REVISED INITIAL STATEMENT OF REASONS

TITLE 15. CRIME PREVENTION AND CORRECTIONS
DIVISION 2. BOARD OF PRISON TERMS
CHAPTER 6. PAROLE REVOCATION
ARTICLE 1. PAROLE HOLD POLICY
ARTICLE 3. REVOCATION PROCEDURES
ARTICLE 8. MULTIJURISDICTION REGULATIONS
ARTICLE 9. PAROLE REVOCATION EXTENSION PROCEDURES
ARTICLE 10. WORKTIME CREDITS

Amendment of Sections 2606, 2635.1, 2646.1, 2733, 2740, 2743 and 2744
Parole Revocation Proceedings

The Board of Parole Hearings (BPH) (formerly known as the Board of Prison Terms) proposes to amend California Code of Regulations, Title 15, Sections 2606, 2635.1, 2646.1, 2733, 2740, 2743, and 2744, governing Parole Revocation Proceedings.[1] This action is necessary to implement, interpret and comply with recently-adopted legislation, collectively referred to as "Criminal Justice Realignment" (Assembly Bill 109 (approved by Governor, April 4, 2011 (2011-2012 Reg. Sess.)), as modified by Assembly Bill 117 (approved by Governor, June 30, 2011 (2011-2012 Reg. Sess.)), Assembly Bill 116 (approved by Governor, July 27, 2011 (2011-2012 Reg. Sess.)), and Assembly Bill 17X (approved by Governor, September 20, 2011 (2011-2012 1st Ex. Sess.))). With the implementation of Criminal Justice Realignment, several of the Board of Parole Hearings' regulations regarding parole revocation proceedings became contrary to statute. Outdated and no longer in compliance with existing law, the Board of Parole Hearings seeks to bring these regulations into accordance with the law, thus providing the opportunity for public understanding of the parole revocation process and consistency and proportionality in application of due process for parolees undergoing parole revocation adjudications.

Background

Criminal Justice Realignment makes various revisions to state law, with an emphasis on diverting the majority of non-serious, non-violent offenders, and offenders who have not been designated as High Risk Sex Offenders (HRSO) to incarceration and post-release supervision at a local level. Criminal Justice Realignment will result in the eventual elimination of the Board of Parole Hearings' authority in adjudicating parole revocation proceedings, with the exception of some life inmates. Beginning on October 1, 2011, a significant portion of the offender population released from prison on or after October 1, 2011, no longer falls under the jurisdiction of the Board of Parole Hearings for revocation proceedings. Instead, these offenders, generally described as non-serious, non-violent offenders, and have not been classified as HRSO or Mentally Disordered Offenders (MDO) are supervised at the local (county) level, and any proceedings to revoke post-release supervision are administered by the superior courts in the county where the released offender is supervised. The remainder of the offender population released from prison on or after October 1, 2011, generally described as serious and/or violent offenders and HRSOs and MDOs, are state-supervised by the California Department of

[1] The Board of Parole Hearings is no longer pursuing amendment to Section 2742 and is no longer proposing creation of new Section 2742.1, both regarding parole revocation extension proceedings. These two sections had been included in the Initial Statement of Reasons and put forward for public comment during the initial 45-day notice, which spanned from December 2, 2011, to January 16, 2012.

Corrections and Rehabilitation, Division of Adult Parole Operations, and continue to fall under the jurisdiction of the Board of Parole Hearings if revocation proceedings are initiated. This division of jurisdiction for the adjudication of revocation actions will continue through June 30, 2013. On July 1, 2013, all authority to revoke parole supervision or community post-release supervision will rest with the superior courts. The Board of Parole Hearings will no longer have authority to revoke parole, with the exception of the Board's ability to finalize revocation proceedings initiated prior to July 1, 2013, and an ongoing, limited exception for proceedings held pursuant to Penal Code section 3000.1 for some life inmates.

