

INITIAL STATEMENT OF REASONS

Title 15. CRIME PREVENTION AND CORRECTIONS **Division 2. BOARD OF PAROLE HEARINGS** **(formerly known as Board of Prison Terms)** **Chapter 5. PAROLE SUPERVISION** **Article 1. LENGTH AND CONDITIONS OF PAROLE**

Amendments to Sections 2510, 2511, 2512 and 2513
Length and Conditions of Parole

SPECIFIC PURPOSE AND NECESSITY OF EACH REGULATORY CHANGE

Government Code section 12838.4 vests the Board of Parole Hearings (Board) with all the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the Board of Prison Terms and Narcotic Addict Evaluation Authority, which no longer exist.

Penal Code section 3052 vests with the Board the authority to establish and enforce rules and regulations under which prisoners committed to state prisons may be allowed to go upon parole outside of prison when eligible for parole.

Penal Code section 5076.2 requires the Board promulgate, maintain, publish, and make available to the general public a compendium of its rules and regulations.

The federal courts in *Armstrong v. Schwarzenegger (Armstrong II)*, (N.D. Cal, C94-2307 CW) (hereafter “*Armstrong*”) and *Valdivia v. Schwarzenegger (E.D. Cal, CIV S94-0671 LKK GGH)* (hereafter “*Valdivia*”) issued orders requiring the Board to develop and implement policies and procedures that ensure access to programs and services by prisoners and parolees with disabilities. Included in this requirement is the need to ensure effective communication with disabled prisoners and parolees at all parole proceedings, including parole revocation proceedings. Providing notice of the conditions of parole is the first step in the parole process that might lead to parole revocation proceedings. Written notice is provided to prisoners and parolees using California Department of Corrections and Rehabilitation (CDCR) Form 1515. This regulatory action is necessary to amend the regulations of the Board in order to comply with the *Armstrong* and *Valdivia* orders requiring use of effective communication in parole proceedings, including revocation. It is also necessary to amend the regulations in order to give notice to certain parolees of Jessica’s Law requirements.

Nearly all of the changes presented by the current action were preliminarily approved by the Board in 2006 and 2008, when prior versions of the regulation package went before the Board. The crux of the 2006 regulation package was to implement those portions of the *Armstrong* and *Valdivia* court orders that required review of parole regulations and forms for the purpose of making them easily understandable to the directly affected public: prisoners and parolees who might have disabilities, including

learning disabilities. The Board gave initial approval of the 2006 regulation package. Then, on November 7, 2006, voters passed Proposition 83 (“Jessica’s Law”), which places additional restrictions on parolees convicted of certain sex offenses. The regulations were amended again and presented to the Board in 2008. The crux of the 2008 regulation package was to amend the regulations to give notice to certain parolees of Jessica’s Law requirements. The Board gave initial approval of the 2008 regulation package. However, following initial adoption by the Board, additional non-substantive changes were made by CDCR and Board staff.

Since 2008, various non-substantive changes have been made for purposes of clarity and consistency. Because more than one year has lapsed since the most recent public comment period, Office of Administrative Law (OAL) rules require re-adoption by the Board.

NECESSITY FOR THE PROPOSED AMENDMENTS

Section 2510. General.

References to Government Code section 12838.4 and Penal Code section 3060.5 were added to the authority section of the regulation. The existing regulatory language was unchanged.

Section 2511. Notice of Parole.

This section currently describes the contents of the notice of parole that inmates receive prior to their release on parole. Due process of law under *Morrissey v. Brewer* (1972) 408 U.S. 471, requires that persons going onto parole be given notice of the parole period and conditions of supervision. The subdivision (a) definition was added for purposes of clarity pursuant to a previous suggestion by OAL. Subdivisions (b) and (c) were existing provisions; language was modified slightly to be more easily understood. Subdivision (d) regarding reasonable accommodation provides basic information from the *Armstrong* and *Valdivia* court orders and reiterates pertinent information concerning the grievance process already detailed in existing regulations, California Code of Regulations, title 15, section 2251.5, and concerning the CDC Form 1824 process detailed in California Code of Regulations, title 15, section 3085.

These amendments present the existing notice of parole in simple English, in an effort to ensure that inmates and parolees receive adequate notice of their conditions of parole. This is intended to satisfy the equal access mandated by the federal courts in the *Armstrong* and *Valdivia* cases and to satisfy due process of law required by the Fourteenth Amendment to the United States Constitution. Additionally, some provisions were moved to California Code of Regulations, title 15, section 2512. The Notice of Certificate of Rehabilitation has been removed as unnecessary for inclusion in the regulations. CDCR uses a separate process to provide this notification to parolees. References to Government Code section 12838.4 and the *Armstrong* and *Valdivia* cases were added to the authority section of the regulation.

Section 2512. General Conditions of Parole.

This section currently describes the general conditions of parole contained in the notice of parole that inmates receive prior to their release on parole.

These amendments translate the notice of parole into simple English in an effort to ensure that inmates and parolees receive adequate notice of their conditions of parole. This is intended to satisfy equal access mandated by the federal courts in the *Armstrong* and *Valdivia* cases and provide due process of law. A reference to Government Code section 12838.4 was added to the authority section of the regulation.

This section reiterates existing regulations and law, and includes some provisions moved from existing section 2511.

