

**California Department of Corrections and Rehabilitation
Division of Juvenile Justice**

Title 15, California Code of Regulations

Division 4, Chapter 4, Article 5 Parole Violation, Detention, and Revocation

**Adopt Section: 4825, 4853, and 4854
Amend Sections: 4846, 4847, 4848, 4848.5, 4849, 4850, and 4852**

Division 4.5, Chapter 1: Article 1 Rules of Construction and Definitions; Article 6 General Rules on Hearings; and Article 7 Appeals; Chapter 2: Article 4 Special Hearings and Actions in Institutions; and Chapter 3: Article 2 Parole Violation

**Adopt Sections: 4939.5, 4961.1, 4977.5, 4977.6, 4977.7, and 4983.5
Amend Sections: 4900, 4925, 4926, 4927, 4928, 4929, 4935, 4936, 4937, 4938, 4939, 4940, 4977, 4978, 4979, 4980, 4981, 4982, and 4983**

ADDENDUM TO THE FINAL STATEMENT OF REASONS

In October 2008, the United States District Court, Eastern District of California in *L.H. vs. Schwarzenegger*, Case No. 2:06-CV-02042-LKK-GGH, issued a stipulated order for permanent injunctive relief under which the Division of Juvenile Justice (DJJ) would revise the process for juvenile parole revocation. The L.H. lawsuit requires promulgation of regulations to ensure parolees under DJJ's jurisdiction, regarding parole violation, detention, and revocation, are given due process as provided by the mandates of court's order, under *Morrissey v. Brewer*, 408 U.S. 481 (1972), the right to counsel under *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), and appropriate accommodations in compliance with the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The proposed revisions to California Code of Regulations (CCR) Title 15, Sections 4845 through 4983.5, will effectuate the changes necessary to department regulations required by the L.H. lawsuit and controlled case law.

UPDATED INFORMATIVE DIGEST

Since the publication of the 2nd 15-Day Re-notice, the DJJ determined that additional corrections to the regulations were needed to meet clarification and consistency standards. The DJJ made no changes that we believe alter the original intent of the regulations that were originally noticed to the public. The modified text was made available to the affected public from January 10, 2012 through January 25, 2012. The DJJ received no further comments.

The following inconsistencies were identified and corrected:

- Section numbers were renumbered which was not necessary and just made for confusion.
- The words/terms: Division vs. Division of Juvenile Justice; Board vs. Juvenile Parole Board; Parole vs. Division of Juvenile Parole Operations; hold vs. parole hold; facility vs. institution; and agent vs. Parole Agent were not used consistently.
- The acronyms DJJ, DJPO, JPB, CAP, RRD, and DDMS were not used consistently.

- Throughout the regulation sections, there were forms that were not identified as such or named correctly.
- There were sections that were not in the correct outline format.
- The capitalization of words/terms was inconsistent.
- There were sections that required additional language for clarity.

Sections 4845 through 4854 were renumbered by a DJJ staff member unfamiliar with the regulatory process. The renumbering was not necessary and just made for confusion. Therefore, DJJ has changed the section numbers back to their original configuration.

Existing Subsection 4937 was not shown in the initial proposal as repealed text. The language was modified and incorporated into new Subsection 4937.5. The DJJ has determined that it is not necessary to repeal Section 4937 and adopt 4937.5. Section 4937 is restored and modified as explained in the attached Addendum to the Initial Statement of Reasons.

Section 4980 was originally amended to include text that defined each type of Parole Violation Hearing. The DJJ has determined that it is not necessary to define these hearings in this section as they are already defined in Section 4900. In addition, the DJJ has determined that instead of creating new Section 4980.5, the regulation text would be more appropriately placed in existing section 4980. Therefore, the DJJ has amended Section 4980 as follows:

Section 4980 is amended to read: 4980. Rules for Parole Violation Hearings.

New Subsections 4980(a) through (e) are repealed.

New Subsection 4980(f) is combined with new Subsection 4980(m).

The DJJ has amended all of the regulation sections to be consistent with the use of each of the words/terms as follows:

In July 2005, Section 1710(a) of the W&I Code abolished the Youth and Adult Correctional Agency. The same provision then created the California Department of Corrections and Rehabilitation (CDCR), consisting of the Division of Adult Operations, Division of Adult Programs, Division of Juvenile Justice, Corrections Standards of Authority, Board of Parole Hearings, State Commission on Juvenile Justice, Prison Industry, and the Prison Industry Board. Therefore, in each instance where the word “Division” occurs, the DJJ has replaced it with “Division of Juvenile Justice.”