Additionally, Criminal Justice Realignment made further changes to the adjudication of parole revocation proceedings for those parolees who continue to be subject to the jurisdiction of the Board of Parole Hearings. First, Criminal Justice Realignment shortened the maximum length of a parole hold or an order of confinement pursuant to revocation (termed revocation period), reducing it from 12 months to 180 days. Second, Criminal Justice Realignment eliminated the practice of incarcerating parolees who violate parole in state prison. Instead, Criminal Justice Realignment provides that parolees who violate parole are incarcerated in county facilities. This change in location of incarceration was accompanied by changes in the Board of Parole Hearings' authority to determine whether parolees are eligible to receive credits (termed worktime credits) against the length of the revocation period for good behavior while incarcerated. Whereas historically, parolees facing specified charges or with a history of specified crimes would be ineligible to receive worktime credits, with Criminal Justice Realignment, all parolees are to be housed in county facilities and are to be assessed credits in accordance with statute set forth for the timekeeping of lengths of incarceration in county facilities. All of these changes are made with the exception of some life inmates, and with the exception of parolees who were already in the parole revocation process on October 1, 2011, meaning they had a parole hold or discovery date (the date the parole supervising authority obtains knowledge that an alleged violation of parole has occurred) prior to October 1, 2011.

In order to implement these various changes, the Board of Parole Hearings had to provide clear guidance to its hearing officers as well as public disclosure to parolees and parolees' attorneys on how to apply the changes, especially as to the application of parole revocation proceedings to the transitional population of parolees, meaning those who were already in the parole revocation process on October 1, 2011. The Board of Parole Hearings drafted and put forward proposed regulatory changes, which were initially presented to the Board of Parole Hearings for possible emergency action on August 16, 2011, and again for preliminary approval on November 11, 2011, and final approval on February 22, 2012. This Revised Initial Statement of Reasons and regulatory package is a reiteration of earlier efforts, revised to provide clarification of the Board of Parole Hearings' intent with these regulatory actions. As detailed in the 15-Day Renotice of Proposed Rulemaking, additional clarifying edits have been made to the text of Sections 2606 and 2743. Additionally, the regulatory package the Board of Parole Hearings is presently pursuing does not address parole revocation extension proceedings. Clarification of the Board of Parole Hearings' application of Criminal Justice Realignment to pending and new parole revocation actions on and after October 1, 2011, is of the utmost importance during the implementation of Criminal Justice Realignment. Clear and transparent application of the law is especially important given the fundamental due process rights of parolees undergoing parole revocation proceedings as established by the Fourteenth Amendment of the United States Constitution.

Specific Modifications/Additions to Regulations

These regulations are necessary to implement and comport with the mandates of Criminal Justice Realignment on and after October 1, 2011. Specifically, pursuant to the Criminal Justice Realignment changes to Penal Code 3056, the maximum parole revocation period is reduced from 12 months to 180 days. For parolees with a parole hold/discovery date on or after October 1, 2011, the maximum parole revocation period is reduced to 180 days. Regulatory references to the parole revocation period, including guidelines for lengths of parole revocation periods must be reduced accordingly.

For parolees with a parole hold/discovery date before October 1, 2011, the Board of Parole Hearings has authority to determine whether the parolee is eligible or ineligible to earn worktime credits during a parole revocation period. Under revised Penal Code section 3057, for parolees with a parole hold/discovery date on or after October 1, 2011, the Board of Parole Hearings no longer has the authority to determine whether the parolee is eligible or ineligible to earn worktime credits, except for life term offenders who are subject to Penal Code section 3000.1.

The Board of Parole Hearings amends several regulatory sections as follows:

Section 2606 is amended to reflect revision to the Board of Parole Hearings' authority regarding length of parole holds placed on or after October 1, 2011, to 180 days. This section specifically applies to the length of time a parole hold can be placed. The authority and reference cited is also amended to reflect current law. Amendment to Section 2606 is necessary to ensure consistency and transparency in application of the new, reduced maximum length of a parole hold, especially with regard to its application to the transitional population of parolees with a parole hold or discovery date prior to October 1, 2011.

Section 2635.1 is amended to reflect revision to the Board of Parole Hearings' authority regarding length of parole revocation period assessments/ offers/ dispositions on or after October 1, 2011, to 180 days. This section specifically applies to the length of time a parolee can be returned to custody on a parole revocation period for violation of parole. The authority and reference cited is also amended to reflect current law. Amendment to Section 2635.1 is necessary to ensure consistency and transparency in application of the new, reduced maximum length of a parole revocation period, especially with regard to its application to the transitional population of parolees with a parole hold or discovery date prior to October 1, 2011.