Specific amendments are as follows:

Subdivision (a): Criminal Conduct

It is believed that specific wording included in the CDCR Form 1515, Notice and Conditions of Parole, regarding reporting of arrests was in conflict with Board of Parole Hearings Resource Document #5, "Guidelines for Conditions of Parole". As a result, additional language has been added to include the reporting of misdemeanor or felony citations.

Subdivision (b): Instructions

An instruction regarding holds placed by agencies other than CDCR has been moved from section 2511. Provisions requiring parolees to report to their parole agents within one working day and to follow parole agents' instructions are currently existing provisions in section 2512.

Subdivision (c): Searches

In December 2005, CDCR developed a revised Notice and Conditions of Parole, CDCR Form 1515. In order to comply with the *Valdivia* Stipulated Order for Permanent Injunctive Relief and requirements as set forth in the *Armstrong* Remedial Plan, this CDCR Form 1515, Notice and Conditions of Parole, was structured to comply with requirements for reasonable accommodation and effective communication.

Prior to the release of the revised CDCR 1515, *Samson v. California*, (2006) 547 U.S. 843, in which a parolee contested the validity of warrantless parole searches conducted without cause, was argued before the United States Supreme Court. The Court held that the requirement of Penal Code section 3067(a) that every prisoner eligible for release on state parole "shall agree in writing to be subject to search or seizure by a parole officer or other peace officer at any time of the day or night, with or without a

search warrant and with or without cause” does not violate the Fourth Amendment of the United States Constitution. As a result of this ruling, it was determined that simple English, utilized in CDCR Form 1515, had not adequately provided parolees with notice that they were subject to suspicionless searches. As a result, additional language is now required to explain that search and seizure conditions applied pursuant to Penal Code section 3067 allow searches and seizures to be conducted without cause.

This subdivision (subdivision (c)), was moved from section 2511.

Subdivision (d): Travel

An instruction regarding waiver of extradition has been moved from section 2511. Other provisions restricting travel are currently existing provisions in section 2512.

Subdivision (e): Residence and Employment

This subdivision is now separate from the subdivision concerning travel.

Subdivision (f): Weapons

A prohibition against possession of ammunition has been added. The remaining provisions in this subdivision were moved from other portions of section 2512.

Section 2513. Special Conditions of Parole.

This section currently describes the special conditions of parole contained in the notice of parole. These amendments present the notice of parole in simple English, in an effort to ensure that inmates and parolees have adequate notice of their conditions of parole. This is intended to satisfy equal access mandated by the federal courts in the *Armstrong* and *Valdivia* cases and provide due process of law. References to Government Code section 12838.4 and the *Armstrong* and *Valdivia* cases were added to the authority section of the regulation.

This section reiterates existing regulations and law. For purposes of clarity, subdivision (a) of the amended regulation breaks down special conditions of parole into two types: discretionary and mandatory. Subdivision (a) is also amended to state that violation of conditions of parole may result in revocation and return to prison. Subdivision (b) provides for special conditions of parole, which are discretionary conditions that may typically be imposed based upon case factors. Subdivision (c) provides for mandatory special conditions of parole, which are conditions required by statute or court order where neither the parole agent nor the Board has discretion. Certain provisions of Jessica’s Law place restrictions on where sex offenders may reside. Parolees will now be given notice of Jessica’s Law provisions in Penal Code sections 3003(g) and 3003.5. Subdivision (c) also provides clarification concerning use of existing appeals (California Code of Regulations, title 15, sections 3084-3085)

and grievance (California Code of Regulations, title 15, section 2251.5) procedures in relation to special conditions of parole.

Subdivision (b)(2) clarifies the special condition for Mentally Disordered Offenders (MDO). It gives the parolee notice that MDO parolees may have a special condition imposed requiring that they be confined in a Department of Mental Health hospital and to be placed in a Conditional Release Program (CONREP) community outpatient mental health treatment program pursuant to Penal Code section 2962. The MDO process is already detailed in existing Board regulations (California Code of Regulations, title 15, sections 2570-2580).

Subdivision (d) provides for additional special conditions of parole which may be imposed in specific cases. Special conditions or mandatory special conditions are imposed by the correctional counselor prior to release or by the parole agent during parole supervision. Additional special conditions imposed by the Board are explained personally by the correctional counselor prior to release, by the parole agent during parole supervision, by the Deputy Commissioner imposing the special condition at a hearing, or via written notice to the parolee from the Board.

Subdivisions (e) and (f) provide clarification concerning use of existing appeals (California Code of Regulations, title 15, sections 3084-3085) and grievance (California Code of Regulations, title 15, section 2251.5) procedures in relation to special conditions of parole. Subdivision (f) of existing section 2513 regarding a parolee's right to a placement hearing when ordered to participate in a residential program as a condition of parole is deleted from regulations. The Board's authority to place parolees in residential programs for substance abuse treatment is sufficiently covered in Health & Safety Code sections 11561 and 11563.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board did not rely on any technical, theoretical, or empirical studies in consideration of this proposed regulation.

CONSIDERATION OF REASONABLE ALTERNATIVES

The Board has not identified any alternatives to the proposed regulatory change that would fully meet the objectives of the statute.

EFFECT ON SMALL BUSINESS

The subject of this regulatory action directly affects prisoners serving life sentences, affects, and expands the rights of victims at the life parole consideration hearings. The Board has not identified any alternatives that would lessen any adverse impact on small businesses. However, no impact on small business is expected.