Title 15, Subsection 4004(a) defines “Board” as the Youthful Offender Parole Board. In July 2005, Section 1710(a) of the W&I Code abolished the Youthful Offender Parole Board and then created the Juvenile Parole Board. Therefore, in each instance where the word “Board” occurs, the DJJ has replaced it with “Juvenile Parole Board.”

Within the DJJ there exists the Division of Juvenile Parole Operations. In each instance where the word “Parole” was used and clearly indicates the language is referring to the Division of Juvenile Parole Operations, the word “Parole” has been replaced with the “Division of Juvenile Parole Operations.”

Title 15, new Subsection 4900(24) defines the term “Parole Hold.” All of the regulation sections included in this filing are specific to parole. For the purposes of these regulations, DJJ does not identify or use any other type of “hold.” However, other outside agencies and law enforcement can place a hold on a youth. Therefore, where appropriate, the DJJ has also included the word “parole” for better clarity.

The DJJ no longer identifies where youth under DJJ’s jurisdiction are housed as institutions. Therefore, “institution” has been replaced with “facility.”

Title 15, Subsection 4004(n) defines “Parole Agent.” The DJJ finds no distinction between an agent and a Parole Agent. Therefore, in all instances where the word “agent” occurs, the DJJ has replaced it with “Parole Agent.”

The DJJ has amended the regulations to replace the acronyms with the appropriate terms as follows:

“DJJ” has been replaced with “Division of Juvenile Justice,” “DJPO” has been replaced with “Division of Juvenile Parole Operations,” “JPB” has been replaced with “Juvenile Parole Board,” “CAP” has been replaced with “Corrective Action Plan,” “RRD” has been replaced with “Revocation Release Date,” and “DDMS” has been replaced with “Disciplinary Decision Making System.”

The DJJ made the following changes to address the forms that were not identified as such or named correctly and has included form numbers and revision dates:

Subsection 4852(a) is amended to include “incorporated by reference” as required by Title 1, Article 2, Section 20 of the Government Code (GC).

Subsection 4852(b) is amended to identify “Violation reports” as the “Violation Report, DJJ 3.264A (REV 09/09)” and include the text “incorporated by reference” as required by Title 1, Article 2, Section 20 of the GC.

New Subsection 4852 (c) is amended to identify the revocation matrix as the “Parole Revocation Assessment Matrix, REV 11/2008, and include the text “incorporated by reference” as required by Title 1, Article 2, Section 20 of the GC.

New Subsection 4852(e) is amended to identify the “Corrective Action Plan” as “DJJ 3.221 (REV 04/09)” and include the text “incorporated by reference” as required by Title 1, Article 2, Section 20 of the GC.

New Subsection 4853(b) and (c) are amended to include the form numbers and revision dates for each form.

New Subsection 4853 (l) is amended to include the revision date and include the text “incorporated by reference” as required by Title 1, Article 2, Section 20 of the GC.

New Subsection 4900(5) is amended to identify the “Corrective Action Plan” as “DJJ 3.221 (REV 04/09).” In addition, the text “incorporated by reference” was included as required by Title 1, Article 2, Section 20 of the GC.

New Subsection 4900 (b) (22) is amended to identify the “Notice of Charges” as “DJJ 3.274 (REV 04/10),” and include the text “ incorporated by reference” as required by Title 1, Article 2, Section 20 of the GC.

New Subsection 4900(23) is amended to identify the “Notice of Conditions of Parole” as “DJJ 3.207 (REV 04/10),” and include the text “incorporated by reference” as required by Title 1, Article 2, Section 20 of the GC.

New Subsection 4900(24) is amended to identify the “Notice of Rights” as form “Notice of Revocation Rights and Acknowledgement, DJJ 3.270 (REV 08/10),” and include the text “incorporated by reference” as required by Title 1, Article 2, Section 20 of the GC.

Existing Section 4935 is amended to identify which forms are used and replace the word “forms” with “an Appeal Form, DJJ 1.316 (Rev 10/07) for appealing non-revocation related issues or an Appeal of Parole Revocation Decisions, DJJ 3.290 (NEW 10/09) for revocation related issues, and include the text “incorporated by reference” as required by Title 1, Article 2, Section 20 of the GC.

New Subsection 4939.5(a)(3) is amended to identify the “Appeal Board Order” as “DJJ 1.311 (Rev 11/08),” and include the text “incorporated by reference” as required by Title 1, Article 2, Section 20 of the GC.

Existing Subsection 4940(a) is amended to identify the “Appeal Board Order” as “DJJ 1.311 (Rev 11/08).”