Section 2646.1 is amended to reflect revision to the Board of Parole Hearings' authority regarding length of parole revocation period assessments/ offers/ dispositions on or after October 1, 2011, to 180 days. These recommended lengths of parole revocation periods are similar to sentencing guidelines in a criminal context. Fundamental due process requires consistency and proportionality in setting parole revocation periods and as there is no statutory guidance on the setting of recommended lengths of parole revocation periods, clear and transparent regulations on point are of critical importance. For implementation of Criminal Justice Realignment, the Board of Parole Hearings has reduced all of the historical guidelines for parole revocation periods in half in direct proportion to the reduction in maximum lengths of parole revocation periods from 12 months to 180 days, and all ranges are now phrased in terms of days instead of months. For example, for parole holds or discovery dates on or after October 1, 2011, Section 2646.1 is amended to reduce all Type I violations from a parole revocation assessment range of zero to four months to an assessment range of zero to 60 days. Additionally, subdivision (u) related to guidelines for "Psychiatric Treatment" is eliminated. In accordance with a January 15,

2008, court order in *Valdivia v. Brown*, Case No. C-94-0671-LKK, (E.D. Cal.), the Board of Parole Hearings has developed separate processes for parolees who are too mentally ill to meaningfully participate in their parole revocation proceedings. The authority and reference cited is also amended to reflect current law.

Section 2733 is amended to reflect revision to the Board of Parole Hearings' authority regarding length of parole revocation period assessments/ offers/ dispositions on or after October 1, 2011, to 180 days. This section specifically applies to parole revocation proceedings for multijurisdictional parolees. The authority and reference cited is also amended to reflect current law. Amendment to Section 2733 is necessary to ensure consistency and transparency in application of the new, reduced maximum length of a parole revocation period, especially with regard to its application to the transitional population of parolees with a parole hold or discovery date prior to October 1, 2011.

Section 2740 is amended to reflect revision to the Board of Parole Hearings' authority regarding length of parole revocation period assessments/ offers/ dispositions on or after October 1, 2011, to 180 days. This section specifically sets forth a maximum 180-day parole revocation period. The authority and reference cited is also amended to reflect current law. Amendment to Section 2740 is necessary to ensure consistency and transparency in application of the new, reduced maximum length of a parole revocation period, especially with regard to its application to the transitional population of parolees with a parole hold or discovery date prior to October 1, 2011.

Section 2743 is amended to reflect revision to Penal Code section 3057 for the Board of Parole Hearings' authority regarding the Board of Parole Hearings' authority to assess the type of parolees eligible for California Department of Corrections and Rehabilitation worktime credits while serving a parole revocation period. Whereas historically, the Board of Parole Hearings determined whether a parolee would be eligible to receive worktime credits while serving a parole revocation period in prison, with Criminal Justice Realignment, the Board of Parole Hearings only has the authority to make such an assessment of eligibility to receive worktime credits for parolees with a parole hold or discovery date prior to October 1, 2011 and life term inmates. With Criminal Justice Realignment, all remaining parolees are housed in county facilities and are to be assessed credits in accordance with Penal Code section 4019. The authority and reference cited is also amended to reflect current law. Amendment to Section 2743 is necessary to ensure consistency and transparency in the Board of Parole Hearings' assessment or lack of assessment of a parolee's eligibility to receive worktime credits, especially with regard to its application to the transitional population of parolees with a parole hold or discovery date prior to October 1, 2011.

Section 2744 is amended to reflect revision to Penal Code section 3057 for the Board of Parole Hearings' authority regarding the type of parolees not eligible for California Department of Corrections and Rehabilitation worktime credits while serving a parole revocation term based on a parole hold/discovery before October 1, 2011, or life term inmates. Additionally, subdivision (c) of this section is amended to comport with specific exclusionary criteria set forth in Penal Code section 3057. Amendment to Section 2744 is necessary to ensure consistency and transparency in the assessment of parolees' eligibility for worktime credits for the transitional population of parolees with a parole hold or discovery date prior to October 1, 2011 and for life inmates.

Additional Findings

The Board of Parole Hearings has made an initial determination this action will not have a significant adverse economic impact on business. Additionally, there have been no facts, evidence, documents, testimony, or other evidence provided that would alter the Board's initial determination.

The Board of Parole Hearings has determined this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement to Part 7 (Section 17561) of Division 4.

The Board of Parole Hearings has determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected private persons than the action proposed.

The Board of Parole Hearings, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.