerability or susceptibility to negative influences and outside pressures, particularly from family members or peers;
- Recklessness or heedless risk-taking;

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<sup>189</sup> Cal. Code Regs., tit. 15, §§ 2445, subd. (d), 2447, subd. (c).

<sup>190</sup> Pen. Code, § 4801, subd. (c).

<sup>191</sup> Cal. Code Regs., tit. 15, § 2446, interpreting *Graham v. Florida* (2010) 560 U.S. 48, *Miller v. Alabama* (2012) 567 U.S. 460, *People v. Caballero* (2012) 55 Cal.4th 262, *Moore v. Biter* (9th Cir. 2013) 725 F.3d 1184, *Roper v. Simmons* (2005) 543 U.S. 551, *People v. Franklin* (2016) 63 Cal.4th 261, and *Montgomery v. Louisiana* (2016) 577 U.S. 190.

<sup>192</sup> Cal. Code Regs., tit. 15, § 2446, subd. (a).

<sup>193</sup> Cal. Code Regs., tit. 15, § 2446, subd. (b).

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- Limited ability to assess or appreciate the risks and consequences of behavior; and
- Transient characteristics and heightened capacity for change.

### **(3) Subsequent Growth and Increased Maturity**<sup>194</sup>

The Board’s regulations define “subsequent growth and increased maturity” as including, but not limited to, consideration of the following factors:

- Considered reflection;
- Maturity of judgment including, but not limited to, improved impulse control, the development of pro-social relationships, or independence from negative influences;
- Self-recognition of human worth and potential;
- Remorse;
- Positive institutional conduct; and
- Other evidence of rehabilitation.

### ***Special Consideration for Elderly Parole Factors***

When deciding whether an incarcerated person who qualifies for elderly parole should be released, a hearing panel is required to give *special consideration* to whether the elderly parole factors have reduced the incarcerated person’s risk of future violence.<sup>195</sup> For information on who qualifies for elderly parole, see section 1.2.

The elderly parole factors are the incarcerated person’s advanced age, time served, and diminished physical condition, if any.<sup>196</sup> Each factor is discussed below.

#### **(1) Advanced Age**<sup>197</sup>

The Board’s regulations define “advanced age” as including the following factors:

- Cognitive decline and its impact on an elderly incarcerated person's ability to process information, convert thought to action, the ability to learn, the ability to plan, recall or reorganize information, organize information, control impulses, execute a task, incorporate feedback, change a strategy, sustain complex attention, or to calm down when emotionally aroused; and
- Physiological (or physical) changes that decrease the person’s motivation to commit crimes or be violent.

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<sup>194</sup> Cal. Code Regs., tit. 15, § 2446, subd. (c).

<sup>195</sup> Pen. Code, § 3055, subd. (c); Cal. Code Regs., tit. 15, § 2449.42, subd. (c).

<sup>196</sup> Pen. Code, § 3055, subd. (c); Cal. Code Regs., tit. 15, § 2449.43.

<sup>197</sup> Cal. Code Regs., tit. 15, § 2449.43, subd. (a).

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### **(2) Time Served**<sup>198</sup>

The Board's regulations state the impact of being in prison for a long time includes consideration of the following factors:

- Reduced criminal propensity (incarcerated person is not inclined to commit crime);
- Change of attitudes and beliefs over time;
- Evidence of prosocial routines (person is positive or helpful to others);
- Social conformity (person follows the rules); and
- Detachment from crime-producing environments and peers (person no longer associates with people who commit crimes or break the rules).

### **(3) Diminished Physical Condition**<sup>199</sup>

The Board's regulations define "diminished physical condition" as including the following factors:

- The ability of an incarcerated person to physically commit crimes and violence;
- Chronic or terminal illness;
- Evidence of sensory impairment due to visual, hearing, or speech impairment (person has difficulty seeing, hearing, or speaking);
- Inability to walk or difficulty walking without crutches, a cane, or walker;
- Needs nursing care;
- Reduced mental capacity;
- Assistance with daily living activities, which includes but is not limited to, feeding, bathing, dressing, grooming, work, homemaking, or communication;
- Permanently unable to take care of them self because of a medical, physical, or mental health condition, or any other condition that results in permanent incapacitation; and
- Other evidence of reduced physical condition.

### ***Great Weight to Evidence of Intimate Partner Violence***

A hearing panel is required to give *great weight* to any information or evidence that, at the time of the commission of the crime, the incarcerated person had experienced intimate partner violence if the crime occurred before August 29, 1996.<sup>200</sup> The Board's regulations define "intimate partner battering" as evidence of the effects of physical, emotional, or mental abuse upon the beliefs, perceptions, or behavior of victims of domestic violence where it appears the criminal behavior was the result of that victimization.<sup>201</sup> If a person presents evidence of intimate partner violence at

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<sup>198</sup> Cal. Code Regs., tit. 15, § 2449.43, subd. (b).

<sup>199</sup> Cal. Code Regs., tit. 15, § 2449.43, subd. (c).

<sup>200</sup> Pen. Code, § 4801, subd. (b)(1).

<sup>201</sup> Cal. Code Regs., tit. 15, § 2000, subd. (b)(7).

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a hearing, the hearing panel cannot use that information to support a finding the person lacks insight into their crime and its causes.<sup>202</sup>

Further, the Board's regulations require a hearing panel to *consider* any information or evidence of intimate partner violence where it appears the criminal behavior was the result of that victimization, regardless when the offense occurred.<sup>203</sup> In doing so, the panel is required to state on the record the information considered and its effect, if any, on the panel's parole decision.<sup>204</sup> If sufficient information is not available to decide whether the incarcerated person's criminal behavior was the result of intimate partner violence, the hearing panel is required to refer the matter for an investigation.<sup>205</sup>

### 3.3 Issuing a Decision

After reviewing all available relevant and reliable information, rating the risk-related domains, and considering the additional factors, the hearing panel will decide if the incarcerated person currently poses an unreasonable risk of danger to the public.

When making a parole decision, the hearing panel is expected to explain the rating it assigned to each risk-related domain. If the panel's ratings or the risk assessment's overall risk rating seem to be inconsistent with the hearing panel's decision to grant or deny parole, the panel should explain the discrepancy and clearly articulate the rationale for their decision. Hearing panels must give all risk-related domains and additional factors the weight they deem appropriate when making a parole decision.

If the panel determines the incarcerated person poses a current, unreasonable risk of danger to the public, the panel will deny parole and determine how long the panel thinks the person will need to become suitable for release. If the panel determines the person does not pose a current, unreasonable risk of danger to the public, the panel must grant parole. All decisions resulting in a denial of parole *may* be reviewed by the Board's legal division and all decisions resulting in a grant of parole *must* be reviewed by the Board's legal division and *may* be reviewed by the Governor. In addition, some decisions are referred for review by a majority of commissioners at a monthly executive board meeting. For more information on the review process and the en banc review process, see sections 2.27, 2.28, 2.29, and 7.

### 3.4 Limitations on Parole Suitability Decision Making

Some statutes and court decisions have *limited* the use of certain factors by hearing panels when deciding whether an incarcerated person is suitable for parole.

#### 3.4.1 Commitment Offense

Hearing panels *may* not deny parole solely based on the severe nature of the incarcerated person's crime.<sup>206</sup> The severe nature of the person's crime committed long ago does not by itself show the person is *currently* dangerous.<sup>207</sup> However, the Board may deny parole if the person's behavior

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<sup>202</sup> Pen. Code, § 4801, subd. (b)(3).

<sup>203</sup> Cal. Code Regs., tit. 15, § 2239.

<sup>204</sup> Cal. Code Regs., tit. 15, § 2239.

<sup>205</sup> Cal. Code Regs., tit. 15, § 2239.

<sup>206</sup> *In re Lawrence* (2008) 44 Cal.4th 1181, 1214.

<sup>207</sup> *In re Lawrence* (2008) 44 Cal.4th 1181, 1214.

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while in prison, or their current thoughts and actions, show that the person's dangerousness at the time of their crime is still present today.<sup>208</sup>

### 3.4.2 Admission of Guilt

A hearing panel cannot require a person to *admit they are guilty of any crime* when deciding on their suitability for parole, even if the person was convicted of the crime.<sup>209</sup> However, the panel can consider the *plausibility* or reasonableness of any version of events presented by the incarcerated person.<sup>210</sup>

### 3.4.3 Release Plans

A hearing panel cannot base a denial of parole on an incarcerated person's lack of release plans, such as plans for housing or employment, unless the lack of a particular plan relates to the person's potential for dangerousness.<sup>211</sup>

## 3.5 Data on Parole Hearing Outcomes and CRAs

From 2018 through 2022, the Board held 18,464 parole hearings. Of hearings held, 34% resulted in a grant. This data includes hearings that were held, which means the hearing happened and the hearing panel made a decision to grant or deny parole; the data does not include hearings that were scheduled, but did not happen because they were postponed, waived, continued, cancelled, or resulted in the person stipulating to being unsuitable for parole.

Regarding CRAs, from 2018 through 2022, Board psychologists administered 19,183 CRAs. Of those, 22% rated the incarcerated person as low risk for future violence, 50% rated the person as moderate risk for future violence, and 28% rated the person as high risk for future violence. Furthermore, of CRAs used at a hearing that resulted in a grant, denial, or stipulation to unsuitability, about 65% of persons rated low were granted parole, about 20% of persons rated moderate were granted parole, and less than 1% of persons rated high were granted parole.

Finally, there is a lot of interest in hearing outcomes across different racial and ethnic groups. In 2021, the Committee on Revision of the Penal Code, along with researchers at U.C. Berkeley's California Policy Lab, reviewed all hearings held over one year (July 1, 2019, through June 30, 2020) (about 3,400 hearings). Their analysis found that, unlike other parts of the criminal legal system, there were no significant disparities in hearing outcomes by race: white people were granted parole at a rate of 36%, Black people at 34%, and Latinx people at 34%. Further, white people with no rules violations within three years before their hearing were granted parole at a rate of 43%, Black people at a rate of 47%, and Latinx people at a rate of 45%. Finally, with one disciplinary rules violation within three years before their hearing, white people were granted parole at a rate of 16%, Black people at a rate of 20%, and Latinx people at a rate of 14%.<sup>212</sup>

Additionally, the Board's Forensic Assessment Division looked at hearing outcomes by race and ethnicity for all incarcerated persons who had a CRA in 2022 and found that Black persons were

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<sup>208</sup> *In re Lawrence* (2008) 44 Cal.4th 1181, 1214.

<sup>209</sup> Pen. Code, § 5011, subd. (b).

<sup>210</sup> *In re Busch* (2016) 246 Cal.App.4th 953.

<sup>211</sup> *In re Criscione* (2009) 173 Cal.App.4th 60, 76.

<sup>212</sup> 2021 Annual Report and Recommendations, Committee on Revision of the Penal Code, p. 61, [http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC\\_AR2021.pdf](http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf).



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granted parole at a rate of 23%, Latinx persons at a rate of 25%, and white persons at a rate of 19%.<sup>213</sup>

While the Board acknowledges the positive findings of these analyses, the Board continues to work toward minimizing the potential for racial bias in its hearings, including through extensive training, review of decisions, and working with independent researchers to extensively analyze factors affecting hearing outcomes.

In addition, the Board allows any member of the public to observe a parole hearing (so long as they have no connection to the case) and it publishes a Report of Significant Events each year, which contains a variety of statistics like those mentioned above and much more. These reports are available to the public on the Board's website.<sup>214</sup>

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<sup>213</sup> There was not a large enough sample size to provide meaningful grant percentages for other races or ethnicities.

<sup>214</sup> <https://www.cdcr.ca.gov/bph/statistical-data/>

### SECTION 4: ADVANCING PAROLE HEARING DATES

#### 4.1 General

When an incarcerated person is denied parole at a parole hearing, the hearing panel will determine if the person's next hearing should be scheduled in 3, 5, 7, 10, or 15 years. The hearing panel will choose the length of time it believes the person will need to become suitable for parole. For example, if a hearing panel thinks the person will need five years to become suitable for parole, it will deny the person for a period of five years and the Board will schedule the person's next hearing to occur about five years from the date of the panel's decision.

However, once the Board has set the date of the person's next parole hearing, the law says the date of that future parole hearing can be moved up one of two ways: (1) the incarcerated person can file a petition to advance their next hearing date, or (2) the Board may decide on its own to advance a person's next hearing date (referred to as the Board's administrative review process). Both processes allow a person's next hearing date to be moved up when there is a change in circumstances or new information establishing a reasonable likelihood that public safety does not require the person to serve more time in prison.

#### 4.2 Petitions to Advance

An incarcerated person may submit a written request, often called a "petition to advance," to the Board asking the Board to advance their next hearing date.<sup>215</sup> The person may file their first petition with the Board any time after their first parole hearing, even if they stipulated to being unsuitable for parole at that hearing.<sup>216</sup> Once a person has filed their first petition to advance, they may submit another petition once every three years from the date of the Board's decision approving or denying their last petition.<sup>217</sup> A person may not submit a petition to move up the date of their first, or initial, parole hearing because the timing of a person's first parole hearing is generally set by statute and the Board does not have the legal authority to change it.<sup>218</sup>

In the petition, the incarcerated person must describe a change in circumstances or new information establishing there is a reasonable likelihood that public safety does not require them to serve more time in prison.<sup>219</sup> The petition must include the person's name, their CDCR number, the institution where they are housed, their signature, and the date of their signature.<sup>220</sup> With the petition, the person is encouraged to submit documentation of recent program participation that is not already in their central file. The person may submit the petition on a **BPH Form 1045-A, *Petition to Advance Hearing Date***. The BPH Form 1045-A is available at each institution and on the Board's website.<sup>221</sup> For reference, a sample BPH Form 1045-A is included in the appendix of this handbook.

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<sup>215</sup> Pen. Code, § 3041.5, subd. (d)(1).

<sup>216</sup> Cal. Code Regs., tit. 15, § 2150, subd. (a).

<sup>217</sup> Cal. Code Regs., tit. 15, § 2150, subd. (a).

<sup>218</sup> In some cases, the Board may schedule a person's initial parole hearing under the elderly parole program established by the *Plata* court order dated February 10, 2014.

<sup>219</sup> Pen. Code, § 3041.5, subd. (d)(1).

<sup>220</sup> Cal. Code Regs., tit. 15, § 2150, subd. (b).

<sup>221</sup> <https://www.cdcr.ca.gov/bph/bph-forms/>.

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### *Jurisdictional Review*

When the Board receives a petition to advance, it will review the petition to see if it is properly before the Board. This is called a “jurisdictional review.”<sup>222</sup> A petition is properly before the Board if: (1) the incarcerated person’s last hearing resulted in a denial of parole or a stipulation of unsuitability,<sup>223</sup> and (2) the person has not submitted a petition to advance (that was approved or denied by the Board) within the past three years.<sup>224</sup> If the Board determines the petition does not meet both (1) and (2), the person’s hearing date is not advanced and the Board issues a written decision, which is served on the person and placed in their central file within 15 business days.<sup>225</sup>

If the incarcerated person disagrees with the decision, they may write to the Board asking that the decision be reviewed within 30 calendar days of being served with it.<sup>226</sup> The request to review a decision must include a description of why they believe the decision was not correct and may include additional information that was not available at the time the Board made its decision.<sup>227</sup> The Board must complete its review within 15 business days of receiving the request.<sup>228</sup> The result of the review is served on the incarcerated person and placed in their central file within 15 business days.<sup>229</sup>

If the Board determines the petition is properly before the Board, a deputy commissioner will conduct a “review on the merits,” and approve or deny the petition as described in section 4.5.

### **4.3 Administrative Reviews**

After considering the views and interests of the victim and their family members, the Board may advance an incarcerated person’s next parole hearing date if the Board finds there has been a change in circumstances or new information establishing a reasonable likelihood that public safety does not require the person to serve more time in prison.<sup>230</sup>

The California Supreme Court has determined the Board may review an incarcerated person’s circumstances at any time to determine if there is a reasonable likelihood they are suitable for parole.<sup>231</sup> In addition, the United States Supreme Court has supported parole boards focusing their efforts on those persons identified as having a good possibility of being found suitable for parole.<sup>232</sup>

As such, the Board uses the “administrative review” process to identify those incarcerated persons who have a good possibility of being found suitable for parole and review their cases to determine if the Board should advance their next hearing date.<sup>233</sup> There are two types of administrative review

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<sup>222</sup> Cal. Code Regs., tit. 15, § 2151, subd. (a).

<sup>223</sup> Cal. Code Regs., tit. 15, § 2151, subd. (b). A petition to advance may not be submitted following a hearing that resulted in a postponement, continuance, or waiver.

<sup>224</sup> Cal. Code Regs., tit. 15, § 2151, subd. (b).

<sup>225</sup> Cal. Code Regs., tit. 15, § 2151, subd. (d).

<sup>226</sup> Cal. Code Regs., tit. 15, § 2151, subd. (e).

<sup>227</sup> Cal. Code Regs., tit. 15, § 2157, subd. (a).

<sup>228</sup> Cal. Code Regs., tit. 15, § 2157, subd. (c).

<sup>229</sup> Cal. Code Regs., tit. 15, § 2157, subd. (e).

<sup>230</sup> Pen. Code, § 3041.5, subd. (b)(4).

<sup>231</sup> *In re Vicks* (2013) 56 Cal.4th 274, 302.

<sup>232</sup> *Garner v. Jones* (2000) 529 U.S. 244, 254.

<sup>233</sup> Cal. Code Regs., tit. 15, §§ 2152–2157.

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processes—administrative review of three-year denials and ad hoc administrative reviews. Both are explained below.

### *Administrative Review of Three-Year Denials*

To determine if a hearing should be advanced, the Board conducts an administrative review of all incarcerated persons denied parole for a period of three years who have a low or moderate overall risk rating on their most recent comprehensive risk assessment.<sup>234</sup> This review happens 11 months after the person’s parole hearing.<sup>235</sup> Persons who stipulated to being unsuitable at their last hearing are not reviewed under this process.<sup>236</sup>

The Board first screens each case to see if it meets the criteria for a full review (called a “review on the merits”).<sup>237</sup> If any of the following apply, the case will be screened out and the Board will not conduct a full review:

- The incarcerated person stipulated to unsuitability at their last parole hearing;
- The person’s last parole hearing resulted in a denial of more than three years;
- The person’s overall risk rating was high on their most recent comprehensive risk assessment;
- The person or their attorney submitted a petition to advance since their last parole hearing, which was either approved or denied (i.e., “reviewed on the merits”);
- The person was found guilty of a specified serious rule violation since their last parole hearing;<sup>238</sup>
- The person was convicted of a new crime since their last parole hearing; or
- The person’s next hearing date has already been advanced since their last parole hearing.<sup>239</sup>

If none of the above apply, the Board will conduct a full review of the case and decide whether to move up the person’s next parole hearing date. This means a deputy commissioner conducts a “review on the merits,” as described in section 4.5.

**NOTE:** Determinately sentenced incarcerated persons who were denied parole for three years at their last hearing will not be considered under the administrative review process if, at the time the administrative review is started (11 months after their parole hearing), they are within 24 months of being released based on their Earliest Possible Release Date (EPRD).<sup>240</sup> All persons not considered for an earlier parole hearing date under the administrative review process for three-year

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<sup>234</sup> Cal. Code Regs., tit. 15, §§ 2153, 2154.

