# FINAL STATEMENT OF REASONS

Amendment to California Code of Regulations, title 15, section 2253
Voluntary Waivers, Stipulations of Unsuitability, Postponements, and Continuances

This regulatory action arises from the passage of Proposition 9, the Victims' Bill of Rights Act of 2009: Marsy's Law (*Marsy's Law*) by the people of the State of California on the November 4, 2008. The Secretary of State certified the election results on December 13, 2008. Among its provisions, *Marsy's Law* extended the time that those individuals with life sentences who are denied parole must generally wait for another parole consideration hearing. It also increased the number of people who can attend and testify at parole consideration hearings. The Board enacted these modifications on December 15, 2008, through Administrative Directive 08-01.

The specific purpose of each amendment of the proposed text and the rationale supporting the Board's determination that each amendment is reasonably necessary to carry out the purpose for which the amendment is proposed is as follows:

*Proposed amended section 2253(b). Voluntary Waivers.*

*Marsy's Law* amended Penal Code section 3041.5(b) by eliminating the distinction between prisoners convicted of murder and prisoners convicted of other life offenses when setting the next hearing after a parole denial. The proposed amended CCR title 15**,** section 2253(b)(1) removes the distinction between prisoners with a commitment offense of murder and those with a commitment offense other than murder as it relates to the period of time for which a voluntary waiver may be requested.

*Proposed amended section 2253(b)(4). Voluntary Waivers.*

*Marsy's Law* amended Penal Code section 3043 (b) by defining who has the right to appear at a parole consideration hearing and express their views about the prisoner and the case. The proposed amended CCR title 15, section 2253 (b)(4) affords the victim, victim's next of kin, members of the victim's immediate family, and two victim's representatives the opportunity to give a statement on the record if a voluntary waiver is accepted during the week of the scheduled hearing.

*Proposed amended section 2253(c)(1). Stipulations of Unsuitability.*

*Marsy's Law* amended Penal Code section 3041.5(b) by eliminating the distinction between prisoners convicted of murder and prisoners convicted of other life offenses when setting the next hearing after a parole denial. The proposed amended CCR title 15**,** section 2253(c)(1) removes the distinction between prisoners with a commitment offense of murder those with a commitment offense other than murder as it relates to the period of time for which a stipulation to unsuitability may be requested.

*Marcy's Law* further amended Penal Code section 3041.5(b) by changing the period for scheduling a prisoner's next hearing after a parole denial from up to two years for non-murderers and up to five years for murderers to fifteen, ten, seven, five or three years for all prisoners. The proposed amended CCR title 15, section 2253 (c)(1) revises the time periods for a stipulation to unsuitability from one, two, three, four or five years to three, five, seven, ten or fifteen years from the date of the scheduled hearing.

*Marsy's Law* amended Penal Code section 3043(b) by defining who has the right to appear at a parole consideration hearing and express their views about the prisoner and the case. The proposed amended CCR title 15, section 2253 (c)(1) includes the victim, victim's next of kin, members of the victim's immediate family, and two victim's representatives, in addition to the District Attorney, as those persons who may provide written statements to be reviewed by the board prior to its consideration of a prisoner's offer to stipulate to unsuitability.

*Proposed amended CCR, title 15, section 2253(c)(2) Stipulations of Unsuitability.*

*Marsy's Law* amended Penal Code section 3043 (b) by defining who has the right to appear at a parole consideration hearing and express their views about the prisoner and the case. The proposed amended CCR title 15, section 2253 (c)(2) affords the victim, victim's next of kin, members of the victim's immediate family, and two victim's representatives the opportunity to give a statement on the record if a stipulation to unsuitability is offered during the week of the scheduled hearing.

*Proposed amended section 2253(d)(4). Postponements.*

*Marsy's Law* amended Penal Code section 3043 (b) by defining who has the right to appear at a parole consideration hearing and express their views about the prisoner and the case. The proposed amended CCR title 15, section 2253 (d)(4) affords the victim, victim's next of kin, members of the victim's immediate family, and two victim's representatives the opportunity to give a statement on the record if a postponement is granted during the week of the scheduled parole consideration hearing.

*Proposed amended section 2253(e)(3). Continuances.*

*Marsy's Law* amended Penal Code section 3043 (b) by defining who has the right to appear at a parole consideration hearing and express their views about the prisoner and the case. The proposed amended CCR title 15, section 2253 (e)(3) affords the victim, victim's next of kin, members of the victim's immediate family, and two victim's representatives the opportunity to give a statement on the record if a continuance is granted during the scheduled parole consideration hearing.

## SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD FROM MARCH 27, 2008 THROUGH MAY 11, 2009.

The Public Comment period on the proposed text was open for public comment for 45 days from March 27, 2009 through May 11, 2009. Twelve written comment letters and e-mails were received during that period. No comments were received during the public hearing conducted on May 12, 2009. Pursuant to Government Code section 11346.9(a)(3), the Board of Parole Hearings (Board) has summarized and responded to those comments as follows:

### Comment #1:

The commenter stated he would like to file all paperwork necessary within the written comment period so that the Board would consider his comments. He stated that he needed help "due to the complexity of how to write written comments."

Response: The Board responded on April 2, 2009 to the commenter's letter stating that written comments about the proposed rulemaking are not complicated nor is special paperwork required. The Board instructed that written comments could be submitted by letter or other written communication to the Regulations Coordinator.

Accommodation: None.

### Comment #2:

The commenter reminded the Board that because of the proposed regulation amendments, the Life Parole Consideration hearings might be longer. CASE represents the Deputy Commissioners, and stated these commissioners have a right to take breaks, including meal breaks, and they should not be required to work non-stop when assigned to a Life Parole Consideration Hearing.[1]

Response: Although the Board is mindful of these comments, they are not substantively related to the text of the proposed amendments.

Accommodation: None.

### Comment #3:

The commenter stated that he objects to the proposed regulations because the amended text relies on a false premise that *Marsy's Law* applies to non-murderers as well as murderers. He stated that *Marsy's Law* made a mistake by not including non-murderers

[1] CASE is the union representing California Attorneys, Administrative Law Judges, and Hearing Officers in State employment.

in the Penal Code. He also commented that the statement of purposes and intent of *Marsy's Law* refers to murderers and homicide victims. The commenter is requesting that the rulemaking process be delayed until the issue of whether *Marsy's Law* applies to non-murderers is finally determined.

This commenter requested a public hearing by letter dated March 24, 2009 and received on April 6, 2009.

Response:

The Board disagrees with the commenter. *Marsy's Law* amended Penal Code section 3041.5(b) by eliminating the distinction between prisoners convicted of murder and prisoners convicted of other life offenses when setting the next hearing after a parole denial. *Marsy's Law* amended Penal Code section 3041 (b)(3) by deleting subsection (b)(3)(A) and adding new text and by deleting subsection (b)(3)(B), which included the phrase "if the prisoner has been convicted of murder" and adding new text. Therefore, the Board's proposed amendments comport with this statutory change.

Accommodation: None.

## Comment #4:

The commenter requested that his letter be made a part of the rulemaking record.

Response: The commenter did not make a substantive comment about the proposed amendments.

Accommodation: None

## Comment #5:

(1) The commenter stated that *Marsy's Law* does not give authority to the Board to adopt, amend, enforce, or promulgate any rule, regulation, standard of general application, policy, or procedure, which amends or expands the scope of the application of its statutory provisions.

(2) In addition, the commenter states that *Marsy's Law* does not apply to all life prisoners, but clearly specifies a distinction between prisoners convicted of murder and other life prisoners as outlined in Proposition 9, "Purpose and Intent" at Section 3.

(3) The commenter also stated that the Fiscal Impact Statement (in the Notice of Proposed Rulemaking) is incorrect, misleading, and contrary to the "Purpose and Intent" of *Marsy's Law,* because the Board has made an initial determination that the "cost or savings to any state agency" are "none."

(4) In addition, the commenter stated that the Initial Statement of Reasons is also misleading in that *Marsy's Law* clearly discerns that only "convicted murderers" who have "no likelihood" of being paroled will be "provided" with the extended parole hearing denial periods.

(5) The commenter addressed the proposed amended regulatory text stating that not all prisoners sentenced to indeterminate sentences have "life parole." He states that the only prisoners who have "life parole" are those who have been convicted of murder after 1982 and therefore, the term "life parole consideration hearing," is misleading and does not apply to those prisoners who do not and cannot be considered for life parole.

(6) The commenter stated that the Board is mandated to be a fair and impartial administrative agency that cannot "adopt procedures that tend to significantly favor one party over the other." However, the provisions of *Marsy's Law* are solely for the benefit of crime victims. This "binds" the Board to conduct proceedings for the personal benefit of the victims of crime. Therefore, this procedure creates a conflict of interest.

(7) Further, he stated that the *Marsy's Law* parole denial periods clearly violate the due process, equal protection, cruel and unusual punishment, and ex post facto clauses of both state and federal constitutions and, therefore, all rules, regulations, policies, standards of general application, or procedures adopted are unconstitutional.

Responses

(1) The Board is granted its rulemaking authority from Penal Code section 5076.2 and Government Code section 11340. The statutory changes in *Marsy's Law*, as approved by the voters, created the necessity for revision to portions of CCR, title 15, Division 2 regulations that interpret, implement, and clarify Penal Code sections 3041.5 and 3043(a).