<sup>235</sup> Cal. Code Regs., tit. 15, § 2153.

<sup>236</sup> Cal. Code Regs., tit. 15, § 2154, subd. (b)(1).

<sup>237</sup> Cal. Code Regs., tit. 15, § 2154.

<sup>238</sup> The rule violations include Division A-1, A-2, B, C, D, or E rule violations specified in section 3323 of division 3 of title 15 of the California Code of Regulations. They also include Division F rule violations specified in paragraphs (h)(3), (5), (6), (12), or (13) of section 3323 of division 3 of title 15 of the California Code of Regulations.

<sup>239</sup> Cal. Code Regs., tit. 15, § 2154, subd. (b)(8).

<sup>240</sup> Cal. Code Regs., tit. 15, § 2153.

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denials may still be considered for an earlier parole hearing date under the Board's ad hoc administrative review process.

### *Ad Hoc Administrative Review*

At any time, the Board may initiate an administrative review of an incarcerated person to determine whether to advance the date of the person's next parole hearing.<sup>241</sup> This review is referred to as an "ad hoc administrative review." When the Board initiates an ad hoc administrative review, it conducts a "review on the merits," as described in section 4.5. An ad hoc administrative review is most often initiated to address unique or unexpected changes in circumstances or new information when the case is not eligible for review under a petition to advance or the administrative review process for three-year denials. The Board may conduct ad hoc reviews for persons who were denied parole for more than three years.

#### **4.4 Notification of Victims and Victims' Family Members**

The Board notifies any victims and victims' family members registered with the Office of Victim and Survivor Rights and Services (OVSRS) who request notice and provides them with an opportunity to submit a written statement before it decides whether to advance an incarcerated person's next parole hearing date under the petition to advance or administrative review process.<sup>242</sup> Statements must be submitted in writing and postmarked or emailed no later than **30 calendar days** after the Board issues the notification.<sup>243</sup> If the Board is reviewing a petition to advance, the Board will provide the victim or victim's family member with a copy of the petition upon request.

#### **4.5 Review on the Merits**

When deciding whether to move up an incarcerated person's next parole hearing date, a deputy commissioner will conduct a "review on the merits." During a review on the merits, a deputy commissioner reviews any statements received from the victim or victim's family member, and in the case of a petition to advance, information in the petition.<sup>244</sup> The deputy commissioner also reviews the incarcerated person's institutional records, documents previously submitted to the Board, and the decision from the person's last parole hearing.<sup>245</sup> The deputy commissioner then determines whether there has been a change in circumstances or new information establishing a reasonable likelihood that consideration of public safety does not require the person serve more time in prison.<sup>246</sup>

If the incarcerated person was under the age of 26 when they committed their controlling offense,<sup>247</sup> the deputy commissioner considers the youth offender factors described in section 3.2.5 when making the determination.<sup>248</sup> If the person is eligible for elderly parole, the deputy

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<sup>241</sup> Cal. Code Regs., tit. 15, § 2152.

<sup>242</sup> Cal. Code Regs., tit. 15, § 2155, subd. (a).

<sup>243</sup> Cal. Code Regs., tit. 15, § 2155, subd. (b).

<sup>244</sup> Cal. Code Regs., tit. 15, § 2156, subd. (b).

<sup>245</sup> See Cal. Code Regs., tit. 15, § 2156, subd. (b).

<sup>246</sup> Cal. Code Regs., tit. 15, § 2156, subd. (e).

<sup>247</sup> "Controlling offense" is defined as "the single crime or enhancement for which any sentencing court imposed the longest term of imprisonment." (Cal. Code Regs., tit. 15, § 2440, subd. (c).)

<sup>248</sup> Cal. Code Regs., tit. 15, § 2156, subd. (c).

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commissioner will consider the elderly factors described in section 3.2.5 when making the determination.<sup>249</sup>

If the deputy commissioner determines that there has been a change in circumstance or new information establishing a reasonable likelihood that public safety does not require that the incarcerated person serve more time in prison, the person's next parole hearing date will be advanced.<sup>250</sup> If the deputy commissioner determines there has not been a change in circumstances or new information meeting the standard, the person's next parole hearing will not be advanced.<sup>251</sup> When a person's next hearing date is advanced, the person's next hearing may be scheduled to occur within four to six months from the date of the decision. Another outcome may be that the deputy commissioner reduces the length of the denial the person received at their last hearing.<sup>252</sup> For example, if a person's prior hearing resulted in a denial of parole for five years, the deputy commissioner may order the denial length be modified to three years, in which case the person's next parole hearing will be scheduled to occur three years from the date of the person's last parole hearing.

The Board sends notice of its decision to the incarcerated person and any victim and victim's family member who received notice of the review.<sup>253</sup> The decision is served on the incarcerated person, placed in their central file within 15 business days, and sent to any registered victim and victim's family members within five business days.<sup>254</sup>

If the incarcerated person disagrees with the decision, they may request that the decision be reviewed. Requests must be in writing and submitted within **30 calendar days** of the person being served with the decision.<sup>255</sup> The request for review of the decision must include a description of why the person believes the decision was not correct and may include additional information that was not available at the time the decision was made.<sup>256</sup> The Board must complete its review of the decision within 15 business days of receiving the request.<sup>257</sup> The results of the review will be served on the person and placed in their central file within 15 business days.<sup>258</sup> If the review resulted in a previous decision being overturned or modified, the Board will also notify any registered victim and victim's family members within five business days.<sup>259</sup>

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<sup>249</sup> Cal. Code Regs., tit. 15, § 2156, subd. (d).

<sup>250</sup> Cal. Code Regs., tit. 15, § 2156, subd. (e).

<sup>251</sup> Cal. Code Regs., tit. 15, § 2156, subd. (e).

<sup>252</sup> Cal. Code Regs., tit. 15, § 2156, subd. (g).

<sup>253</sup> Cal. Code Regs., tit. 15, § 2156, subd. (f).

<sup>254</sup> Cal. Code Regs., tit. 15, § 2156, subd. (f).

<sup>255</sup> Cal. Code Regs., tit. 15, § 2156, subd. (h).

<sup>256</sup> Cal. Code Regs., tit. 15, § 2157, subd. (a).

<sup>257</sup> Cal. Code Regs., tit. 15, § 2157, subd. (c).

<sup>258</sup> Cal. Code Regs., tit. 15, § 2157, subd. (e).

<sup>259</sup> Cal. Code Regs., tit. 15, § 2157, subd. (f).

**SECTION 5: OTHER TYPES OF BOARD PROCEEDINGS**

**5.1 Parole Reconsideration Hearings**

When a person who has been released from prison violates a parole condition or commits a new crime, they may be returned to prison and be subject to the Board’s parole reconsideration hearing process. Under the Penal Code, those convicted of first- or second-degree murder committed on or after January 1, 1983, and those who committed certain sex offenses, are referred to the Board upon a court’s determination that the person violated a parole condition or committed a new crime.<sup>260</sup>

Those who are referred to the Board are scheduled for an initial parole reconsideration hearing within 12 months of the date the court determined the person violated a parole condition or the date the person was convicted of a new crime. At this initial hearing, the panel considers whether the person’s violation of a parole condition or commitment of a new crime requires the person to be in prison for a longer period of time.<sup>261</sup> The hearing panel also considers the person’s past and recent history and all of the relevant suitability factors normally considered at a parole hearing.<sup>262</sup>

If the panel grants parole, the person will be released from prison once all reviews of the decision have been completed. If the panel denies parole, the person will remain in prison and will receive annual parole reconsideration hearings and will be released from prison once they are found suitable for parole.<sup>263</sup>

After the initial parole reconsideration hearing, any following hearings are called “subsequent parole reconsideration hearings.” Subsequent parole reconsideration hearings are conducted the same way as subsequent parole hearings—the same standard for parole suitability and the same procedures apply.<sup>264</sup> This means the hearing panel will give great weight to the youth offender factors, special consideration to elderly parole factors, and great weight to evidence of intimate partner violence, if applicable, at subsequent parole reconsideration hearings. The only significant difference between a subsequent parole reconsideration hearing and a regular subsequent parole hearing is that the Board can only deny someone parole for one year at a subsequent parole reconsideration hearing.

At initial and subsequent parole reconsideration hearings, the person is assigned an attorney to represent them. Additionally, all applicable hearing notifications will be provided, including notice to the prosecutor and any registered victims and victims’ family members.<sup>265</sup>

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<sup>260</sup> Pen. Code, §§ 3000, 3000.1, & 3000.08, subdivision (h).

<sup>261</sup> Cal. Code Regs., tit. 15, § 2275, subd. (c).

<sup>262</sup> Cal. Code Regs., tit. 15, §§ 2281, 2402.

<sup>263</sup> In cases where the person receives a new sentence for a crime, the person will receive an initial parole reconsideration hearing but may not receive a subsequent annual hearing until one year prior to the Earliest Possible Release Date (EPRD) on any new crimes.

<sup>264</sup> Pen. Code, § 3041; Cal. Code Regs., tit. 15, §§ 2281, 2402.

<sup>265</sup> Cal. Code Regs., tit. 15, § 2275, subd. (g).

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### 5.2 Medical Parole Hearings

A medical parole hearing, also known as an “expanded medical parole (EMP) hearing,”<sup>266</sup> is a hearing to determine if an incarcerated person who is permanently medically incapacitated should be placed in a licensed health care facility in the community to serve their term.<sup>267</sup> The term “medical parole” may be misleading because approval for medical parole is not a finding of parole suitability. Rather, those on medical parole are *placed* in a community setting for medical reasons and may be returned to prison if their condition improves or for other reasons. Persons who are on medical parole will also receive parole hearings if they are eligible.

EMP hearings are conducted like parole hearings, with a few exceptions. First, EMP hearings are often conducted without the incarcerated person attending the hearing. The person may attend, but they do not have a right to attend. Second, the hearing panel shall grant medical parole if it determines that the conditions under which the person would be released would not reasonably pose a threat to public safety.<sup>268</sup> If a hearing panel approves a person for medical parole, it will specify conditions necessary for the person’s placement not to pose an unreasonable risk to public safety.

Like parole hearings, the incarcerated person will be appointed an attorney to represent them at the hearing. Additionally, all applicable hearing notifications will be provided, including notice to the prosecutor and any registered victims and victims’ family members.

If a person is disapproved for medical parole, they are not automatically scheduled for another EMP hearing in the future. However, the incarcerated person, their family or attorney, or a prison health care staff member may request the person’s primary care physician in prison consider the person for another EMP referral to the Board. Generally, persons will be considered for possible referral for a medical parole hearing no more than once every six months.

### 5.3 Serious Offender Hearings or Extended Term Hearings

In rare circumstances, such as “cold hit” cases, a person is arrested for a crime they committed on or before June 30, 1977. In these situations, the Penal Code and the Board’s regulations require the Board to follow specific procedures if the person would have been sentenced under the Determinate Sentencing Law had they committed their crime on or after July 1, 1977.<sup>269</sup>

For these persons, the Board will review their sentence and conduct a “serious offender hearing,” also known as an “extended term hearing,” to determine the person’s determinate term, as required under Penal Code section 1170.2. These individuals will also receive annual parole hearings in

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<sup>266</sup> Pen. Code, § 3550. The medical parole hearing process was first enacted by Senate Bill 1399, which went into effect in 2011. The State was later ordered to expand the medical parole hearing process by a federal court order issued in February 2014 in the *Plata* class action lawsuit. The resulting medical parole hearing process is commonly referred to as expanded medical parole. For more information on EMP hearings, visit the Board’s website at <https://www.cdcr.ca.gov/bph/mph-overview/>.

<sup>267</sup> Pen. Code, § 3550, subd. (a).

<sup>268</sup> Pen. Code, § 3550, subd. (a).

<sup>269</sup> Pen. Code, § 1170.2; Cal. Code Regs., tit. 15, § 2300 et seq.



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accordance with the Board's regulations<sup>270</sup> and will be released from prison upon serving their determinate term, or being found suitable at a parole hearing, whichever occurs first.<sup>271</sup>

### 5.4 Nonviolent Offender Parole Review for Determinately Sentenced Persons

#### *Eligibility*

Under the nonviolent offender parole review process (NVPP), CDCR refers certain determinately sentenced nonviolent offenders to the Board for review and possible release.<sup>272</sup> To be eligible for referral, the person must have completed the full term for their primary offense, which is the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.<sup>273</sup> Additionally, the person must not be serving a term of incarceration for a violent felony, as defined in Penal Code section 667.5, subdivision (c).

Eligible persons will receive a nonviolent parole eligible date (NPED), which is the date the person will have served the full term of their primary offense.<sup>274</sup> CDCR reviews persons for NVPP eligibility and will provide them with a written notice of their eligibility and NPED. The person will also receive information about NVPP, including the opportunity to submit a written statement to the Board.<sup>275</sup> Persons who do not agree with CDCR's eligibility determination should use the department's appeal process.<sup>276</sup> Once a person reaches their NPED, their case is referred to the Board for parole consideration.

#### *Referral to the Board; Jurisdictional Review; Review on the Merits*

Upon receiving the referral from CDCR, the Board notifies the prosecutor and registered victims and victims' family members that the person is being considered for parole. Those noticed have **30 calendar days** to submit written statements.<sup>277</sup> Once the 30 days has passed, a deputy commissioner conducts a jurisdictional review to confirm the person is eligible for NVPP. If the person is eligible, the deputy commissioner reviews the case "on the merits" and determines whether the person would pose a current, unreasonable risk of violence or significant criminal activity if released.<sup>278</sup> In making this decision, the deputy commissioner considers factors, such as the person's criminal history, institutional behavior, programming, and input from the incarcerated person, prosecutor, and registered victims and victims' family members.<sup>279</sup>

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<sup>270</sup> Cal. Code Regs., tit. 15, §§ 2304, 2305.

<sup>271</sup> If the person has an outstanding hold, warrant, or detainer from another law enforcement agency, the person may be transferred to another jurisdiction. If the person has an additional term to serve for a crime they committed while in prison, they may remain in prison and will be released upon serving the additional sentence, less any applicable credits. See section 2.31 of this handbook for more information.

<sup>272</sup> For CDCR's review and referral process, see California Code of Regulations, title 15, sections 3490-3497. For the Board's review process, see California Code of Regulations, title 15, sections 2449.1-2449.34.

<sup>273</sup> Cal. Const., art. I, § 32; Cal. Code Regs., tit. 15, §§ 3490, subd. (d), 3491.

<sup>274</sup> Cal. Code Regs., tit. 15, §§ 3490, subd. (e), 3491.

<sup>275</sup> Cal. Code Regs., tit. 15, § 3492, subd. (a).

<sup>276</sup> Cal. Code Regs., tit. 15, § 3481.

<sup>277</sup> Cal. Code Regs., tit. 15, §§ 2449.3, 2449.4.

<sup>278</sup> Cal. Code Regs., tit. 15, § 2449.4, subd. (f).

<sup>279</sup> Cal. Code Regs., tit. 15, § 2449.5.

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The Board's review on the merits for determinately sentenced persons are "paper reviews," meaning the deputy commissioner makes a decision based on the incarcerated person's file and written statements submitted to the Board. No parole hearing is held for these cases.

### *Board's Written Decision*

Upon reviewing a case on the merits, the deputy commissioner will issue a written decision with a statement of reasons supporting the decision. The incarcerated person, prosecutor, and registered victims and victims' family members will receive a copy of the Board's decision. If the incarcerated person is approved for release, the person will be processed for release by CDCR 60 days from the date of the Board's decision. If the person is denied release, they will be eligible for referral to the Board again one year later.

### *Review of the Board's Decision*

Within **30 calendar days** of being served with the Board's decision for jurisdictional review or a review on the merits, the person may request review of the decision.<sup>280</sup>

For more information about the Nonviolent Offender Parole Review Process for determinately sentenced persons, see sections 3490 through 3497 and 2449.1 through 2449.34 of title 15 of the California Code of Regulations.

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<sup>280</sup> Cal. Code Regs., tit. 15, § 2449.7.

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### SECTION 6: VICTIMS AND THE PAROLE HEARING PROCESS

#### 6.1 Introduction

This section outlines the victim's role and rights in the parole hearing process. The Board recognizes and respects that many people who have been harmed by violent crime prefer to be referenced as a "survivor" instead of "victim." However, the term "victim" is the specific term used in the law governing parole hearings, so that is the term used throughout this handbook. Also, sections 6.6 through 6.10 include information contained in other sections of the handbook. However, the information is repeated in section 6 to provide one convenient location for all relevant information pertaining to victims and the parole hearing process.

Parole hearings are often very difficult for a victim and their family. Victims and their family are strongly encouraged to contact CDCR's Office of Victim and Survivor Rights and Services (OVSRS) for assistance in navigating the parole hearing process.<sup>281</sup>

The decision of whether to participate in a parole hearing is a personal decision. Victims and their family are encouraged to make the decision whether to participate based on their individual circumstances, which can vary greatly from one person to another, even within the same family. Regardless of whether a victim or a victim's family member chooses to participate in a parole hearing, the Board will always review detailed information about the crime from arrest reports, Probation Officer Reports, appellate decisions, and other official documents in preparation for a parole hearing (in addition to official prison records and other relevant documents).

Under the law, victims are included in the parole hearing process to protect important dignitary values; to ensure that parole hearings are fair and that victims are acknowledged and treated with understanding, dignity, and respect.<sup>282</sup> The California Supreme Court has determined, however, that the Board cannot base a parole decision "on victims' opinions or public outcry."<sup>283</sup> Instead, the Board is required to base its decisions solely upon whether the incarcerated person poses a current, unreasonable risk of danger to the public. Victims and their family members should not feel that the outcome of a parole decision will rest on whether they choose to attend and participate. For this reason, victims and their family members are encouraged to decide whether to attend and participate in a parole hearing based on what is best for them, given their individual circumstances.

Historically, victims and their family members have attended 10 to 12% of all parole hearings held. At a parole hearing, the Board will rely on a thorough review of the evidence and well-founded research on risk to determine whether the incarcerated person would pose a current, unreasonable risk of danger if released. This has led to one out of every three parole hearings held resulting in a grant of parole. And despite the very serious and often violent crimes they committed, 99% of people released after a grant of parole desist from committing any new felony crime

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<sup>281</sup> OVSRS can be reached by phone at 1-877-256-6877 or by email at [victimservices@cdcr.ca.gov](mailto:victimservices@cdcr.ca.gov). Their website is [www.cdcr.ca.gov/victim-services/](http://www.cdcr.ca.gov/victim-services/).

<sup>282</sup> *In re Vicks* (2013) 56 Cal.4th 274.

<sup>283</sup> *In re Vicks* (2013) 56 Cal.4th 274.

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involving harm to another person and 97% desist from committing any new crime (misdemeanor or felony).<sup>284</sup>

### 6.2 Definition of Victim, Victim's Next of Kin, and Victim's Immediate Family

A victim, victim's next of kin, and a victim's immediate family, as defined in the law, have a right to participate in the parole hearing process.

A "victim" is defined as an individual who suffered a direct or threatened physical, psychological, or financial harm because of a crime committed by the incarcerated person.<sup>285</sup> To meet the qualifying definition of a victim, the person must be a victim of the incarcerated person's current commitment offense, a prior crime for which the incarcerated person was convicted, or a crime committed by the incarcerated person, regardless of conviction.<sup>286</sup> Individuals who believe they are victims should contact OVSRS and register as victims, as explained in section 6.2.

A "victim's next of kin" is defined as the person or group of persons who is/are the closest relative of a deceased victim. The Board and OVSRS use the table of consanguinity to determine the person or group of persons who is/are the deceased victim's closest next of kin.<sup>287</sup> The table of consanguinity lists relatives in the order of those most closely related to the deceased victim. This is the same table used for other legal purposes, such as determining a person's next of kin for purposes of distributing the person's property if they did not have a will. According to the table of consanguinity, the deceased victim's next of kin will be the person or persons who appear first among the following list of relatives: (1) spouse or domestic partner, (2) children or stepchildren, (3) parents, (4) grandchildren, (5) siblings, (6) grandparents, (7) great-grandchildren, (8) nieces or nephews, (9) aunts or uncles, and (10) great-grandparents. If there are no surviving individuals in the above categories, the next of kin will be any individual with the next-closest family relation.

A victim's "immediate family" is defined to include a victim's spouse or registered domestic partner, children, parents, siblings, grandchildren, and grandparents.<sup>288</sup>

### 6.3 Registering with the Office of Victim and Survivor Rights and Services

Victims, victims' next of kin, and members of a victim's immediate family have a right to be notified of a parole hearing and participate in the hearing. The first step is to register with the Office of Victim and Survivor Rights and Services (OVSRS) as a victim, victim's next of kin, or victim's immediate family member. Only persons who have registered with OVSRS will be notified of upcoming parole hearings and be permitted to attend a parole hearing.

Victims, victims' next of kin, and victims' immediate family members are encouraged to register with OVSRS, even if they believe the incarcerated person will never be eligible for a parole hearing. This is because it is possible for a person to become eligible for a parole hearing even if they were not eligible when they were first sent to prison. This can happen for a number of reasons. For example, an incarcerated person may be resentenced years later or they may become eligible

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<sup>284</sup> <https://www.cdcr.ca.gov/research/offender-outcomes-characteristics/offender-recidivism/>.

<sup>285</sup> Pen. Code, § 3043, subd. (a)(1); Cal. Const., art. I, § 28, subds. (d), (e).

<sup>286</sup> Pen. Code, § 3043, subd. (a)(1).

<sup>287</sup> A copy of the table of consanguinity is included in the appendix of this handbook.

<sup>288</sup> Pen. Code, § 3043, subd. (e).

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for a parole hearing if there is a change in the law. Changes in the law since 2014 have made people who qualify as an elderly offender, youthful offender, or a nonviolent offender eligible for a parole hearing once they serve a certain period of time, regardless of the sentence imposed by the court.<sup>289</sup> A person may also have their sentence commuted by the Governor. For these reasons, victims, victims' next of kin, and victims' immediate family members who think they may want to attend a parole hearing sometime in the future or who just want to be notified if an incarcerated person is one day scheduled for a parole hearing should register with OVSRS when the incarcerated person is first admitted to state prison or as early as possible.

Victims, victims' next of kin, and victims' immediate family members can register with OVSRS by completing an online application at <https://www.cdcr.ca.gov/victim-services/application/> or by mailing a completed **CDCR Form 1707, Request for Victim Services** to OVSRS.<sup>290</sup> Once OVSRS confirms the person's identity and their connection to the crimes committed by the incarcerated person, the person will receive notice of any parole hearing or parole review concerning the case for which they are registered.

A victim, victim's next of kin, or victim's immediate family member can choose to receive notice of a parole hearing or parole review by U.S. mail or email. It is important that victims, victims' next of kin, and victims' immediate family members keep their contact information updated with OVSRS so they continue to receive timely notices from the Board.

Contact information provided to OVSRS for purposes of registering to receive notice of a parole hearing or review is confidential and will not be disclosed to the incarcerated person, their attorney, or any other hearing participant.

### 6.4 Rights of Victims and Victims' Family Members in the Parole Hearing Process

In 2008, the Victim's Bill of Rights Act of 2008 (also known as "Marsy's Law") amended the California Constitution to provide additional rights to victims.<sup>291</sup> The rights provided by Marsy's law apply to all hearings where the purpose is to determine if a person should be released from state prison, including parole hearings.<sup>292</sup>

#### *Rights of the Direct Victim*

The direct victim or survivor (referred to as "victim" throughout this handbook) is entitled to notice of Board hearings and proceedings where an incarcerated person's suitability for release is being determined.<sup>293</sup> The victim may attend a parole hearing, provide an impact statement, and submit a

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<sup>289</sup> Pen. Code, §§ 3051 (youth offender), 3055 (statutory elderly parole program); *Plata v. Brown*, USDC ND Cal. No. 01-1351 TEH, Order Granting in Part and Denying in Part Defendant's Request for Extension of December 31, 2013 Deadline (ECF No. 2766) (court-ordered elderly parole program); Cal. Code Regs., tit. 15, §§ 2449.1–2449.34, 3490-3497 (nonviolent offender parole review process).

<sup>290</sup> A copy of the CDCR Form 1707 is provided in the appendix of this handbook.

<sup>291</sup> Cal. Const., art. I, § 28, subd. (b).

<sup>292</sup> The California Constitution, article I, section 28, subdivision (b), provides: "(15) To be informed of all parole procedures, to participate in the parole hearing process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender. (16) To have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made."

<sup>293</sup> Pen. Code, § 3043, subd. (a)(1).

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written impact statement. Additionally, a victim may appoint two representatives who can also attend the parole hearing and provide a statement on any subject that the victim has a right to be heard. A victim can also bring one support person to attend the hearing but who cannot participate in the hearing or make any comments.<sup>294</sup> A victim may choose to appear by counsel instead of personally making a statement.<sup>295</sup>

Victims of a sexual offense or human trafficking also have the right to identify themselves as “J. Doe” at a parole hearing instead of stating their name on the record.<sup>296</sup> If a victim chooses to remain anonymous at the hearing, the hearing panel will make a confidential recording of the victim’s name and the name that the victim used at the hearing. The purpose of the confidential recording is in case the identity or status of the victim is challenged in court. The recording could be subject to review by a judge “in camera,” which is when a judge privately reviews the recorded information. The confidential recording will not be provided to the incarcerated person or their attorney without a court order. Requests to be identified as “J. Doe” should be made to OVSRS or the Board when a victim provides their notice of intent to attend the hearing.

Additionally, if the incarcerated person was convicted of one of several specified violent crimes or stalking, a direct victim or witness may request the incarcerated person not reside within 35 miles of the actual residence of the direct victim or witness while the person is on parole.<sup>297</sup> DAPO will determine whether this request can be accommodated. This condition only restricts the parolee from residing within 35 miles of the actual residence of the direct victim or witness. The parolee may still travel within 35 miles of the residence.

### ***Rights of the Victim’s Next of Kin***

A victim’s next of kin steps into the role of a deceased victim. A victim’s next of kin may attend the parole hearing, provide a victim’s impact statement, and submit a written victim’s impact statement. Additionally, a victim’s next of kin may appoint two representatives who may speak in addition to the victim’s next of kin on any subject that the victim’s next of kin has a right to be heard. A victim’s next of kin may also bring one support person, who may attend the hearing but cannot participate in the hearing or make a comment. A victim’s next of kin may choose to appear by counsel instead of personally making a statement.

### ***Rights of Victim’s Immediate Family Members***

An immediate member of the victim’s family, who is not the next of kin, may attend the parole hearing, provide an impact statement, and submit a written impact statement. The victim’s family member may choose to appear by counsel instead of personally making a statement. Each immediate family member may designate one support person to attend the hearing but who cannot participate in the hearing or make a comment.

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<sup>294</sup> Cal. Code Regs., tit. 15, § 2029, subd. (e).

<sup>295</sup> Cal. Code Regs., tit. 15, § 2029, subd. (d).

<sup>296</sup> Cal. Const., art. I, § 28, subd. (b)(4); Pen. Code, §§ 293, subd. (g), 293.5, & 3043, subd. (a)(1).

<sup>297</sup> Pen. Code, § 3003, subd. (f).

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### *Role of Victim's Representatives*

A victim's representative may attend the parole hearing, provide an impact statement, and submit a written victim's impact statement.

### *Role of Support Persons*

A support person may attend the parole hearing to support a victim, victim's next of kin, or a victim's immediate family member, but may not participate in the hearing or make a comment. However, as with any member of the public, a support person may write to the Board to voice their opinion on the incarcerated person's suitability for parole.

## **6.5 Timelines for Requesting to Participate in a Parole Hearing**

The Board must notify registered victims, victims' next of kin, and victims' family members at least 90 calendar days before the hearing.<sup>298</sup>

A victim, victim's next-of-kin, victim's family member, and their designated representatives and support persons must inform OVSRS of their intent to attend the hearing at least **15 calendar days** prior to the scheduled hearing.<sup>299</sup>

## **6.6 Scope of a Victim's Impact Statement**

Every victim, victim's next-of kin, victim's immediate family member, and any designated representatives (collectively referred to as "victims and victims' family members" in this section) has the right to make an impact statement at a parole hearing. The purpose of an impact statement is to give the victim and their family members an opportunity to reasonably express their views concerning the incarcerated person, the crimes the incarcerated person committed, the effect of the crimes on the victim and their family members, and the suitability of the incarcerated person for release.<sup>300</sup> Victims may also choose to submit a written statement to the Board.

An impact statement is intended to provide a victim and their family members with an opportunity to share their views with the hearing panel before it makes its decision about the incarcerated person's suitability for parole. Victims and their family members are, therefore, required to address their comments to the hearing panel, not the incarcerated person. Victims and their family members are the last participants to speak before the hearing panel deliberates and makes a decision.<sup>301</sup> Victims and their family members have the right to speak uninterrupted.<sup>302</sup> However, the hearing panel is required to weigh that right against other important interests, such as the need to conduct a hearing that is fair and respectful of all participants. As a result, in rare circumstances, a victim or their family members may be interrupted when necessary to ensure the parole hearing is conducted fairly and in a manner that is respectful of all participants. For example, a victim whose comments are addressed to the incarcerated person can expect to be briefly interrupted and asked to redirect their comments to the hearing panel. Similarly, persons who use threatening or

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<sup>298</sup> Pen. Code, § 3043, subd. (a)(1).

<sup>299</sup> Pen. Code, § 3043, subd. (a)(2); Cal. Code Regs., tit. 15, §2057, subds. (b)(1), (c)(1).

<sup>300</sup> Pen. Code, § 3043, subd. (b)(1).

<sup>301</sup> Pen. Code, § 3043, subd (d).

<sup>302</sup> Pen. Code, § 3043, subd (d).

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offensive language<sup>303</sup> (such as profanity or racial slurs) will be interrupted and asked to refrain from using such language during the hearing.

While the Board cannot base its decision to deny parole or set a denial length based on the victim or victim's family member's opinion,<sup>304</sup> hearing panels appreciate and respect victims and their family members' participation in the parole hearing process and recognize the importance of providing victims and their family members with an opportunity to participate and to be heard.<sup>305</sup>

### ***Methods for Providing an Impact Statement***

Victims and their family members can provide an impact statement to the Board in multiple ways. Victims and their family members may attend the parole hearing and provide a verbal statement at the hearing, submit a written statement, or have one of the other participants, including the prosecutor, read their statement at the hearing. Additionally, victims and their family members may submit an audio or video recording of their statement, but it must be provided to the Board at least **21 calendar days** before the hearing along with a written transcript of the recorded statement.<sup>306</sup>

### **6.7 Statements Submitted Before the Hearing by Victims, Victims' Family Members, and Victim Representatives**

As mentioned in section 2.13, victims, victims' family members, and their representatives (collectively referred to as "victims and victims' family members" in this section) are not required to submit a written statement. However, they have a right to submit a written statement.

It is often very difficult for victims and their family members to describe in words how the incarcerated person's crime(s) has affected them. If a victim or victim's family member would like to submit a written statement to the Board, they are encouraged to use their statement to address their views concerning the crime(s) and the person(s) responsible, the effect of the crime(s) on them and their family, and the suitability of the incarcerated person for parole.<sup>307</sup>

Sometimes the Board receives written statements that are very long or difficult for hearing panels to properly review before the hearing, especially when they are received close to or on the day of the hearing. To make sure written statements are properly considered by the hearing panel, it is recommended victims and victims' family members follow these guidelines:

#### ***Written, Audiotaped, or Videotaped Statements***

Typed statements should be in 10-point font or larger. Handwritten statements should be legible. The victim's or victim's family member's contact information (address, phone number, and email address) **should not** be included on the written statement. Emailed statements should be submitted as a Microsoft Word document, Portable Document Format (PDF), or similar compatible format. Do not submit documents in Joint Photograph Experts Group (JPEG) format. A victim's or

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<sup>303</sup> Pen. Code, § 3043.6.

<sup>304</sup> *In re Vicks* (2013) 56 Cal.4th 274.

<sup>305</sup> *In re Vicks* (2013) 56 Cal.4th 274.

<sup>306</sup> Cal. Code Regs., tit. 15, § 2029, subd. (f).

<sup>307</sup> Pen. Code, §§ 3043(b)(1), 3043.2(a)(1).



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victim's family member's written statement is typically 2 to 4 pages, single-sided, and single-spaced.

The statement may also be audiotaped, videotaped, or stored on any recording medium (such as a DVD or CD-ROM) accepted by the Board.<sup>308</sup> Statements that are audiotaped or videotaped will be accepted so long as (1) they are provided to the Board at least **21 calendar days** before the hearing and (2) a written transcript of the recorded statement is included with the submission.<sup>309</sup>

### *Confidentiality of Statements*

Statements submitted to the Board may be read at a parole hearing or referred to at a hearing. This means the statement will be part of the transcript that is provided to the incarcerated person, their attorney, the prosecutor, and is available to the public upon request. A statement deemed confidential by CDCR will not be read at a parole hearing or provided to the public or the hearing participants. However, the statement may be reviewed by the hearing panel and by the Board and the Governor if the decision is reviewed.

A statement submitted by the victim or victim's family member may be kept confidential upon request if CDCR determines that the written statement meets the criteria for confidentiality.<sup>310</sup> The following criteria suggest that a statement opposing a person's release be deemed confidential: (1) the victim or victim's family member requests the statement be deemed confidential; and (2) the statement contains information or material that, if known by the incarcerated person, could reasonably be expected to incite animosity or potentially endanger the victim or the victim's family.

When submitting the statement to the Board, the words "CONFIDENTIAL" or "REVIEW BY HEARING PANEL ONLY" should be placed at the top of the statement or email to the Board. Victims and victims' family members should be aware that statements determined not to meet the criteria for confidentiality will be made available to the incarcerated person and may be read at the parole hearing and become part of the public transcript of the hearing.

### *Deadline for Submitting Statements*

Victims and victims' family members may submit their written statements at any time before the hearing. However, victims and victims' family members submitting a confidential written statement should submit their statement at least **10 calendar days** prior to the hearing for CDCR to determine if the statement meets the criteria for confidentiality and for the hearing panel to be provided with the statement. If a statement is audiotaped, videotaped, or stored on another recording medium (such as a DVD or CD-ROM), a written transcript of the recording must also be provided to the Board, and both must be submitted at least **21 calendar days** before the hearing.<sup>311</sup>

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<sup>308</sup> Pen. Code, § 3043.2, subds. (a), (b); Cal. Code Regs., tit. 15, § 2029, subd. (f).

<sup>309</sup> Cal. Code Regs., tit. 15, § 2029, subd. (f).

<sup>310</sup> Cal. Code Regs., tit. 15 § 3321.

<sup>311</sup> Pen. Code, § 3043.2, subd. (b); Cal. Code Regs., tit. 15, § 2029, subd. (f).

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### *How to Submit Statements*

Victims and their family members who wish to submit statements should send them by email to [BPH.CorrespondenceUnit@cdcr.ca.gov](mailto:BPH.CorrespondenceUnit@cdcr.ca.gov) or by mail to the Board of Parole Hearings at P.O. Box 4036, Sacramento, CA 95812. Please note that statements submitted will not be returned, so individuals are encouraged to make copies before submitting their statements.

### **6.8 Written Statements Submitted by the Public**

As discussed in section 2.14, any member of the public may submit information concerning the incarcerated person and the crime(s) they committed.<sup>312</sup>

Sometimes the Board receives written statements that are very long or difficult for hearing panels to properly review before the hearing. To make sure written statements submitted can be properly considered by the hearing panel, it is recommended that statements submitted by the public follow these guidelines:

#### *Submit Statements that Are Typed or Clearly Written*

Typed statements should be in 10-point font or larger. Handwritten statements should be legible. The writer's contact information (address, phone number, and email address) **should not** be included on the written statement. Emailed statements should be submitted as a Microsoft Word document, Portable Document Format (PDF), or similar compatible format. Do not submit documents in Joint Photograph Experts Group (JPEG) format or photographs.

#### *Suggested Length of Statements*

Written statements from members of the public are typically 1 to 2 pages, single-sided, and single-spaced.

#### *Avoid Submitting Form Letters and Petitions*

The California Supreme Court has held that the Board must determine a person's suitability for parole based on whether the person poses a current, unreasonable risk of danger to the public. In making this determination, the Court has held that the Board may not consider "public outcry."<sup>313</sup> For this reason, although form letters and signed petitions will be made part of the official record of the hearing, a hearing panel cannot rely on them when determining the person's suitability for parole. Information from members of the public who have personal information about the incarcerated person or their crime(s) that is relevant to determining the person's current risk are most helpful when determining the person's suitability for parole.

#### *Confidentiality of Comments*

Written statements submitted to the Board may be read or referred to at a parole hearing. This means the statement may be part of the transcript that is provided to the incarcerated person, their attorney, the prosecutor, and is available to the public upon request. A statement deemed confidential by CDCR will not be read at a parole hearing or provided to the public or hearing participants. However, the statement may be reviewed by the hearing panel and by the Board and the Governor if the decision is reviewed.

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<sup>312</sup> Pen. Code, §§ 3042, 3043.5; Cal. Code Regs., tit. 15, § 2028.

<sup>313</sup> *In re Vicks* (2013) 56 Cal.4th 274, 310.

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A statement submitted by a member of the public may be kept confidential upon request of the writer if CDCR determines the letter meets the requirements for confidentiality.<sup>314</sup> The following criteria suggest that a statement opposing a person's release be deemed confidential: (1) the writer requests the statement be kept confidential; and (2) the statement contains information or material that, if known by the incarcerated person, could reasonably be expected to incite animosity or potentially endanger the writer. When submitting the statement to the Board, the words "CONFIDENTIAL" or "REVIEW BY HEARING PANEL ONLY" should be placed at the top of the statement or email to the Board. Individuals should be aware that statements determined not to meet the criteria for confidentiality will be made available to the incarcerated person and may be read at the parole hearing and become part of the public transcript of the hearing.

### *Deadline for Submitting Written Statements*

Information from the public should be submitted at least **20 calendar days** before the date of the parole hearing to allow time for hearing panels to review the information. The incarcerated person has a right to review material the Board will consider at the hearing at least 10 calendar days prior to the date of the hearing. For this reason, the Board will not consider statements submitted within 10 calendar days of a hearing unless the incarcerated person or their attorney allows the information to be considered by the hearing panel; otherwise, the information will be kept in the incarcerated person's file to be considered by future hearing panels.