(2) The Board disagrees with the commenter. See response to Comment 3 above.

(3) The Fiscal Impact Analysis only pertains to the proposed amendments to section 2253 of Title 15 and does not pertain to the overall fiscal impact created by *Marsy's Law.*

(4) The Board disagrees with the commenter. See response to Comment 3 above.

(5) The amendments do not concern parole periods after release. The language in the regulation relating to a "life parole consideration hearing" is not being amended.

(6) It is not a conflict of interest for the Board to amend its regulations to comport with the statutory changes in *Marsy's Law* as approved by the people of the State of California on November 4, 2008.

(7) The passage of Proposition 9, *Marsy's Law,* by the people of the State of California voted on November 4, 2008, as certified by the Secretary of State on December 13, 2008, makes its provisions the law of the state.

## Comment #6:

The commenter asked the Board not pass 15 CCR, section 2253, because he stated it is wrong.

Response: The Board disagrees with the commenter. This regulatory action arises from the passage of Proposition 9, the Victims' Bill of Rights Act of 2009: Marsy's Law (*Marsy's Law*) by the people of the State of California on the November 4, 2008. The Secretary of State certified the election results on December 13, 2008.

Accomodation: None

## Comment #7

The commenter stated he is a three-striker prisoner whose crimes are non violent. He requested information on 15 CCR § 2253 and stated that he wanted a parole hearing date as soon as possible.

Response:

This letter does not contain a substantive comment on the proposed amendments. The requested information was sent to the commenter on April 23, 2009.

Accommodation: The Board has added the commenter's name to the regulatory mailing list.

## Comment #8

(1) The commenter opposed the proposed amended to 15 CCR, § 2253 because he is a three-striker inmate. He opines that Proposition 9 is unconstitutional and illegally funded.

(2) In addition, the commenter stated that he has never received or had access to a copy of the Division Two Regulations and therefore all hearings where the prisoner was denied parole should be set aside.

Response: This letter does not contain a substantive comment on the proposed amendments. Title 15, Division 2 Regulations are supplied to all institutional libraries and made available to the prisoners. In addition, they are available through a link on the Board website.

Accommodation: None.

## Comment #9

The commenter stated the new *Marsy's Law* denial periods are extremely harsh.

Response: This letter does not contain a substantive comment on the proposed amendments. The amended regulation regards delays of life prisoner hearings by voluntary waivers, stipulations of unsuitability, postponements, and continuances.

Accommodation: None

## Comment #10

The commenter suggests that public notice of the proposed amendments for public comments is not available for inmates' comments. He also comments that a public hearing excludes prisoners from the process.

Response: Inmates are provided public notice of the regulatory process. The Board mails a copy of proposed regulatory amendments to everyone on its mailing list and posts proposed regulatory amendments on its website. A public hearing was held because another commenter requested it. Public comments are given equal consideration whether they are presented in writing or at a public hearing.

Accommodation: None.

## Comment #11

The commenter initially wrote about restraints for prisoners. His next paragraph referred to a complaint that the Board continues to deny parole for prisoners. In his case, he has now served 28 years and he proceeded to cite case law where the Court has stated the hearing panel must rely on evidence of present risk before denying parole to a life prisoner.

Response: The commenter did not make any substantive comments about the proposed amendments.

Accommodation: None

## Comment #12

The commenter stated he learned that non murder life prisoners are included in the new denial periods outlined in Proposition 9. He stated, "The intent of the author [of Proposition 9] was unambiguously intended only for those with homicide offenses and who are convicted murderers." He characterized this law as an extra-judicial punishing

scheme. He stated that to include non-murderers is unconstitutional and a violation of due process rights. Therefore, he opposed this amendment.

Response: The Board disagrees with the commenter. See response to Comment 3 above.

Accommodation: None

## Comment #13

The commenter stated that he did not agree with Marsy's Law and believed that it related only to those prisoners that were lifers with homicide offenses. In addition, he enclosed a copy of a pleading sent to the Supreme Court of California requesting an advisory opinion on the constitutionality of Marsy's Law.

Response: The Board disagrees with this commenter. See response to Comment 3 above.

Accommodation: None

**ALTERNATIVE DETERMINATION**

The board has determined that no reasonable alternatives identified or considered would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome than the proposed regulatory action

**LOCAL MANDATE DETERMINATION**

The proposed regulation does not impose any mandate on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

**ECONOMIC IMPACT ON SMALL BUSINESSES**

No commenter proposed an alternative to lessen any adverse economic impact on small businesses.