### *How to Submit Written Statements*

Members of the public who wish to submit written statements should send them by email to [BPH.CorrespondenceUnit@cdcr.ca.gov](mailto:BPH.CorrespondenceUnit@cdcr.ca.gov) or by mail to the Board of Parole Hearings at P.O. Box 4036, Sacramento, CA 95812. Statements submitted will not be returned, so individuals are encouraged to make copies before submitting their documents.

## **6.9 Videoconference and In-Person Hearings**

### *Videoconference Hearings*

Parole hearings will be held by videoconference, unless the Board determines the hearing must be held in person in order to effectively communicate with the incarcerated person.<sup>315</sup> All victims, victims' family members, and their representatives and support persons (collectively referred to as "victims and victims' family members" in this section) may participate in a videoconference hearing by phone or by video.

The Board uses Microsoft Teams to conduct hearings by videoconference. Microsoft Teams is a platform used for virtual meetings, which means participants may need to download the application on their computer or smart phone if they want to participate by video. All victims and their family members are responsible for ensuring that they have the proper equipment and internet connection needed to attend and participate in the hearing by video.<sup>316</sup>

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<sup>314</sup> Cal. Code Regs., tit. 15, § 3321.

<sup>315</sup> Cal. Code Regs., tit. 15, §§ 2053, 2054.

<sup>316</sup> Cal. Code Regs., tit. 15, § 2063.

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Parole hearings are not open to the public; only approved participants are allowed to be present during the hearing. This means no unauthorized persons may be present with the victim or the victim's family members while they are participating in the hearing by phone or by video.

In order to maintain a professional hearing, all hearing participants are required to remain respectful throughout the hearing. If the hearing panel determines that a participant is being disruptive, the person may be removed from the hearing. Some examples of disruptive behavior that may result in a person being removed from a hearing include making direct or implied threats, repeatedly interrupting someone while they are speaking, allowing unauthorized individuals to listen or watch the hearing, recording the hearing, and using offensive language.

### *In-Person Hearings*

If a hearing is held in person, victims and their family members may choose to attend the hearing in person, by videoconference, or by phone. Victims and their family members need to let the Board know if they will be attending the hearing in person, by videoconference, or by phone when they notify the Board of their intent to attend the hearing. If a victim or their family member chooses to attend in person, they will be required to follow the rules of the institution, which include limits on what items can be brought into the institution and the types of clothing that can be worn. Upon arriving at the institution, a CDCR victim services representative will greet the victim and their family members and escort them through a security screening process. The victim and their family members will be asked to go through a metal detector and may be subjected to a further cursory search. Once inside the institution, the victim services representative will take the victim and their family members to a waiting room and will remain with the victim and their family members until the end of the hearing.

### **6.10 Procedures Following a Parole Decision**

This section provides a brief overview of what to expect after a parole hearing. For more detailed information, see "After a Hearing," sections 2.24 through 2.31.

#### *Process After a Grant of Parole*

A decision to grant parole will be reviewed by the Board's legal division, which has up to 120 calendar days to complete its review. The purpose of the review is to determine if the hearing panel made an error when applying the law or if the decision was based on an error of fact. Additionally, the legal division will consider whether there is any new information available that was not known to the hearing panel at the time of the hearing. If there was an error or there is new information that the Board's chief counsel believes is likely to result in a substantially different decision if corrected or considered at a new hearing, the case will be scheduled for review by the Board at one of its public monthly executive board meetings.<sup>317</sup> Registered victims and victims' family members will be notified of the monthly executive board meeting and may submit written statements for the Board to consider and speak at the meeting.

If the legal division's review does not result in the decision being scheduled for review at a monthly executive board meeting, the Governor will have 30 calendar days to review the decision. The Governor may refer the grant for review at one of the Board's monthly executive board meetings

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<sup>317</sup> Cal. Code Regs., tit. 15, § 2042.

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or take no action and let the grant stand.<sup>318</sup> Additionally, if the person was convicted of murder, the Governor may reverse the grant.

If the Governor lets the grant stand, the person will likely be processed for release.<sup>319</sup> For more information about the release process, including circumstances when a person will not be released, please see section 5.31. If the Governor refers the decision for review at one of the Board's monthly executive board meetings, the decision will be scheduled for review within 60 calendar days following the Governor's decision.<sup>320</sup> If the Governor reverses the person's grant, the Board will schedule the person's next parole hearing to occur about 18 months from the date of the person's last hearing.

### *Process After a Denial of Parole*

A decision to deny parole may also be reviewed by the Board's legal office for up to 120 calendar days after the hearing. During the 120 calendar days after the hearing, the Board's chief counsel may refer the case for review by the Board at one of its monthly executive board meetings for the same reasons a decision to grant parole can be referred (i.e., error of law, error of fact, or new information). Additionally, the Governor may review the decision and refer it for review by the Board at a monthly executive board meeting. If the decision is not referred by the Board's chief counsel or the Governor, the Board will schedule the person's next parole hearing based on the length of the denial imposed by the hearing panel. However, the Board may later move up the person's next parole hearing date if the incarcerated person is approved for an earlier hearing based on the Board's administrative review or petition to advance processes. For more information about these processes, see section 4.<sup>321</sup> Additionally, a court could also order the Board to schedule the person's next parole hearing earlier if it finds a decision was not supported by some evidence of current dangerousness.<sup>322</sup>

### *Process After a Tie Vote*

If a hearing panel's decision results in a tie-vote, the case will be referred for review by the Board at one of the Board's monthly executive board meetings. At that meeting, the Board will break the tie and decide which of the hearing panel decisions to adopt based on the information available to the original hearing panel. The Board cannot accept any public comment and will not consider information that was unavailable to the original hearing panel. Once the Board votes to adopt one of the hearing panel's decisions, the decision will be subject to review by the Board's legal office and the Governor, as described above. The time periods for review of the decision by the Board's legal division and the Governor will begin on the date the case was decided at the executive board meeting.

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<sup>318</sup> Pen. Code, §§ 3041.1, 3041.2.

<sup>319</sup> The Board reviews the incarcerated person's central file for new information prior to the order to CDCR to release the incarcerated person. This means a case may be referred en banc at the Board's executive board meeting after the Governor has decided to let the grant stand.

<sup>320</sup> Cal. Code Regs., tit. 15, § 2044.

<sup>321</sup> Cal. Code Regs., tit. 15, §§ 2151–2157.

<sup>322</sup> *In re Rosenkrantz* (2002) 29 Cal.4th 616, 658.

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### 6.11 Monthly Executive Board Meetings (i.e., En Banc Proceedings)

If a parole decision is referred for review at one of the Board's monthly executive board meetings, also known as an "en banc review," it will be reviewed by a panel of commissioners (called an "en banc panel"). The en banc panel will review the decision and will vote to affirm the decision, refer a grant of parole for a rescission hearing, or vacate the decision and order a new hearing.

The executive board meeting will be held by videoconference, in-person, or both at the Board's main office in Sacramento. The meeting is open to the public. The agenda for the meeting is posted at least 10 calendar days before the meeting on the Board's website. The agenda contains all the information needed in order to participate in the meeting and to submit a written statement before the meeting.

All registered victims and victims' family members will be notified if a case is referred for review at a monthly executive board meeting. The Board allows public comment on all cases except for hearing panel decisions that resulted in a tie vote. Any member of the public may speak in opposition or support of the incarcerated person, or just speak about the case in general. Executive board meetings are often quite long, with many cases to discuss and many people wanting to speak. For this reason, the Board will often limit the length of time each speaker is provided to ensure all members of the public have an opportunity to make a statement. The Board encourages those wishing to speak at the meeting to consider submitting a written statement to the Board before the meeting. Commissioners will review all written statements that are timely submitted before they make a decision in the case.

The Board posts its monthly executive board meeting decisions on its website within 24 hours after the meeting.

### 6.12 Resources for Victims

The OVSRS is an important resource for victims who choose to participate in the parole hearing process or who want more information about the process. The mission of OVSRS is to give victims and their families a voice, help to enforce their rights, and to provide services. OVSRS is responsible for providing information, restitution, outreach, training, and referral and support services to victims and victims' family members. Additional resources and information for victims can be found at OVSRS's website at <https://www.cdcr.ca.gov/victim-services/>. Additional information about what victims can expect during the parole hearing process can be found on the Parole Justice Works website at <https://parolejustice.org/victim-survivor-education/>.

### 6.13 Frequently Asked Questions

#### **Q: Who will be at the hearing?**

**A:** A parole hearing panel consists of one or two commissioners and one deputy commissioner. Other participants may include the incarcerated person, the incarcerated person's attorney, a representative from the prosecutor's office, and victims. Additionally, there may be observers and individuals deemed necessary to achieve effective communication with the incarcerated person. Examples of observers at a hearing include staff from the Board observing for training or legal purposes, members of the public who have no connection to the case observing for educational

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purposes, and representatives from the media. All observers must be approved by the Board's Executive Officer or a designee.<sup>323</sup>

**Q: Will the incarcerated person look at or speak to the victim at the hearing?**

**A:** No. The incarcerated person is directed to address the hearing panel and to not look at or speak to the victim. Likewise, the victim is directed to speak only to the hearing panel and should not attempt to speak to the incarcerated person.

**Q: Will there be a representative from the prosecutor's office at the hearing?**

**A:** Not always. A prosecutor has the right to attend a parole hearing but is not required to do so. A victim has a right to attend and participate in a parole hearing, regardless of whether a prosecutor attends the hearing.

**Q: If a hearing is held by videoconference, can I go to the prison to attend?**

**A:** No. If a hearing is held by video, the only option to attend the hearing is by videoconference or telephone.<sup>324</sup> If the hearing is held in person, a victim may attend in person, by videoconference, or by telephone.<sup>325</sup>

**Q: How long are parole hearings and do they start on time?**

**A:** Every hearing is different and will vary in length. On average, a hearing is expected to take two and a half hours or less from start to finish. However, a hearing with an interpreter or multiple victims who wish to speak can extend the length of a hearing. All hearing times are approximate, and anyone wishing to participate in the hearing should join the meeting at the scheduled start time.

**Q: What happens if the hearing gets postponed during the week the hearing was scheduled?**

**A:** Sometimes a hearing may be postponed during the week the hearing was scheduled or on the day of the hearing. When this happens, victims may still give a statement on the record. The statement will be transcribed and made available to future hearing panels.<sup>326</sup>

**Q: Can I receive reimbursement for travel expenses related to the parole hearing process?**

**A:** Possibly. Direct victims and the victim's next of kin, as well as their support person and appointed representatives who are scheduled to attend a hearing in person, are eligible for travel reimbursement. Please contact OVSRS to confirm eligibility for reimbursement and for assistance in requesting reimbursement for travel costs.<sup>327</sup>

**Q: I have not received an apology letter from the incarcerated person, did the incarcerated person write one?**

**A:** Incarcerated persons frequently write apology letters to their victims expressing accountability for their crimes and remorse for the harms they have caused. However, incarcerated persons are not permitted to send an apology letter (or any other letter) directly to a victim or their family.

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<sup>323</sup> Cal. Code Regs., tit. 15, §§ 2029.1, 2031, & 2032.

<sup>324</sup> Cal. Code Regs., tit. 15, § 2057 subd. (c).

<sup>325</sup> Cal. Code Regs., tit. 15, § 2057 subd. (b).

<sup>326</sup> Cal. Code Regs., tit. 15, § 2253.

<sup>327</sup> <https://www.cdcr.ca.gov/victim-services/travel-voucher/>.

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OVSRS maintains an Accountability Letter Bank (ALB)<sup>328</sup> in which some incarcerated persons may submit apology letters to the victims of their crime. All letters are reviewed by program facilitators to help ensure the letter is not harmful to the victim. For more information about the ALB or to find out if a letter was written to you, please contact OVSRS by calling 1-877-256-6877 or emailing [victimservices@cdcr.ca.gov](mailto:victimservices@cdcr.ca.gov).

**Q: I have a restitution order, but I have not received any money. How can I claim restitution?**

**A:** On average, OVSRS collects \$2 million per month for victims who have been named in court orders as being entitled to restitution paid by the incarcerated person who committed the crime. To collect owed restitution, please contact OVSRS for assistance or go to <https://www.cdcr.ca.gov/victim-services/unclaimed-restitution/> and fill out an application for unclaimed restitution. Additional information concerning restitution can be found on the OVSRS website.<sup>329</sup>

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<sup>328</sup> <https://www.cdcr.ca.gov/victim-services/alb/>.

<sup>329</sup> <https://www.cdcr.ca.gov/victim-services/restitution/>.



### SECTION 7: Executive Board Meetings

#### 7.1 General

The Board holds an executive board meeting each month that is open to the public.<sup>330</sup> The meeting may be held by videoconference, in person at the Board’s main office in Sacramento, or both. The agenda for the monthly meeting is posted on the Board’s website 10 calendar days before the meeting.<sup>331</sup> The agenda includes a list of all the cases that will be considered at the meeting. The agenda also contains information about how people can participate in the meeting. The Board notifies the incarcerated person, their attorney, the prosecutor, and registered victims or victim’s family members for each case on the agenda.

At the Board meeting, a panel of a majority of the commissioners (called an “en banc panel”) will take comments from those who wish to speak about the cases on the agenda. Once all comments have been received, the en banc panel will go into closed session to deliberate and vote on each case. The Board’s decisions are posted in the lobby of the Board’s main office in Sacramento and on the Board’s website within 24 hours of the meeting.<sup>332</sup> Each incarcerated person whose case appears on the agenda is sent a copy of the Board’s decision on their case.

For more information on executive board meetings, see the Board’s website and click on the “Board Meetings” drop down menu.<sup>333</sup>

#### 7.2 Public Comment on Cases

The Board allows public comment on all cases on the agenda except for hearing panel decisions that resulted in a tie vote. The en banc panel is required to make a decision on tie-vote cases based only on the record that was before the original hearing panel, so it cannot accept comments on those cases at an executive board meeting.<sup>334</sup> For all other cases on the agenda, any member of the public may speak in opposition or support of the incarcerated person, or just speak about the case in general.

Executive board meetings are often quite long, with many cases to discuss and many people wanting to speak. For this reason, the Board will often limit the length of time for each speaker, so all members of the public have an opportunity to make a statement. Those wishing to comment on a case are strongly encouraged to send or email their comments in writing to the Board before the meeting. The en banc panel will review all written statements that are timely received before deciding a case. The meeting agenda gives the deadline for submitting written statements.

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<sup>330</sup> The schedule for the monthly executive board meeting can be found here: <https://www.cdcr.ca.gov/bph/executive-board-meetings-overview/meeting-schedule/>.

<sup>331</sup> The agenda for monthly executive board meetings can be found here: <https://www.cdcr.ca.gov/bph/executive-board-meetings-overview/meeting-agenda/>.

<sup>332</sup> The en banc decisions can be found here: <https://www.cdcr.ca.gov/bph/executive-board-meetings-overview/enbanc/>.

<sup>333</sup> <https://www.cdcr.ca.gov/bph/>.

<sup>334</sup> Pen. Code, § 3041, subd. (e)(2).

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### 7.3 Types of Cases

Below are the types of cases that the Board reviews at a monthly executive meeting.

#### *Tie Votes*

These cases are referred for review at an executive board meeting because the original two-person hearing panel did not agree on whether to grant or deny parole, or it could not agree on the length of the person's parole denial. At the executive meeting, the en banc panel will vote to grant or deny parole or determine the length of the person's parole denial.

After the en banc panel votes to grant or deny parole, the Board's legal division and the Governor will have up to 120 days from the date of the en banc panel's decision to review the decision. If the person was convicted of murder, the Governor will have an additional 30 days to review the decision. For more information about the review process for parole decisions, see sections 2.27, 2.28, 2.29, and 7.

As noted above, the en banc panel cannot accept public comment on tie-vote cases because the law requires that it consider only the record that was before the original hearing panel.

#### *Chief Counsel Referrals*

The Board's chief counsel will refer a case for review at an executive board meeting if the chief counsel finds (1) the original hearing panel made an error of law, the panel relied on an error of fact, or there is new information, and (2) the error of law, error of fact, or new information if corrected or known by the original hearing panel is substantially likely to have resulted in a substantially different result.<sup>335</sup>

If a decision is referred by the Board's chief counsel during the Board's 120-day period for reviewing the decisions, the en banc panel may (1) affirm the original hearing panel's decision, (2) vacate the original hearing panel's decision and schedule a new hearing, or (3) modify the original hearing panel's decision.

If the en banc panel votes to affirm a grant of parole, the decision will be sent to the Governor's office for review. If the en banc panel votes to affirm a denial of parole, the incarcerated person will be scheduled for their next parole hearing based on the length of the parole denial imposed by the original hearing panel. Sometimes, however, an en banc panel will vote to modify the original hearing panel's decision. For example, the en banc panel may reduce a parole denial length. When this happens, the incarcerated person will be scheduled for their next hearing based on the length of denial imposed by the en banc panel.

If the en banc panel votes to vacate the original hearing panel's decision, the incarcerated person will be scheduled for a new hearing in about four to six months.

Only parole hearing decisions that resulted in a grant may be referred by the Board's chief counsel to an executive board meeting after the Board's 120-day period for reviewing a parole decision has ended. When this happens, the en banc panel may (1) affirm the original panel's decision, or

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<sup>335</sup> Pen. Code, § 3041, subd. (b); Cal. Code Regs., tit. 15, §§ 2042, 2450 et seq.

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(2) refer the case for a rescission hearing. The en banc panel may not vacate the original hearing panel's decision and schedule the person for a new parole hearing.<sup>336</sup>

At a rescission hearing, a three-person panel will determine whether the original hearing panel's grant of parole should be rescinded. More information on rescission hearings can be found in section 2.30 of this handbook.

### *Governor Referrals of Parole Decisions*

The Governor may refer a hearing panel's decision to grant parole for review by an en banc panel.<sup>337</sup> When this happens, the en banc panel may (1) affirm (with or without modifications) the original hearing panel's decision, or (2) refer the case for a rescission hearing.

At a rescission hearing, a three-person panel will determine whether the original hearing panel's grant of parole should be rescinded. More information on rescission hearings can be found in section 2.30 of this handbook. If the en banc panel votes to affirm the original hearing panel's grant of parole, the incarcerated person will be scheduled for release (unless they have an outstanding hold, warrant, or detainer from another law enforcement agency, or they have an additional term to serve for a crime they committed while in prison). If the en banc panel votes to refer the case for a rescission hearing, the incarcerated person will be scheduled for a rescission hearing within four months.

The Governor may also refer a hearing panel's decision to deny parole for review by an en banc panel.<sup>338</sup> When this happens, the en banc panel may (1) affirm (with or without modification) the original hearing panel's decision or (2) vacate the original hearing panel's decision and schedule a new hearing.<sup>339</sup> If the en banc panel votes to affirm the original hearing panel's decision to deny parole, the incarcerated person will be scheduled for a hearing according to the denial length given by the original hearing panel. If the en banc panel votes to vacate the original hearing panel's decision, the incarcerated person will be scheduled for a new hearing in about four to six months.

### *Hearing Panel Referrals*

A member of the hearing panel may refer a case for review at an executive board meeting for any reason. The referral must be made within 60 days of the hearing.<sup>340</sup> At the executive board meeting, the en banc panel may (1) affirm (with or without modification) the original hearing panel's decision, or (2) vacate the original hearing panels' decision and schedule a new hearing.<sup>341</sup>

If the en banc panel affirms the original hearing panel's decision to grant or deny parole, the Board's legal division and the Governor will have up to 120 days from the date of the original hearing panel's decision to review the decision. If the person was convicted of murder, the Governor will have an additional 30 days to review the decision. If the en banc panel votes to

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<sup>336</sup> Cal. Code Regs., tit. 15, § 2041, subds. (a), (h).

<sup>337</sup> Pen. Code, §§ 3041.1, 3041.2.

<sup>338</sup> Pen. Code, §§ 3041.1, 3041.2; Cal. Code Regs., tit. 15, § 2044.

<sup>339</sup> Cal. Code Regs., tit. 15, § 2044.

<sup>340</sup> Cal. Code Regs., tit. 15, § 2044, subd. (a).

<sup>341</sup> Cal. Code Regs., tit. 15, § 2044, subd. (a).

## **Parole Hearing Process Handbook**

vacate the original hearing panel's decision, the incarcerated person will be scheduled for a new hearing in about four to six months.

For more information about the review process for parole decisions, see sections 2.27, 2.28, 2.29, and 7 of this handbook.

### ***Cases with Procedural Errors***

On rare occasions, a case is referred to an executive board meeting because there has been a procedural error. This may happen when the recording equipment malfunctions at a hearing and the Board is unable to review the decision or provide a full transcript of the hearing to the incarcerated person, as required by law. Another example is when the Board fails to properly notice hearing participants, such as registered victims and victims' family members, who are entitled to receive notice. When a procedural error occurs, the Board must hold a new hearing so it can comply with the law. Cases with procedural errors will appear on the "Consent Calendar" portion of the meeting agenda. After public comment and approval by the en banc panel, the case will be scheduled for a new hearing within four to six months.

## Parole Hearing Process Handbook

### SECTION 8: LEGAL AUTHORITY

This section lists the legal authority governing the Board of Parole Hearings and its processes.

#### CALIFORNIA CONSTITUTION

- Article I. [Declaration of Rights](#) (including rights of victims and their family members)
- Article IV. [Legislative](#)
- Article V. [Executive](#)
- Article VI. [Judicial](#)

#### CALIFORNIA STATUTES

- Statutes governing the Board and the parole hearing process can be found in [Penal Code sections 3040 through 3073.1](#).
- Statutes governing pardons and commutations can be found in [Penal Code sections 4852.01 through 4852.22](#).
- Statutes governing the Board's administrative process, including the requirements for hearing panels, can be found in [Penal Code sections 5075 through 5081](#) and [Government section 12838](#) and [section 12838.4](#).
- Statutes governing the Board's executive board meetings, also known as the Bagley-Keene Open Meeting Act, can be found in [Government Code sections 11120 through 11132](#).

#### CALIFORNIA CODE OF REGULATIONS

- Regulations governing the Board can be found in [California Code of Regulations, title 15, sections 2000 et seq.](#)
- Regulations governing CDCR can be found in [California Code of Regulations, title 15, sections 3000 et seq.](#)

#### CASE LAW

Below is a list of significant cases regarding the Board and the parole hearing process.

- *In re Rosenkrantz* (2002) 29 Cal.4th 616
- *In re Dannenberg* (2005) 34 Cal.4th 1061
- *In re Lawrence* (2008) 44 Cal.4th 1181
- *In re Shaputis* (2008) 44 Cal.4th 1241
- *In re Prather* (2010) 50 Cal.4th 238
- *In re Shaputis* (2011) 53 Cal.4th 192
- *Swarthout v. Cooke* (2011) 562 U.S. 216
- *In re Vicks* (2013) 56 Cal.4th 274
- *In re Trejo* (2017) 10 Cal.App.5th 972
- *In re Hoze* (2021) 61 Cal.App.5th 309
- February 10, 2014 Three-Judge Court Order in *Plata v. Newsom*, U.S.D.C. N.D. Cal. No. 01-1351 THE (ECF No. 2766) (expanded medical parole and elderly parole program).

## Parole Hearing Process Handbook

### SECTION 9: RESOURCES

#### **Board of Parole Hearings – General Contact**

For general questions related to parole hearings, contact the Board by telephone at (916) 445-4072, by email at [BPH.CorrespondenceUnit@cdcr.ca.gov](mailto:BPH.CorrespondenceUnit@cdcr.ca.gov), or by U.S. mail at:

**Board of Parole Hearings**  
Post Office Box 4036  
Sacramento, CA 95812-4036

#### **Board of Parole Hearings – Forms**

Relevant parole hearing forms can be obtained online on the Board's website at <https://www.cdcr.ca.gov/bph/bph-forms/> or by contacting the Board (see above for general contact information). Incarcerated persons may also obtain forms by contacting their correctional counselor or by visiting their institution's law library.

#### **Board of Parole Hearings – Letters of Support or Opposition for a Parole Hearing**

Please send letters in support of or in opposition to an incarcerated person who has an upcoming parole hearing by email to the Board at [BPHCorrespondenceUnit@cdcr.ca.gov](mailto:BPHCorrespondenceUnit@cdcr.ca.gov) or by U.S. mail to:

**Board of Parole Hearings**  
Post Office Box 4036  
Sacramento, CA 95812-4036

There is no requirement to send a hard copy by U.S. mail if the document has already been submitted by email.

#### **Board of Parole Hearings – Objections to a Comprehensive Risk Assessment**

Incarcerated persons or their attorney may submit objections to a factual error in a Comprehensive Risk Assessment. These objections must be received by the Board no fewer than 30 calendar days before the hearing and should be sent to the Board by email at [m\\_CRAObjections@cdcr.ca.gov](mailto:m_CRAObjections@cdcr.ca.gov) or by U.S. mail to:

**Board of Parole Hearings**  
Post Office Box 4036  
Sacramento, CA 95812-4036

#### **Board of Parole Hearings – Requests for a Parole Hearing Transcript**

Hearing transcripts are available for release within 30 calendar days after a parole hearing. The Board will automatically send a printed copy to the incarcerated person. For more information on requesting a hearing transcript, including any costs that may be associated with the request, visit the Board's website at <https://www.cdcr.ca.gov/bph/psh-transcript/>.

## Parole Hearing Process Handbook

Requests for a parole hearing transcript may be sent by email to [bphsuitabilityhearingtrans@cdcr.ca.gov](mailto:bphsuitabilityhearingtrans@cdcr.ca.gov) or by U.S. mail to:

**Board of Parole Hearings**  
Post Office Box 4036  
Sacramento, CA 95812-4036  
Attention: Transcript Request

### **Board of Parole Hearings – Public Comment for a Case on the Board’s Monthly Executive Board Meeting Agenda (i.e., “En Banc Referrals”)**

Written statements in support or opposition of an incarcerated person for an upcoming executive board meeting should be submitted to the Board by email at [BPHEXE.BRDMEETING@cdcr.ca.gov](mailto:BPHEXE.BRDMEETING@cdcr.ca.gov) or by U.S. mail to:

**Board of Parole Hearings**  
Post Office Box 4036  
Sacramento, CA 95812-4036

There is no requirement to send a hard copy by U.S. mail if the document has already been emailed. More information regarding the executive board meetings is available on the Board’s website at <https://www.cdcr.ca.gov/bph/> under the “Board Meetings” tab.

### **CDCR – Office of Victim and Survivor Rights & Services (OVSRS)**

Victims and victims’ family members are strongly encouraged to contact OVSRS for assistance in navigating the parole hearing process. Victims and victims’ immediate family members have a right to be notified of a parole hearing and participate in the hearing. The first step is to register with OVSRS. Only persons who have registered with OVSRS will be notified of upcoming parole hearings and be permitted to attend a parole hearing.

- **General Questions and Support.** Contact OVSRS by phone at 1-877-256-6877, by email at [victimservices@cdcr.ca.gov](mailto:victimservices@cdcr.ca.gov), or by U.S. mail at:

**California Department of Corrections and Rehabilitation**  
Office of Victim & Survivor Rights & Services  
P.O. Box 942883  
Sacramento, CA 94283-0001

- **Register to Receive Notice of Parole Hearings.** To register with OVSRS and request to receive notice of a parole hearing, visit the OVSRS Victim Request for Services website at <https://www.cdcr.ca.gov/victim-services/application> and complete the **CDCR 1707 Form, Request for Victim Services**.
- **Register to Participate in a Parole Hearing.** To request to participate in a parole hearing, visit the OVSRS Parole Hearing Reservations website at <https://www.cdcr.ca.gov/victim-services/parole-hearing-reservations/>.

## Parole Hearing Process Handbook

- **Information about Restitution.** For restitution-related questions or information, please contact the OVSRS Restitution Unit by email at: [CDCRRestitution@cdcr.ca.gov](mailto:CDCRRestitution@cdcr.ca.gov) or by U.S. mail at:

**California Department of Corrections and Rehabilitation**  
Office of Victim and Survivor Rights & Services  
P.O. Box 942883  
Sacramento, CA 94283-0001

### **CDCR – California Incarcerated Records and Information Search (CIRIS)**

For general information on an incarcerated person currently in the custody of CDCR, including the person's current location and their parole eligible date, visit CDCR's incarcerated records and information search website at <https://inmatelocator.cdcr.ca.gov>. If you cannot find an incarcerated person, contact CDCR's Identification Unit at (916) 445-6713.

### **CDCR – Office of Legal Affairs (OLA)**

For legal issues not related to the Board or parole hearings, contact the Office of Legal Affairs by telephone at (916) 445-0495 or by U.S. mail at:

**California Department of Corrections and Rehabilitation**  
Office of Legal Affairs  
P.O. Box 942883  
Sacramento CA, 94283-0001

### **CDCR – Division of Adult Institutions (DAI) – Case Records Services**

**Information about Parole Eligible Dates and Credit Earing.** DAI's Case Records Services calculates an incarcerated person's parole eligible date(s). For questions about parole eligible date calculations, including credits applied to a person's parole eligible date, the incarcerated person should contact their assigned correctional counselor in the institution where they are housed or use CDCR's appeal process outlined in California Code of Regulations, title 15, section 3481.

### **CDCR – Division of Adult Parole Operations (DAPO)**

DAPO balances public safety with supporting parolees in their effort to successfully reintegrate into the community after being released from prison. Parole agents assist in finding suitable housing for parolees and help them with their individual needs until they are discharged from parole. For more information on DAPO's services and other resources available to parolees, see DAPO's *Parolee Handbook* on their website at <https://www.cdcr.ca.gov/parole/housing-live-in-residence/>. For questions or concerns related to parole, contact DAPO's headquarters by calling (916) 445-6200.

### **CDCR – Office of the Ombudsman**

The Office of the Ombudsman works independently of CDCR and helps incarcerated persons, their family, and the community resolve complaints and issues at the lowest possible level. For



## Parole Hearing Process Handbook

more information on the Office of the Ombudsman, including how to submit an ombudsman assistance request form, visit their website at <https://www.cdcr.ca.gov/ombuds/>.

The Office of the Ombudsman can be reached by telephone at (916) 445-1773 or by U.S. mail at:

**California Department of Corrections and Rehabilitation**  
Office of the Ombudsman  
1515 S Street  
Sacramento, CA 95811

### **CDCR – Office of Public and Employee Communications (OPEC)**

OPEC is composed of CDCR's **Press Office** and the **Office of Strategic Communications and External Affairs**. The Press Office oversees all media outreach and provides CDCR's position on operations, policies, employees, incarcerated persons, programs, and issues. The Office of Strategic Communications and External Affairs is responsible for keeping all CDCR staff and external stakeholders up-do-date on CDCR's operations, including new programs, regulations, and protocols. For information on CDCR's media request policies, research requests, and Public Records Act requests, visit OPEC's website at <https://www.cdcr.ca.gov/about-opec/>. Inquiries may be submitted online. OPEC can also be reached by telephone at (916) 445-4950.

### **Parole Justice Works (PJW)**

PJW is a nonprofit organization comprised of experienced parole attorneys, educators, advocates, formerly incarcerated persons, prosecutors, and victims. PJW provides advocacy training for state-appointed attorneys representing incarcerated persons at parole hearings. PJW maintains a website at <https://parolejustice.org/>, which provides valuable information about the parole hearing process. PJW can be reached by email at [info@parolejusticeworks.org](mailto:info@parolejusticeworks.org).

### **Office of Governor Gavin Newsom**

Clemency Information: <https://www.gov.ca.gov/clemency/>

Submit feedback at <https://www.gov.ca.gov/contact>

## Parole Hearing Process Handbook

### APPENDIX

- A. Pre-Hearing Processes and Deadlines
- B. Post-Hearing Decision Review Process (Parole Justice Works)
- C. Structured Decision-Making Framework Worksheet
- D. Table of Consanguinity
- E. Identifying Who Qualifies as Victim's Next of Kin
- F. Forms
  - BPH Form, Attorney Appearance Election at Hearing
  - BPH Form 1002, Notice of Hearing Rights
  - BPH Form 1003, Hearing Rights
  - BPH Form 1045-A, Petition to Advance Hearing Date
  - BPH Form 1073, Notice and Request for Assistance at Parole Proceeding
  - BPH Form 1074, Request for Reasonable Accommodations – Grievance Process
  - CDCR Form 1707, Request for Victim Services
  - CDCR Form 1824, Request for Reasonable Accommodation

Forms are also available on the Board's website at <https://www.cdcr.ca.gov/bph/bph-forms/>.

CDCR Form 1707, *Request for Victim Services* is available at <https://www.cdcr.ca.gov/victim-services/application/>.

## Parole Hearing Process Handbook – Appendix A

### Pre-Hearing Processes and Deadlines

All days are calendar days unless noted otherwise. The timeline below reflects the Board's and CDCR's procedural guidelines.

**Person is received by CDCR** – Case Records staff establish person's parole eligible date(s).

**In the sixth year before the incarcerated person's earliest parole eligible date** – Incarcerated person receives a consultation with a commissioner or deputy commissioner.

**180 days prior to NLT date\*** – Parole hearing is scheduled.

**160 days prior to hearing** – Non-confidential portions of the central file are made available to the prosecutor and the incarcerated person's attorney of record.

**155 to 60 days prior to the NLT date\*** – Institution staff meet with incarcerated person and create a post-conviction report.

**150 days prior to hearing** – State appointed attorney is assigned to incarcerated person.

**150 days prior to NLT date\*** – Incarcerated person is offered the opportunity to review their central file (*Olson* review). If the person chooses to have an *Olson* review, the review will occur no later than 60 days before the hearing.

**135 days prior to the NLT date\*** – Incarcerated person is notified of the hearing and provided notice of their hearing rights.

**120 to 90 days prior to hearing** – Incarcerated person is interviewed for a comprehensive risk assessment (CRA).

**100 days prior to hearing** – **Deadline** for the incarcerated person who is scheduled for an in-person hearing to request their hearing be conducted by videoconference.

**90 days prior to hearing** – Board sends notices to hearing participants (includes prosecutor and registered victims and victims' family members).

**79 days prior to hearing** – Master hearing packet of select non-confidential documents is made available to the incarcerated person's attorney and the prosecutor.

\* An NLT ("Not Later Than") date reflects the date by which a hearing must be held. For example, an NLT date of January 1, 2030, means the hearing must occur no later than January 1, 2030. For initial hearings, the NLT date is based on the incarcerated person's earliest parole eligible date, such as YPED, MEPD, EPED, NPED, or XPED. For subsequent hearings, the NLT date is set based on the denial length given at the last hearing. The Board generally schedules hearings to occur 30 to 45 days prior to the NLT date.

## Parole Hearing Process Handbook – Appendix A

**60 days prior to hearing** – CRA is provided to the incarcerated person, their attorney, and the prosecutor.

**45 days prior to hearing** – **Deadline** for the incarcerated person to request to waive their hearing for request to be presumed valid. Late submissions require good cause.

**30 days prior to hearing** – **Deadline** for the incarcerated person to submit CRA objections.

**20 days prior to hearing** – **Deadline** for the incarcerated person, their attorney and the prosecutor to submit relevant documents for consideration by hearing panel. Late submissions require good cause.

**NOTE:** This does not include letters of support for the incarcerated person (such as those offering housing, employment, financial assistance, or general support); those letters can be submitted up until the day of the hearing.

**20 days prior to hearing** – **Deadline** for the public to submit written comment for consideration by hearing panel.

**NOTE:** This does not include letters from the incarcerated person and their attorney, letters of support for the incarcerated person (such as those offering housing, employment, financial assistance, or general support) or victim statements; those letters can be submitted up until the day of the hearing.

**15 days prior to hearing** – **Deadline** for victims, victims' family members, and their representatives and support persons to notify the Board of their attendance.

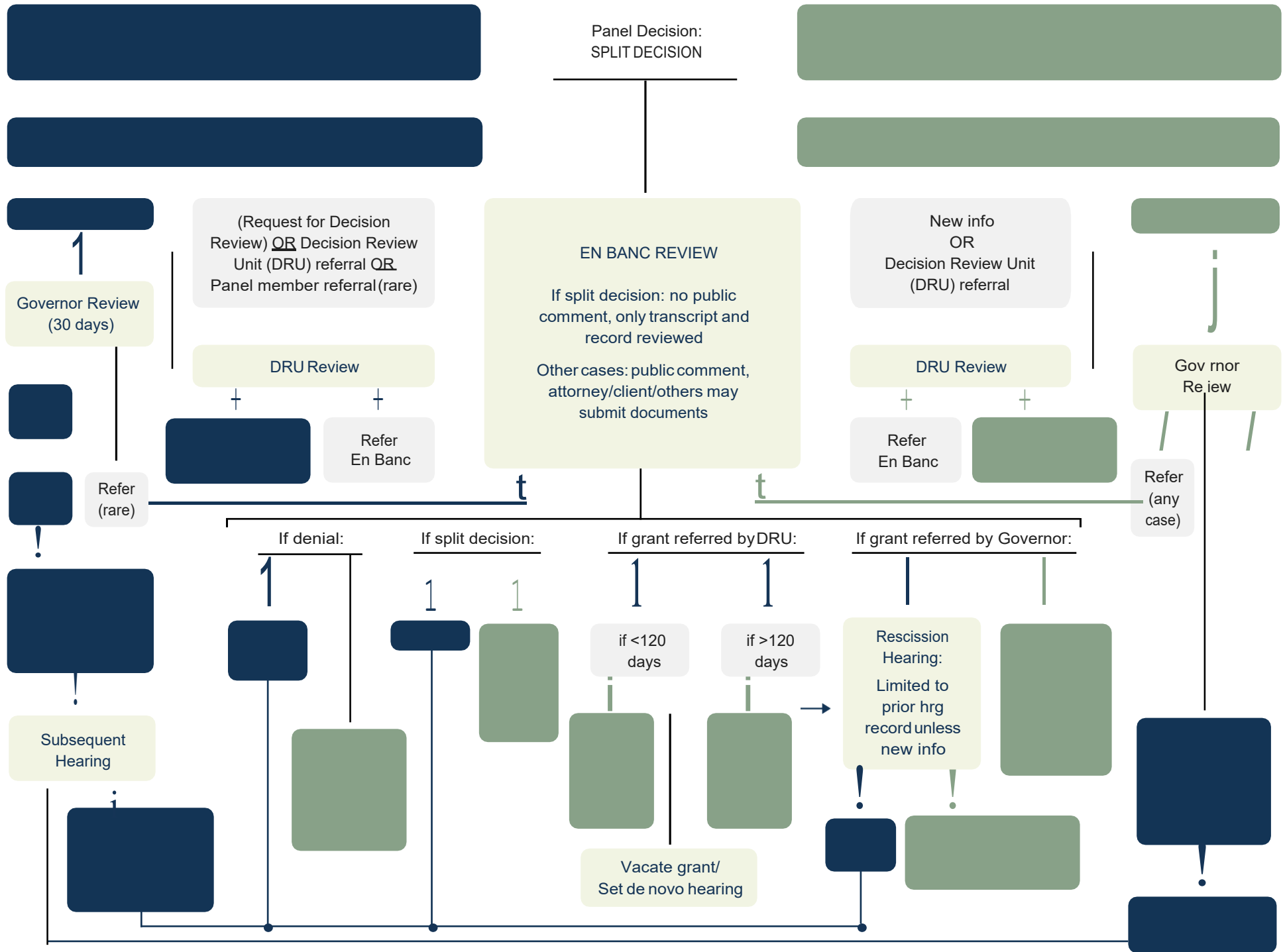
**14 days prior to hearing** – **Deadline** for the prosecutor to notify the Board of their attendance.

**10 days prior to hearing** – 10-day hearing packet is made available to the incarcerated person, their attorney, and the prosecutor.

**10 days prior to hearing** – If there is confidential information in the incarcerated person's file, a notice and summary of confidential information is provided to the incarcerated person, their attorney, and the prosecutor.

**HEARING HELD**

# Parole Hearing Process Handbook – Appendix B



(items in parentheses are not mandatory for Panel Attorneys)

## Parole Hearing Process Handbook – Appendix C

### Structured Decision-Making Framework Worksheet For Parole Hearings Conducted by the California Board of Parole Hearings

© Ralph C. Serin, Ph.D., C.Psych., 2019

Derived in past collaboration with Renée Gobeil, Carleton University & Jean Sutton, Parole Board of Canada, 2007

<p>This Framework guides an analysis of current risk and additional factors by Board panels in order to support a decision rationale that is consistent with the Board’s governing statutes, regulations, and case law. This is a structured professional judgment model; factors are not used to provide a score. The panel retains its full discretion when determining a person’s suitability for release.</p>			
<b>Comprehensive Risk Assessment</b>		<b>Low / Moderate / High</b>	
<b>Risk Related Factors</b>			
<b>Criminal &amp; Parole History</b>	<b>Aggravating (-)</b>	<b>Neutral</b>	<b>Mitigating (+)</b>
<p><b><u>Rating Examples</u></b></p> <ul style="list-style-type: none"> <li>• <b>Aggravating:</b> The extent to which a person has an early onset of criminality, (i.e., age 11 or younger) multiple crimes with short intervals between, crimes that increased in seriousness, and multiple parole violations or revocations.</li> <li>• <b>Mitigating:</b> No prior criminal history or has minor infractions with long intervals between crimes.</li> <li>• <b>Neutral:</b> If multiple crimes, they are minor with no increase in severity, and long intervals between.</li> </ul>			
<p><b><u>Long-Term Incarcerated Person (LTIP) Considerations</u></b> Persons serving long sentences may have different trajectories. Overall, LTIPs have lower rates of re-arrests than other violent offenders and rates of re-arrest for homicides are very low. Predictors of recidivism for LTIPs are not markedly different than for offenders in general, despite having greater periods of incarceration.</p>			
<b>Self-Control</b>	<b>Aggravating (-)</b>	<b>Neutral</b>	<b>Mitigating (+)</b>
<p><b><u>Rating Examples</u></b></p> <ul style="list-style-type: none"> <li>• <b>Aggravating:</b> The extent to which a person reflected poor self-control at the time of the crime(s) as indicated by presence of one or more self-control factors (e.g., substance abuse, poor problem solving, sexual deviance, etc.).</li> <li>• <b>Mitigating:</b> At the time of the crime(s), person did not reflect poor self-control as indicated by one or more of the self-control factors (e.g., substance abuse poor problem solving, sexual deviance, etc.).</li> <li>• <b>Neutral:</b> Self-control factors present at the time of the crime(s) do raise serious concern for person’s lack of self-control or reduce confidence in their ability to maintain self-control at the time of the crime(s).</li> </ul>			
<p><b><u>LTIP Considerations</u></b> There are no unique aspects of self-control based on type of offender or sentence length. Panels should be confident that any of the above disinhibitors that are related to the person’s criminal conduct or prison behavior have been addressed or are no longer relevant.</p>			
<b>Programming</b>	<b>Aggravating (-)</b>	<b>Neutral</b>	<b>Mitigating (+)</b>
<p><b><u>Rating Examples</u></b></p> <ul style="list-style-type: none"> <li>• <b>Aggravating:</b> The CRA identifies risk factors that remain currently relevant. The person has not completed programs based on that risk. (Person was not afforded the opportunity to complete such</li> </ul>			

## Parole Hearing Process Handbook – Appendix C

programming or person was assigned to such programming but did not actively participate and complete assignments.)

- **Mitigating:** The CRA does not identify risk factors that remain currently relevant or the self-control factors identified have been addressed by the person through active participation and completion of required assignments for assigned programming; programming was based on Risk-Need-Responsivity (RNR).
- **Neutral:** The CRA identifies risk factors that remain currently relevant and the person has completed some programs to address those factors, but one or more elements of the person’s RNR have not been adequately addressed.

### **LTIP Considerations**

Contrary to RNR, for low-risk persons with serious commitment offenses, the intent of programming is to improve the person’s suitability for parole; programming upon release would also be preferred. Specific responsivity factors (e.g., motivation, language ability, cultural context) are relevant in that they impact the person’s participation in programming. Panels must note this as such factors impede program efficacy. For moderate and high-risk persons, appropriate programming of sufficient dosage should be required for a positive decision, absent overriding mitigating circumstances. Alternatively, panels should require access to appropriate programming in the community upon release.

Institutional Behavior	Aggravating (-)	Neutral	Mitigating (+)
------------------------	-----------------	---------	----------------

### **Rating Examples**

- **Aggravating:** Serious misconduct within the last three years.
- **Mitigating:** No serious misconduct their current period of incarceration, no recent misconduct regardless of severity, and demonstrated meritorious behavior above and beyond expected rule compliance.
- **Neutral:** Absence of misconduct alone is not a predictor of release outcome; no serious misconduct within the last three years and no recent misconduct regardless of severity, but no indication of meritorious behavior.

### **LTIP Considerations**

LTIPs typically have low rates of misconduct (lower than other offenders), especially after the first 18 months of adjustment. Those LTIPs with a pattern of serious misconduct over time or recent misconduct (Rules Violation Reports) (i.e., within 5 years) would be an anomaly and viewed to be higher risk. A pattern of frequent minor misconduct (Counseling Chronos) throughout the sentence would also be a concern, if this reflects ongoing problems with self-control. An apparent relationship or pattern consistent with the dynamics of the commitment offense would also be of concern. Recent (within past year) minor misconduct (Counseling Chronos), depending on context, would not necessarily warrant an assessment of aggravating.

Personal Change	Aggravating (-)	Neutral	Mitigating (+)
-----------------	-----------------	---------	----------------

### **Rating Examples**

- **Aggravating:** Person rejects the need for change, has refused programs or has been asked to leave programs due to noncompliance, or, despite programming continues to express views that demonstrate lack of change.
- **Mitigating:** Clear demonstration of change, regardless of whether the person completed programs to address all identified self-control factors.
- **Neutral:** Evidence of some change since the commitment offense, but the change is not substantial, clear, or consistent or time.

## Parole Hearing Process Handbook – Appendix C

### **LTIP Considerations**

Meritorious reports from staff or volunteers might be a good source for indications of change. The CRA might also provide some insights regarding change over time. The panel hearing is an opportunity for panels to examine this more closely and would be time better spent than rehashing the minute details of the crime, as this is more relevant to offender outcome.

Release Plan	Aggravating (-)	Neutral	Mitigating (+)
--------------	-----------------	---------	----------------

Is the release plan realistic for *this* person? Does the person have protective factors in place in case of lapses, such as pro-social friends, employment? If the person fails on release, what is the likely impact on the community?

### **Rating Examples**

- **Aggravating:** The person lacks a concrete, realistic parole plan and there is a connection between the lack of a parole plan and current dangerousness.
- **Mitigating:** The person has a concrete, realistic parole plan addressing *most* of the community stability factors (e.g., stable housing, prospective employment, pro-social supports, realistic plans to manage risk factors).
- **Neutral:** The person has a concrete, realistic parole plan addressing *some* of the community stability factors, but other factors are not adequately addressed (e.g. person has plans to live with supportive pro-social family but it is in the same crime-ridden neighborhood where his criminally involved peers live). The person offers general statements about risk factors (e.g., “I need to avoid people, places and things I associate with my drug use”) but cannot offer specific details or strategies to manage those risk factors.

### **LTIP Considerations**

The initial transition to assisted living is challenging as persons decompress from long imprisonment. This initial supportive environment may buffer risk such that the increased risk of initial release (first 6 months) may be delayed. Protective factors change over time and must be considered. Finally, holistic programming (accommodation, employment, mental health, addictions support, social networks, etc.) is essential.

Case-Specific Factors	Aggravating (-)	Neutral	Mitigating (+)
-----------------------	-----------------	---------	----------------

Is there anything that seems salient for this particular person that may influence/effect risk, change, release planning or risk management that has not been considered?

### **Rating Examples**

- **Aggravating:** There is a unique case-specific factor that increases the person’s current dangerousness.
- **Mitigating:** There is a unique case-specific factor that decreases the person’s current dangerousness.
- **Neutral:** There are no unique case-specific factors that affect the person’s current dangerousness.

### **Additional Factors**

Victim/DA Considerations	Aggravating (-)	Neutral	Mitigating (+)
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Did the victim, victim’s family member, or prosecutor provide information or argument relevant to the express issue of safety or current dangerousness and thus, the person’s suitability for parole?

### **Rating Examples:**

- **Aggravating:** The victim, victim’s family member, or the prosecutor provided reliable information indicating the person poses a current risk of dangerousness to the public.

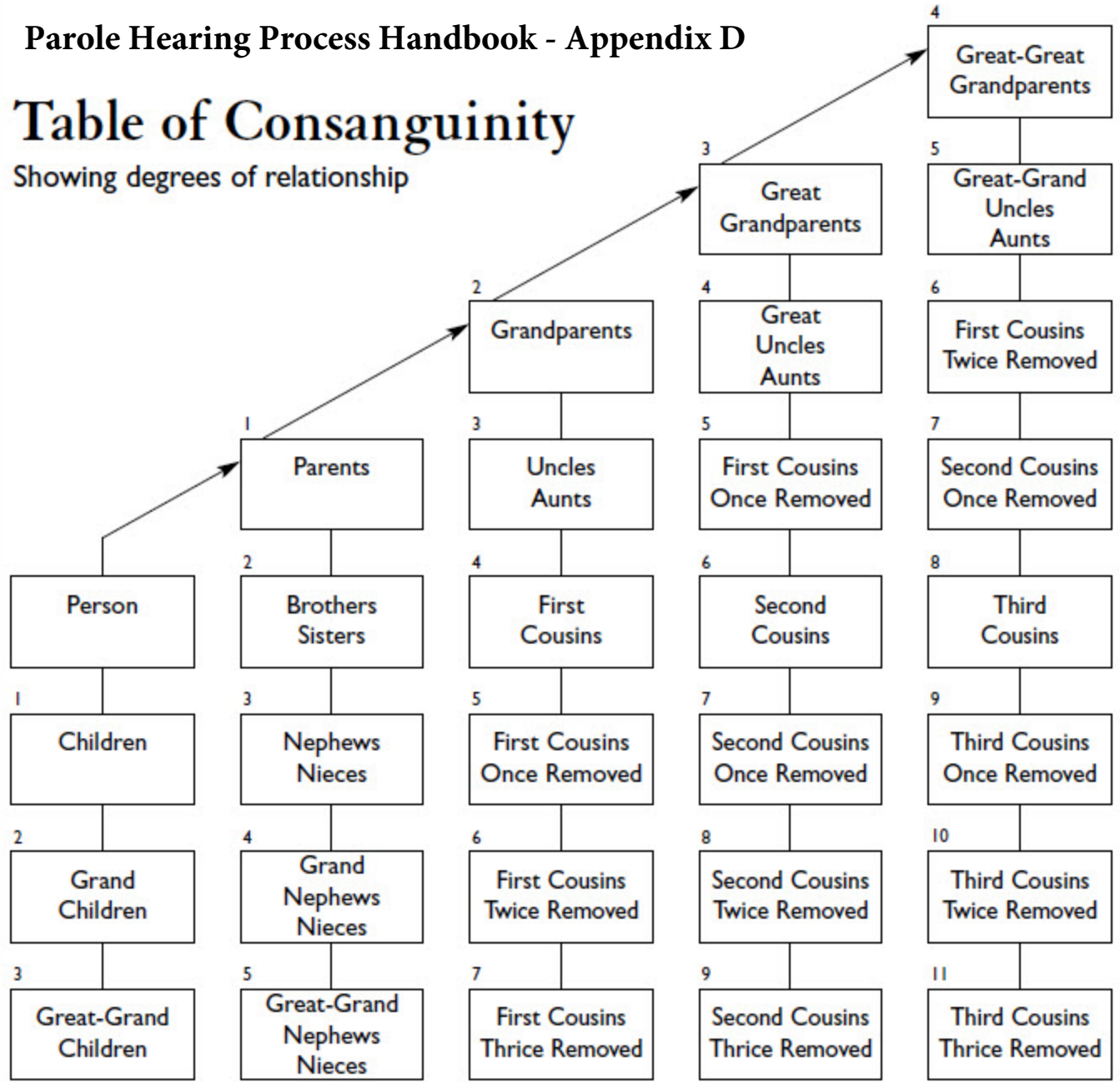


## Parole Hearing Process Handbook – Appendix C

<ul style="list-style-type: none"> <li>• <b>Mitigating:</b> The victim, victim’s family member, or the prosecutor provided reliable information indicating the person does not pose a current risk of dangerousness to the public.</li> <li>• <b>Neutral:</b> The victim, victim’s family member, or the prosecutor did not provide information relevant to the person’s current risk of dangerousness to the public.</li> </ul>			
<b>Youth Offender Factors</b>		<b>Great Weight Applied:</b>	<b>Yes/No</b>
<p>A hearing panel shall find a youth offender suitable for parole unless the panel determines, even after giving great weight to the youth offender factors, that the youth offender remains a current, unreasonable risk to public safety. If a hearing panel finds a youth offender unsuitable for parole, the hearing panel shall articulate in its decision the youth offender factors present and how such factors are outweighed by relevant and reliable evidence that the youth offender remains a current, unreasonable risk to public safety. The panel shall give great weight to the youth offender factors: Diminished culpability of youths as compared to adults, the hallmark features of youth, and subsequent growth and increased maturity while incarcerated.</p>			
<b>Elderly Parole Considerations</b>		<b>Consideration Given:</b>	<b>Yes/No</b>
<p>The panel shall give special consideration to the person’s advanced age, long-term confinement, and diminished physical condition, if any, when determining the person's suitability for parole.</p>			
<b>Intimate Partner Violence Considerations</b>		<b>Great Weight Applied:</b>	<b>Yes/No</b>
<p>The panel shall give great weight to any information or evidence that, at the time of the commission of the crime, the person had experienced intimate partner violence, but was convicted of an offense that occurred prior to August 29, 1996; the panel shall state on the record the information or evidence that it considered and the reason for the parole decision; the fact that a person presented evidence of intimate partner violence cannot be used to support a finding that the person lacks insight into his or her crime and its causes.</p>			
<b><u>Discordant Information</u></b>			
<p>Is there any discordant or incongruent information that must be considered prior to making a release decision?</p>			
<b>Final Analysis</b>	<b>Aggravating (-)</b>	<b>Neutral</b>	<b>Mitigating (+)</b>
<b>Recommendation</b>	<b>Grant/Deny</b>		

# Table of Consanguinity

Showing degrees of relationship



## Parole Hearing Process Handbook – Appendix E

### Identifying Who Qualifies as the Next of Kin

A victim's next of kin steps into the role of a deceased victim. A victim's next of kin may attend the parole hearing, provide a victim's impact statement, and submit a written victim's impact statement. Additionally, a victim's next of kin may appoint two representatives who may speak in addition to the victim's next of kin on any subject that the victim's next of kin has a right to be heard. A victim's next of kin may also bring one support person, who may attend the hearing but cannot participate in the hearing or make a comment. A victim's next of kin may choose to appear by counsel instead of personally making a statement.

The Board of Parole Hearings and the California Department of Corrections and Rehabilitation's Office of Victim and Survivor Rights and Services use the following set of questions to determine who qualifies as a victim's next of kin.

**1. Is the victim alive?**

**Yes:** STOP HERE: There is NO "next of kin."

**No:** If the victim is deceased, *go to number 2.*

**2. Was the victim legally married?**

**Yes:** STOP HERE: The living spouse is the "next of kin."

**No:** If the victim was unmarried or the spouse is deceased, *go to number 3.*

**3. Does the victim have living children or stepchildren?**

**Yes:** STOP HERE: Each living child or step child is the "next of kin."

**No:** If the victim had no children or stepchildren or if all children and stepchildren are deceased, *go to number 4.*

**4. Does the victim have any living parents?**

**Yes:** STOP HERE: Each living parent is the "next of kin."

**No:** If all parents are deceased, *go to number 5.*

**5. Does the victim have any living grandchildren?**

**Yes:** STOP HERE: Each living grandchild is the "next of kin."

**No:** If the victim had no grandchildren or all grandchildren are deceased, *go to number 6.*

**6. Does the victim have any living siblings?**

**Yes:** STOP HERE: Each living sibling is the "next of kin."

**No:** If the victim had no siblings or all siblings are deceased, *go to number 7.*

**7. Does the victim have any living grandparents?**

**Yes:** STOP HERE: Each living grandparent is the "next of kin."

**No:** If all grandparents are deceased, *go to number 8.*

**8. Does the victim have any living great-grandchildren?**

**Yes:** STOP HERE: Each living great-grandchild is the "next of kin."

**No:** If the victim had no great-grandchildren or all great-grandchildren are deceased, *go to number 9.*

## Parole Hearing Process Handbook – Appendix E

**9. Does the victim have any living nieces or nephews?**

**Yes:** STOP HERE: Each living niece and nephew is the “next of kin.”

**No:** If the victim had no nieces or nephews or all nieces and nephews are deceased, *go to number 10.*

**10. Did the victim have any uncles or aunts?**

**Yes:** STOP HERE: Each living uncle and aunt is the “next of kin.”

**No:** If the victim had no aunts or uncles or all aunts and uncles are deceased, *go to number 11.*

**11. Did the victim have any great-grandparents?**

**Yes:** STOP HERE: Each living great-grandparent is the “next of kin.”

**No:** If all great-grandparents are deceased, *go to number 12.*

**12. If the answer to all above questions is “NO,” any individual with the next-closest family relation is the “next of kin.”**

## Parole Hearing Process Handbook – Appendix F

### Forms

- BPH Form 1002, Notice of Hearing Rights (Consultations)
- BPH Form 1002, Notice of Hearings Rights (Parole Hearings)
- BPH Form 1003, Hearing Rights
- BPH Form 1045-A, Petition to Advance Hearing Date
- BPH Form 1073, Notice and Request for Assistance at Parole Proceeding
- BPH Form 1074, Request for Reasonable Accommodations – Grievance Process
- BPH Form, Attorney Appearance Election at Hearing
- CDCR Form 1707, Request for Victim Services
- CDCR Form 1824, Request for Reasonable Accommodation

Forms are also available on the Board’s website at <https://www.cdcr.ca.gov/bph/bph-forms/>.

CDCR Form 1707, *Request for Victim Services* is available at <https://www.cdcr.ca.gov/victim-services/application/>.



ATTORNEY APPEARANCE ELECTION AT HEARING

INMATE: \_\_\_\_\_ CDCR Number: \_\_\_\_\_

California Code of Regulations, title 15, section 2057 requires inmate counsel to be physically present with their client at a hearing absent an applicable exception. Please use this form to identify how you plan to appear at the hearing. This form should be submitted to the board no later than 30 days prior to the scheduled date of the hearing.

If you plan on attending the hearing by videoconference, the board will review your request based on the information below and will approve or deny your request before the hearing. Without this approval from the board to appear by videoconference, you are expected to physically appear in person for the hearing.

I. For Hearings Scheduled to Occur by Videoconference:

I plan to be physically present with my client for the hearing.

I plan to appear by videoconference for the hearing and I affirm one of the following:

I have consulted with my client, who knowingly and voluntarily waives my physical presence at the hearing. I attest my appearance by videoconference is in the best interest of my client, and I have exercised due diligence to ensure effective communication can be achieved with my client by videoconference.

I have NOT consulted with my client because \_\_\_\_\_

I attest that my appearance by videoconference is in the best interest of my client, and I have exercised due diligence to ensure effective communication can be achieved with my client by videoconference.

II. For Hearings Scheduled to Occur in Person:

I plan to be physically present with my client for the hearing.

I plan to appear by videoconference for the hearing. Complete A and B.

A. I affirm one of the following:

I have consulted with my client, who knowingly and voluntarily waives my physical presence at the hearing. I attest that my appearance by videoconference is in the best interest of my client, and I have exercised due diligence to ensure effective communication can be achieved with my client by videoconference.

I have NOT consulted with my client because \_\_\_\_\_

I attest that my appearance by videoconference is in the best interest of my client, and I have exercised due diligence to ensure effective communication can be achieved with my client by videoconference.

B. Justification for Appearing by Videoconference. Provide information regarding your client's effective communication needs and why your appearance should be by videoconference.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attorney Signature (Below):

Date:

You are receiving this Notice of Hearing Rights because you are scheduled to have a consultation with a hearing officer (commissioner or deputy commissioner) from the Board of Parole Hearings (Board).

### **1. Purpose of Consultation:**

The purpose of a consultation is to review and document your activities and conduct while in prison. The Board is required to provide you with information about the parole hearing process, legal factors relevant to your suitability or unsuitability for parole, and to provide you with recommendations for work assignments, rehabilitative programs, and institutional behavior. (Pen. Code, § 3041(a)(1); see Pen. Code, § 3051(c).)

### **2. Right to Consultation:**

Your consultation will be scheduled during the sixth year before your initial parole hearing based on your Minimum Eligible Parole Date (MEPD), Youth Parole Eligible Date (YPED), Nonviolent Parole Eligible Date (NPED), or Elderly Parole Eligible Date (EPED), whichever date is earliest, unless your consultation date is set otherwise by law. (Pen. Code, §§ 3041(a)(1), 3051(i)(2)(B).)

**3. Right to be Present and Participate:**

You have a right to attend the consultation, ask and answer questions, and speak on your own behalf. (Cal. Code Regs., tit. 15, § 2247.)

**4. Attorney:**

You are not entitled to be represented by an attorney at a consultation.

**5. Witnesses:**

You may not call witnesses at a consultation.

**6. Others Who May Attend Your Consultation:**

If you have a disability and require a staff assistant, they will attend your consultation with you. The only other persons who may attend are Board employees who may attend for training purposes. Neither the District Attorney's office nor victims are entitled to attend.



**7. Consultation Conducted In-Person or by Videoconference:**

The Board schedules all consultations to be conducted by videoconference unless it determines an in-person consultation is necessary for the hearing officer to effectively communicate with you. (See Cal. Code Regs., tit. 15, §§ 2050-2063.) The Board will notify you whether your consultation is scheduled to occur in person or by videoconference.

If your consultation is conducted by videoconference, you will communicate with the hearing officer by videoconference. This means the hearing officer will not be physically present with you during the consultation; instead, they will appear at your consultation by videoconference.

If your consultation is conducted in person, you will communicate with the hearing officer while they are physically present with you during the consultation. This is usually at an institution. Your scheduled interpreter, if needed, is required to be physically present with you during the consultation, unless you waive their physical presence or special circumstances apply. Approved observers may appear in person, by videoconference, or by telephone.

**7. Consultation Conducted In-Person or by Videoconference (cont):**

If your consultation is scheduled to be conducted in person, you may submit a written request to the Board that your consultation be conducted by videoconference instead. The written request must include an explanation of why an in-person consultation is not necessary for the hearing officer to effectively communicate with you. If possible, these requests should be sent to the Board at least 15 days prior to the date on which the consultation is scheduled to occur. The Board will review these requests and will notify participants if an in-person consultation is changed to a videoconference consultation.

**8. Review of File; Opportunity to Present Evidence:**

You may receive reasonable accommodations and assistance in preparing for your consultation. If you are unable to effectively communicate due to language difficulties or a physical, developmental, or mental disability, appropriate accommodations will be provided to you before and during your consultation. (Cal. Code Regs., tit. 15, § 2251.)

**9. Postponements:**

If a hearing officer has determined you require an accommodation and no reasonable accommodation is available, a consultation may be postponed for good cause. (Cal. Code Regs., tit. 15, § 2251.5.) In addition, the Board may also postpone your consultation for other reasons, such as a hearing officer's unavailability.

**10. Impartial Hearing Officer:**

You are entitled to a consultation by an impartial hearing officer and may request the disqualification of the hearing officer where grounds for disqualification exist. (Cal. Code Regs., tit. 15, § 2250.)

**11. Record Decision:**

You are entitled to a copy of the Board’s findings and recommendations within 30 days following the consultation. (Pen. Code, § 3041(a)(1).) information considered and the reasons for the decision. (15 CCR § 2255.)

---

I have read and understand the rights and procedures (Items 1 through 11, above), and I have had an opportunity to ask questions about any rights or procedures that I did not understand.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
CDCR #

\_\_\_\_\_  
Date

---

I explained the foregoing rights to the inmate, provided them with an opportunity to ask questions, and answered all questions they asked.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Title

You are receiving this Notice of Hearing Rights because you are scheduled to have a parole consideration hearing or a rescission hearing before the Board of Parole Hearings (Board). You will be notified of the date, time, and location of your hearing at least one month before your hearing.

**1. Scheduling of Hearing:**

The purpose of a parole consideration hearing is to determine if you are suitable for parole. (15 CCR §§ 2281, 2402.) The purpose of a rescission hearing is to determine if a parole date should be taken away or postponed. (15 CCR § 2450.)

**2. Right to Hearing:**

Your first parole consideration hearing is called an initial parole hearing and will be scheduled no later than: (1) one year prior to your minimum eligible parole date (MEPD) (Pen. Code, § 3041(a)); (2) six months after your youth parole eligible date (YPED) (Pen. Code, § 3051); (3) one year after your elderly parole eligible date (EPED) (*Plata* court order dated 2/10/2014; Pen. Code § 3055); or (4) within one year from being referred to the Board as an indeterminately-sentenced nonviolent offender under Proposition 57 (15 CCR § 2449.32). If more than one parole eligibility date applies to you, your first hearing will be scheduled according to the date that will result in the earliest hearing. You can be denied parole for 3, 5, 7, 10, or 15 years. (Pen. Code, § 3041.5(b)(3).) However, the date of any future parole consideration hearings, called subsequent hearings, may be advanced if approved through the Board's Administrative Review Process or in response to a Petition to Advance filed by you (Pen. Code §§ 3041.5(b)(4), 3041.5(d)(1)).

For rescission hearings, if the hearing panel determines that your parole date should be taken away, you will be scheduled for a new parole consideration hearing within 120 days.

**3. Right to Be Present and Participate:**

You have a right to attend the hearing, ask and answer questions, and speak on your own behalf. (Pen. Code, § 3041.5, subd. (a)(2).) You may waive that right. If you do not attend the hearing, a decision will be made in your absence. (15 CCR § 2247.)

**4. Right to Have an Attorney:**

You are entitled to be represented by an attorney. (Pen. Code, § 3041.7.) You will be provided an attorney at the state's expense or you may choose to hire your own attorney. You may waive your right to have an attorney and choose to represent yourself, unless you are required to have an attorney under the *Armstrong Remedial Plan II*. (15 CCR § 2256.)

**5. Witnesses:**

You may not call witnesses at a parole consideration hearing. (Pen. Code, § 3041.5.) At a rescission hearing, you may call evidentiary witnesses and may request that witnesses (including adverse witnesses) be subpoenaed. (15 CCR § 2465.)

**6. Hearings Conducted In-Person or by Videoconference.**

The Board schedules all parole hearings to be conducted by videoconference unless it determines an in-person hearing is necessary for the hearing panel to effectively communicate with you. (See 15 CCR §§ 2050-2063) The Board will notify you at least 120 days before your hearing is scheduled to occur and the notice will specify whether your hearing is scheduled to occur in person or by videoconference.

If your hearing is conducted by videoconference, you will communicate with the hearing panel by

videoconference. This means the hearing panel will not be physically present with you during the hearing; instead, the hearing panel will appear at your hearing by videoconference. Only your attorney and scheduled interpreter, if needed, are required to be physically present with you during the hearing, unless you waive their physical presence or special circumstances apply. If you waive the physical presence of your attorney or scheduled interpreter, that person will also appear at your hearing by videoconference. Victims, victims' next of kin, victims' family members, designated representatives, victims' support persons, representatives of prosecuting agencies, and approved observers may appear by videoconference or telephone only—they will not appear in person.

If your hearing is conducted in person, you will communicate with the hearing panel while the panel is physically present with you during the hearing. This is usually held at the institution where you are housed. All other participants may also be physically present in the hearing room with you and the panel. Your attorney and any scheduled interpreter are required to be physically present with you during the hearing, unless you waive their physical presence or special circumstances apply. Victims, victims' next of kin, victims' family members, designated representatives, victims' support persons, representatives of prosecuting agencies, and approved observers may appear in person, by videoconference, or by telephone.

If your hearing is scheduled to be conducted in person, you or your attorney may submit a written request to the Board that your hearing be conducted by videoconference instead. The written request must include an explanation of why an in-person hearing is not necessary for the panel to effectively communicate with you. These requests must be sent to the Board at least 100 days prior to the date on which the hearing is scheduled to occur. The Board will review these requests and will notify hearing participants if an in-person hearing is changed to a videoconference hearing.

If your hearing is scheduled to be conducted by videoconference, and you feel that an in-person hearing is necessary for you and the hearing panel to effectively communicate with each other, you should notify the Board immediately and provide the reason(s) as to why it is necessary for the hearing panel to be physically present with you during the hearing to establish effective communication.

#### **7. Others Who May Attend the Hearing:**

At parole consideration hearings and rescission hearings, the district attorney (or representative) from the county where the offense was committed will be notified of the hearing and may be present to represent the interests of the People. (Pen. Code, § 3041.7.) Notice of parole consideration hearings will also be given to the attorney who represented you at sentencing and the law enforcement agency that investigated the case. (Pen. Code, § 3042.) Victims, victims' next of kin, victims' family members, and designated representatives of victims or their next of kin may also attend parole consideration hearings and address the hearing panel. (Pen. Code, § 3043.) Victims, victims' next of kin, and victims' family members may also have one support person each who can attend the hearing with them but will not speak during the hearing. (Pen. Code, § 3043.1.)

#### **8. Review of File; Opportunity to Present Evidence:**

You have the right to review non-confidential documents in your institutional central file. (Pen. Code, § 3041.5; 15 CCR § 2247.) This review is called an Olson Review. You may present a written response to any material in the file and may present relevant documents to the hearing panel. (15 CCR §§ 2247, 2249.) At least 10 working days prior to a rescission hearing, you may submit a request to your institution's Classification & Parole Representative, or other institutional staff, as appropriate, that relevant documents be subpoenaed. (15 CCR §§ 2465, 2676.)

**9. Accommodations in Preparing for the Hearing and at the Hearing:**

You may receive reasonable accommodations and assistance in preparing for the hearing. If you are unable to effectively communicate due to language difficulties or a physical, developmental, or mental disability, appropriate accommodations will be provided to you before and during the hearing. (15 CCR § 2251.

**10. Voluntary Waivers:**

You may choose to waive your parole consideration hearing. (15 CCR § 2253(b).) If you voluntarily waive your parole consideration hearing, it means you will not have your hearing. You may waive your hearing for one, two, three, four, or five years. (15 CCR § 2253, subd. (b)(1).) However, you may not waive more than three parole hearings in a row. (15 CCR § 2253, subd. (b)(5).) You should submit your waiver request in writing (or by filling out the BPH 1003 Hearing Rights Form) at least 45 days before your hearing date. Waiver requests submitted less than 45 days prior to your hearing will not be approved unless you can show a good reason for the request and explain why you could not submit the request at least 45 days prior to the hearing. (15 CCR § 2253.) Once the board approves your waiver request, you cannot rescind the request.

Your attorney may also waive your hearing after consulting with you. If your attorney is unable to consult with you regarding your waiver, they must affirm that the waiver is in your best interest and provide the reasons why they were unable to consult with you. You or your attorney may not waive a rescission hearing.

**11. Stipulations:**

A stipulation is an agreement between you and the Board that you should be denied parole. You can ask the Board to schedule your next hearing in 3, 5, 7, 10 or 15 years. Your request should explain why you are currently unsuitable for parole and how long you think it will take for you to become suitable for parole. The Board retains discretion to approve or reject your stipulation that you are unsuitable for parole. (15 CCR § 2253, subd. (c)(1)). To make a stipulation, you or your attorney must make the request to the panel during the week your hearing is scheduled. (BPH Admin. Dir. 2013-03(A).) If the hearing panel accepts your stipulation, you may subsequently submit a request to the Board that your next hearing date be advanced in accordance with Penal Code section 3041.5 subdivision (d)(1).

**12. Postponements:**

To postpone a hearing means to move your hearing to a later date. The Board or the hearing panel chair may postpone a parole consideration hearing or a rescission hearing for various reasons outlined in the Board's regulations. This includes the absence or untimeliness of required notices, documents, reports or required inmate accommodations; exigent circumstances, such as illness of attending parties, natural disasters, or institutional emergencies. (15 CCR § 2253, subd. (d)(1).) Furthermore, you or your attorney may request a postponement before or at your hearing "to resolve matters relevant to [your] parole consideration." (15 CCR § 2253, subd. (d)(2).) When requesting a postponement, you must provide a good reason for the request and show why you did not or could not have known about the need for the postponement any earlier than when you made the request. You may postpone your hearing for one, two, three, four, five, six, seven, eight, nine, ten or eleven months.

Your attorney, after consulting with you, may also request to postpone your hearing for a period up to 11 months. If your attorney is unable to consult with you regarding the postponement, they must affirm that the postponement is in your best interest and provide the reasons why they were unable to consult with you. Once the board approves your postponement request, you cannot rescind the request.

**13. Impartial Hearing Panel:**

You are entitled to a hearing by an impartial hearing panel and may request the disqualification of one or more panel members where grounds for disqualification exist. (15 CCR § 2250.)

**14. Record Decision:**

You are entitled to a copy of the record of the hearing upon request. (15 CCR § 2254.) You are entitled to a copy of the decision, which includes the information considered and the reasons for the decision. (15 CCR § 2255.)

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I have read and understand the rights and procedures (Items 1 through 14, above), and I have had an opportunity to ask questions about any rights or procedures that I did not understand.

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Signature	CDCR #	Date
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I explained the foregoing rights to the inmate, provided them with an opportunity to ask questions, and answered all questions they asked.

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Signature	Date
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Name (print)	Title
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### BOARD OF PAROLE HEARINGS HEARING RIGHTS FORM

**INSTRUCTIONS:**

Use this form for a parole consideration hearing, a rescission hearing, or a parole reconsideration hearing.

- If you want your hearing to occur as scheduled, fill out sections I and II.
- If you want to waive your hearing, fill out sections I, II, and III [parole consideration hearings only].
- If you want to postpone your hearing, fill out sections I, II, and IV.

Are you trying to change a Hearing Rights Form you already submitted for your hearing?  No  Yes

**I. ATTENDANCE AT HEARING (Check one box)**

I plan to attend my hearing.  I do not plan to attend my hearing.

Inmate Signature (Below): \_\_\_\_\_ CDCR Number: \_\_\_\_\_ Date: \_\_\_\_\_

**II. ATTORNEY REPRESENTATION (Check one box)**

By requesting a state appointed attorney or indicating that I have hired my own attorney, I agree that the California Department of Corrections and Rehabilitation and the Board of Parole Hearings can release my non-confidential records to my attorney.

I request a state-appointed attorney.

I hired my own attorney. My private attorney is:

Attorney's Name: \_\_\_\_\_

Attorney's Address: \_\_\_\_\_

Attorney's Telephone Number: \_\_\_\_\_

**I waive my right to have an attorney.** I was informed on \_\_\_\_\_ (date) that I have been scheduled for a parole hearing before the Board of Parole Hearings. I was also informed of my right to be represented by an attorney at the hearing. I know that if I do not wish to retain my own attorney, the state will appoint an attorney to represent me at state expense. Knowing this, I have decided that I **DO NOT** want an attorney to represent me at my hearing.

Inmate Signature (Below): \_\_\_\_\_ CDCR Number: \_\_\_\_\_ Date: \_\_\_\_\_

**III. REQUEST TO WAIVE HEARING (DOES NOT APPLY TO RESCISSION HEARING)**

(Can be completed by the inmate or inmate's attorney.)

To be completed by inmate:

I choose to waive my parole consideration hearing for the reasons stated below. I ask the Board to approve my request. I understand that an approved waiver cannot be rescinded and I cannot submit a Petition to Advance my next hearing date. I request to waive my hearing for:

[ ] one year [ ] two years [ ] three years [ ] four years [ ] five years **(choose one)**

Reason(s) for Request: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Inmate Signature (Below): \_\_\_\_\_ CDCR Number: \_\_\_\_\_ Date: \_\_\_\_\_

**III. REQUEST TO WAIVE HEARING (DOES NOT APPLY TO RESCISSION HEARING) – CONTINUED**

To be completed by inmate's attorney:

I consulted with my client and my client requests to waive his/her/their hearing for:

[ ] one year [ ] two years [ ] three years [ ] four years [ ] five years **(choose one)**

I have informed my client that an approved waiver cannot be rescinded and a Petition to Advance their next hearing date cannot be submitted.

Reason(s) for Request: \_\_\_\_\_

I consulted with my client but my client was not capable of making a knowing, voluntary, and intelligent waiver of their right to a hearing, and I understand this is a mandated attorney case as defined in the *Armstrong Remedial Plan II*. I understand that an approved waiver cannot be rescinded and a Petition to Advance their next hearing date cannot be submitted. I believe the waiver is in the best interest of my client and request a waiver for:

[ ] one year [ ] two years [ ] three years [ ] four years [ ] five years **(choose one)**

Reason(s) for Request: \_\_\_\_\_

Attorney Signature (Below):

Date:

**IV. REQUEST TO POSTPONE HEARING (Can be completed by the inmate or inmate's attorney.)**

To be completed by inmate:

I request to postpone my hearing for \_\_\_\_ months (no more than 11 months). I understand that an approved postponement cannot be rescinded and I cannot submit a Petition to Advance my next hearing date.

Reason(s) for Request: \_\_\_\_\_

Inmate Signature (Below):

CDCR Number:

Date:

To be completed by inmate's attorney:

I consulted with my client and my client requests to postpone his/her/their hearing for \_\_\_\_ months (no more than 11 months). I have informed my client that an approved postponement cannot be rescinded and a Petition to Advance their next hearing date cannot be submitted.

Reason(s) for Request: \_\_\_\_\_

I request a postponement of \_\_\_\_ months (no more than 11 months) due to my inability to meet or meaningfully consult with my client, as explained below. I understand that an approved postponement cannot be rescinded. I believe the postponement is in the best interest of my client.

a. Reason(s) for Inability to Consult: : \_\_\_\_\_

b. Reason(s) for Postponement Request: \_\_\_\_\_

Attorney Signature (Below):

Date:

## PETITION TO ADVANCE HEARING DATE

INMATE NAME: \_\_\_\_\_

CDCR NUMBER: \_\_\_\_\_ INSTITUTION: \_\_\_\_\_

Inmates sentenced to a life term can request to advance their next parole suitability hearing by filling out this form (called a petition) and mailing it to the Board of Parole Hearings at the address above. You may submit an initial petition any time after your first parole suitability hearing. After that, you may not submit a subsequent petition until a three (3) year period of time has elapsed since the decision by the board on your earlier petition. Nor may you submit a petition to advance a documentation hearing, initial suitability hearing, progress hearing or medical placement hearing. Also, if there are any registered victims they will be notified of your petition and upon request, a copy will be given to them for their review and comments. Finally, your petition will be granted if it meets the requirements above and a change in circumstances or new information establishes a reasonable likelihood that consideration of the public safety does not require an additional period of incarceration. Please describe the change in circumstances or new information that you believe will support your petition in the space below and on the backside of this form.

\_\_\_\_\_  
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\_\_\_\_\_

[YOU MAY CONTINUE ON THE BACK SIDE]

INMATE SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

BOARD OF PAROLE HEARINGS  
DECISIONS PROCESSING AND SCHEDULING UNIT  
P.O. BOX 4036  
SACRAMENTO, CA 95812-4036

STATE OF CALIFORNIA



A series of 24 horizontal black lines providing a ruled area for text entry.

**I. PRE-INTERVIEW FILE/DEC REVIEW (STAFF ONLY)**

I acknowledge that I have reviewed all relevant and reasonably available central file and/or field file and Disability and Effective Communication System (DECS) information prior to first contact with the inmate/parolee involved in this parole proceeding.

Print Name:

Sign Name:

Date:

**Mental Health Concerns**

**Source**

**Dated**

**Identified Disabilities**

**Note:**

**Source**

**Dated**

**Other Potential Assistance Needs**

**ReadingLevel:**

**Total GPL:**

**SpeaksEnglish**  Yes  No

**Languages Spoken**

**II. INMATE/PAROLEE RIGHTS & SELF IDENTIFICATION**

You have a right to receive help for your hearing. If you need help talking, reading, hearing, seeing, understanding, or getting to your hearing, you have a right to that help. You have a right to receive help in meeting with your attorney. If you do not speak English, you have a right to an interpreter. If you are deaf and use sign language, you have a right to a sign language interpreter. If you cannot read, the BPH or CDCR must provide you with help to read the forms and papers. If you need special transportation, the BPH or CDCR must provide it for you. If you do not get help, or you do not think you got the kind of help you need, ask for a BPH 1074 Grievance Form.

Check all that apply:

I need help reading my documents.

I need the following help to hear

I need help understanding the procedures and forms.

I need the following help to see

I need a sign language interpreter.

I need to communicate in writing.

I need a wheelchair and I  do have one.  do not have one.

I need a Durable Medical Equipment to get around :

Have Durable Medical Equipment : \_\_\_\_\_

Do not have Durable Medical Equipment : \_\_\_\_\_

I do not speak English and need an interpreter in

I need a housing accommodation :

I have a health problem, I need  A medical evaluation  A mental health evaluation  Medication

Other

**I do not need any help for my parole hearing.**

Name:

CDC Number:

Proceeding:

Type of Hearing:

Location:

**III. INITIAL SERVICE OF RIGHTS (STAFF ONLY)**

I have informed inmate/parolee of his/her rights and charges, if any, and have determined that he/she:

Appears to Understand       Appears to have difficulty understanding

Effective Communication Method Used:

\_\_\_\_\_  
Staff Name and Title (please print)

\_\_\_\_\_  
Staff Signature

\_\_\_\_\_  
Date

**IV. ACCOMMODATIONS PLANNED**

Accommodation(s)/Assistance to be provided at hearing(s):

Summary:

Comment:

\_\_\_\_\_  
Staff Name and Title (please print)

\_\_\_\_\_  
Staff Signature

\_\_\_\_\_  
Date

**V. SUMMARY OF ACCOMMODATIONS**

Accommodation(s)/Assistance provided at hearing(s):

Private Durable Medical Equipment(Inmate/Parolee Provided):

\_\_\_\_\_  
Staff Name and Title (please print)

\_\_\_\_\_  
Staff Signature

\_\_\_\_\_  
Date

Name:  
Proceeding:  
Location:

Type of Hearing:

CDC Number:

Log Number: \_\_\_\_\_

**A. INMATE OR PAROLEE TO COMPLETE BEFORE THE HEARING**

You have been given a state attorney to help you in preparation for and during your hearing. Fill out this form only if you did not get the other kinds of help for your disability that you asked for on your BPH Form 1073 or if new problems came up. You can ask your attorney or staff for help in filling out this form. If you need more space attach another sheet of paper.

1. Your complaint \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. What you want done: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Before the hearing, you should send this form as soon as possible to the BPH ADA Coordinator at 1515 K Street, Suite 600, Sacramento CA 95814, or give this form to a staff person, or your Attorney to send to the BPH ADA Coordinator. The decision will be sent to you within five (5) days from the date it was received by the ADA Coordinator, or before your parole proceeding (whichever comes first).

X \_\_\_\_\_  
(Print name) (Inmate or parolee sign here) CDCR Number Date

**B. RESPONSE TO A GRIEVANCE FILED BEFORE THE HEARING**

Date received by BPH: \_\_\_\_\_

Decision

Granted       Granted with Changes       Denied       No Action Required

DISCUSSION OF FINDINGS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

BASIS FOR DECISION: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
BPH ADA Coordinator/Designee Signature

\_\_\_\_\_  
Date Completed

**INSTRUCTIONS TO INMATE OR PAROLEE**

If you have already had your hearing, did not like the decision made about the kind of help given, and want a new hearing, then fill out Section C, on page 2.

Log Number: \_\_\_\_\_

**C. INMATE OR PAROLEE TO COMPLETE AFTER THE HEARING**

I did not get all the help with my disability that I needed during the hearing. Earlier, I requested that help on the BPH Form 1073, or a new disability problem came up at the hearing. I need a new hearing with more help, because: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Inmate/Parolee Print Name      Inmate/Parolee Sign Here      CDCR Number      Date

**D. RESPONSE TO A GRIEVANCE FILED AFTER THE HEARING**

Date Received by Quality Control Unit: \_\_\_\_\_      Type of Parole Proceeding: \_\_\_\_\_

Decision

Granted       Granted with Changes       Denied       No Action Required

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Chief Deputy Commissioner/Designee Signature      Date Completed

**E. TO INMATE OR PAROLEE**

1. After the hearing the inmate, parolee, or their attorney may file the grievance, concerning denial of disability accommodations at the hearing, by mailing this form to:

Board of Parole Hearings  
Quality Control Unit  
1515 K Street, Suite 600  
Sacramento, CA 95814

2. All ADA grievances related to parole revocations shall be answered within 10 days from the time they were received at BPH.

3. All ADA grievances for the life prisoners shall be answered within 30 days from the time they were received at BPH.

\_\_\_\_\_  
NAME      CDCR NUMBER      TYPE OF PROCEEDING      LOCATION



**Office of Victim and Survivor Rights and Services (OVSRS)**  
**P.O. Box 942883, Sacramento, CA 94283-0001**  
Toll Free Number: 1-877-256-6877 Fax Number: (916) 445-3737  
Web: <http://www.cdcr.ca.gov/victims> Email: [victimservices@cdcr.ca.gov](mailto:victimservices@cdcr.ca.gov)



**DO NOT MAIL THE COMPLETED FORM TO A PRISON. ALL INFORMATION WILL REMAIN CONFIDENTIAL.**

- Check one:  New/Revised Request for Victim Services  Change of address/phone/e-mail only (complete sections A, D and E)  
 Collection of court ordered restitution only/**no notification services** (complete sections A, D and E)

**SECTION A. APPLICANT INFORMATION (Must be completed.)**

- Check one:  Victim of crime(s) committed by offender  Witness who testified against the offender  
 Family member of **victim**, indicate relationship: \_\_\_\_\_

(See page 2 – Section A)

Name of Victim(s): \_\_\_\_\_

Person requesting information: \_\_\_\_\_  
(FIRST) (MIDDLE) (LAST)

Physical Address: \_\_\_\_\_  
(STREET) (CITY) (STATE) (ZIP CODE)

Mailing Address (If different): \_\_\_\_\_  
(STREET) (CITY) (STATE) (ZIP CODE)

Telephone: (\_\_\_\_) \_\_\_\_\_ (\_\_\_\_) \_\_\_\_\_ (E-MAIL) \_\_\_\_\_  
(PRIMARY) (SECONDARY)

**NOTE: It is your responsibility to keep the OVSRS informed of any changes to your contact information.**

**SECTION B. NOTIFICATION OF CHANGES TO OFFENDER'S CUSTODY STATUS (Complete if you want to request notification.)**

To be notified of changes to the custody status of an offender, check the box below to indicate your preferred method\* of receiving notices:

1.  Send me notification by electronic mail (e-mail)  
**OR**  
2.  Send me notification by mail  
**Please choose only one (1) mail delivery method:**  
 Regular Mail  Certified Mail (signature required to receive)

**Change in custody status includes release, death, escape, parole suitability hearing (Victims/Victims' family members only), contract, name/gender change, or scheduled execution.**

\* **NOTE:** If the preferred method of notification you selected is not available, regular mail will be used to send the notice.

**SECTION C. CONDITIONS OF PAROLE/COMMUNITY SUPERVISION (Complete if you want to request special conditions.)**

**Requests for special conditions of parole/community supervision are considered but not guaranteed.**

I request the following conditions when the offender is released on parole/community supervision:

1.  Offender not be allowed to contact me while they are on parole/community supervision.

**For direct victims/witnesses only:**

2.  Offender not be allowed to live within 35 miles of my home address (available only for specific types of crimes, see page 2)

**NOTE: If you would like to provide additional information explaining your request, attach a separate sheet of paper.**

**SECTION D. OFFENDER IDENTIFICATION (ID) (Complete as much information as possible.)**

Offender's Full Name (Print): \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
(FIRST) (MIDDLE) (LAST) MO DAY YEAR

CDCR Number (Offender ID): \_\_\_\_\_ Date Sentenced to Prison: \_\_\_\_\_  
MO DAY YEAR

Court Case Number: \_\_\_\_\_ County of Sentencing: \_\_\_\_\_

**SECTION E. APPLICANT SIGNATURE (Sign and date the completed form.)**

Signature of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

**REQUEST FOR VICTIM SERVICES**  
CDCR 1707 (Rev. 10/22)**INSTRUCTIONS**

Read the following instructions carefully to fill out page 1 of the form so that it can be processed correctly. Sections A, D, and E must be completed. Complete all other sections, based on your needs. All information will remain confidential.

Check one of the three boxes at the top of the CDCR 1707 form to indicate if this is a **new/revised request for victim services**, a **change of address/phone/e-mail only**, or **Collection of court ordered restitution only/no notification services**. If you check **change of address/phone/e-mail only**, complete sections A, D, and E. If you check **Collection of court ordered restitution only/no notification services**, complete sections A, D, and E.

**SECTION A. APPLICANT INFORMATION**

This section must be completed. Check the box that most accurately describes your relationship to the crime: **victim, witness, or family member of victim** and your relationship to the victim. (Example - spouse, child, sibling, grandparent, or grandchild)

Please indicate the name(s) of the victim(s) of the crime committed by the offender.

Clearly print your name, physical address, mailing address (*if different*), your primary phone number, secondary phone number, and e-mail address.

**NOTE:** *In order to be entitled to receive notice the requesting party shall keep the department or board informed of his or her current contact information. (Penal Code sections 3043(a)(1), 3058.8(b))*

**SECTION B. NOTIFICATION OF CHANGES TO OFFENDER'S CUSTODY STATUS**

Complete this section if you choose to request notification services. Check the most appropriate box(es).

You have one of two choices to receive notice of an offender's **release, escape, death, parole suitability hearing** (*Victims/Victims' family members only*), **contract, name/gender change, or scheduled execution**:

Check **Box 1** to register to receive notification by electronic mail (e-mail).

Check **Box 2** to register to receive notification by mail. Indicate whether you prefer to receive your notice by regular mail or certified mail. If the preferred method of notification you selected is not available regular mail will be used to send the notice.

**NOTE:** *It is your responsibility to request notification of an offender's criminal appeal. Please call the State of California, Office of the Attorney General, Victim Services Unit 1-877-433-9069.*

**SECTION C. CONDITIONS OF PAROLE/COMMUNITY SUPERVISION**

Complete this section if you choose to request special conditions of parole/community supervision. You may check all the conditions that you wish to request or are eligible to receive however such conditions are not guaranteed.

Checking **Box 1** will request that the offender have **no contact** with you while they are on parole/community supervision.

Checking **Box 2** will request that the offender **not be allowed to live within 35 miles of your home address**. *Per Penal Code Section 3003, available only for the following crimes: murder or voluntary manslaughter, mayhem, rape, sodomy by force, oral copulation, lewd acts on a child under 14, any felony punishable by death or imprisonment in the state prison for life, stalking, felony with a great bodily injury enhancement, and continuous sexual abuse of a child.*

**NOTE:** *The second box applies to direct victims and witnesses only. (Penal Code section 3003)*

**SECTION D. OFFENDER IDENTIFICATION**

Provide as much information as you can in this section to ensure that we have the correct offender involved in your case. If you need help completing this section, you may contact the district attorney's office in the county where the trial was held.

**SECTION E. APPLICANT SIGNATURE**

Sign and date the completed form.

**SUBMIT COMPLETED FORM BY MAIL, FAX OR E MAIL (SCANNED COPY) TO:**

California Department of Corrections and Rehabilitation  
Office of Victim and Survivor Rights and Services  
P.O. Box 942883, Sacramento, CA 94283-0001  
Fax: (916) 445-3737 / E-mail: [victimservices@cdcr.ca.gov](mailto:victimservices@cdcr.ca.gov)

**PRIVACY STATEMENT:**

**AGENCY STATEMENT:** The California Department of Corrections and Rehabilitation (CDCR), CDCR 1707, Request for Victim Services. **OFFICE RESPONSIBLE FOR FORM:** Office of Victim and Survivor Rights and Services, P.O. Box 942883, Sacramento, CA 94283-0001. The telephone number is 1-877-256-6877. **AUTHORITY:** California Constitution Article I, section 28, Penal Code sections 667.5, 679.03, 2085.5, 3003, 3043, 3058.8, 3605, 5065.5.

**PROVIDING INFORMATION:** The information requested is necessary to process your request for victim services and is voluntary. Failure to provide any of the information requested may prevent the OVSRS from processing your request. **All information will remain confidential per Penal Code section 679.03(c):** Your information may be shared with the investigating agency, the district attorney's office that prosecuted the case, and/or the State of California, Office of the Attorney General, Victim Services Unit.

**Penal Code section 5065.5:** When notified that an offender has entered into a contract for the sale of the story of a crime for which the offender was convicted CDCR will notify registered victims and victim's immediate family members that are registered with CDCR.

<b>INSTITUTION</b> (Staff use only)	<b>LOG NUMBER</b> (Staff Use Only)	<b>DATE RECEIVED BY STAFF:</b>	
<b>*****TALK TO STAFF IF YOU HAVE AN EMERGENCY*****</b> <b>DO NOT</b> use a CDCR 1824 to request health care or to appeal a health care decision. This may delay your access to health care. Instead, submit a CDC 7362 or a CDCR 602-HC			
<b>INMATE'S NAME</b> (Print)	<b>CDCR NUMBER</b>	<b>ASSIGNMENT</b>	<b>HOUSING</b>
<b>INSTRUCTIONS:</b> <ul style="list-style-type: none"> <li>You may use this form if you have a physical or mental disability or if you believe you have a physical or mental disability.</li> <li>You may use this form to request a specific reasonable accommodation which, if approved, will enable you to access and/or participate in a program, service or activity. You may also use this form to submit an allegation of disability-based discrimination.</li> <li>Submit this form to the Custody Appeals Office.</li> <li>The 1824 process is intended for an individual's accommodation request. Each individual's request requires a case-by-case review.</li> <li>The CDCR 1824 is a request process, not an appeal process. All CDCR 1824 requests will receive a response.</li> <li>If you have received an 1824 decision that you disagree with, you may submit an appeal (CDCR 602, or CDCR 602-HC if you are disagreeing with a medical diagnosis/treatment decision).</li> </ul>			
<b>WHAT CAN'T YOU DO / WHAT IS THE PROBLEM?</b>			
<b>WHY CAN'T YOU DO IT?</b>			
<b>WHAT DO YOU NEED?</b>			
<i>(Use the back of this form if more space is needed)</i>			
<b>DO YOU HAVE DOCUMENTS THAT DESCRIBE YOUR DISABILITY?</b> <b>Yes</b> <b>No</b> <b>Not Sure</b> List and attach documents, if available:			
I understand that staff have a right to interview or examine me, and my failure to cooperate may cause this request to be disapproved.			
_____ <b>INMATE'S SIGNATURE</b>		_____ <b>DATE SIGNED</b>	
Assistance in completing this form was provided by:			
_____ Last Name	_____ First Name	_____ Signature	