New Subsection 4982 (b) is amended to identify the “Corrective Action Plan” as “DJJ 3.221 (REV 04/09).”

New Subsections 4983 (c) (3) and 4983.5 (a) are amended to identify the matrix as the “Parole Revocation Assessment Matrix, REV 11/2008, or the Revocation Extension Matrix, REV 12/2008 and include the text “incorporated by reference” as required by Title 1, Article 2, Section 20 of the GC.

The DJJ made changes to the following sections to address the correct outline format: Subsection 4900 (b) (8), Subsection 4900 (b) (43); Subsections 4977(b)(1) through (12); Subsections 4977.5(a) through (c); Subsection 4977.6(a); and Subsections 4977.7(c) through (e).

The DJJ made changes throughout the regulations to correct capitalization of words/terms where appropriate.

The DJJ made the following changes throughout the regulations for better clarity:

Existing Section 4845 is amended to include definitions of terms pertaining to parole violations, detention and revocation. These definitions were included in the original proposed regulation

language under Division 4.5, specifically Section 4900(b). However, these definitions did not apply to Division 4.0 but are used throughout Article 5. Therefore it is necessary to adopt specific definitions from Section 4900(b) in Division 4.0, Section 4845(a) for consistency within both Divisions.

Existing Section 4848.5 is amended to change “of” to “for.”

Existing Section 4850 is amended to include “there are” after the word “assuming.”

New Subsections 4853 (a) and 4982 (b) (3) are amended to delete “which the Parole Agent and Unit Supervisor deem serious or reportable” and add “that is exacerbated by repetition, severity and/or relation to the youth’s original commitment offense” for better clarity. The L.H. Stipulated Permanent Injunction does not preclude the Division of Juvenile Justice from referring a parolee for parole revocation when a parolee’s violation is a Level 1 or 2 behavior. The previous language left too much up to interpretation. The Division of Juvenile Justice believes that when a parolee repeatedly commits the same violation, or the severity of the violation increases or the parolee commits a violation directly related to the original commitment, the Level 1 or Level 2 violation constitutes a referral to the Juvenile Parole Board.

New Subsection 4853(g) is amended to include “revocation” between the words “initial packet.”

New Subsection 4853(h) is amended to include “Revocation” in front of the words “Hearing” and replace “at a reasonable time prior” with “48 hours prior.” The “at a reasonable time” leaves too much up to interpretation. The L. H. Stipulated Permanent Injunction requires that any additional evidence or documents be provided to the parolee’s counsel 48 hours prior to the Revocation Hearing. The Division of Juvenile Justice believes that this would also include supplemental charges.

New Subsections 4853 (i) and 4854 (e) are amended to delete the term “hearing officer guidelines.” This term is vague and does not pertain to just one document. Guidelines for hearings are contained within the regulations. Therefore, this term is not necessary and is deleted.

New Subsection 4854 (f) is amended to include “her” after “his” for consistency.

New Subsection 4854(j) is amended to replace “4977, 4977.6, 4977.7, 4979, 4980(d), 4980.5, and 4983.5) with “sections 4977 through 4983.5.”

New Subsection 4900(b)(2) is amended to delete the words “Division of” from “Division of Juvenile Parole Board” as the DJJ does not refer to the Juvenile Parole Board as a Division.

New Subsection 4900(b)(12) is amended to correct the title “Adult Division” to “Division of Adult Operations.”

New Subsection 4900(b)(14) is restored as the term “Exit Interview” is mentioned in Subsection 4977.7(e)(7).

New Subsection 4900(b)(35) is amended to replace “termed” with “referred to as.”

New Subsection 4900(b)(38) is amended to change “his or her” to “his/her.”

New Subsection 4936 (e) is amended to replace “a Juvenile Parole Board Policy” with “any of the provisions contained in Division 4.0, Chapter 4, Article 5 and Division 4.5 of Title 15, California Code of Regulations. All rules governing the appeal process are being adopted in this proposed action.

Existing Section 4939 is amended to repeal “Appeal bodies may take action as follows:” as this text is redundant and should have been shown as repealed in the initial proposal; and is amended to restore the Note as follows: Note: Authority cited: Section ~~4722~~–1719, Welfare and Institutions Code. Reference: Sections ~~4724~~ 1723 and 1725, Welfare and Institutions Code.

New Subsection 4939.5(a) was amended to replace “policy” with “Section 4938.” Provisions for scheduling hearings are included in Section 4938. The regulation language is amended to reflect this information.

New Subsection 4961.1 (a) is amended to delete “(DDMS) policy for youth” and “This applies to Levels 1 through 3 of the Disciplinary Decision Making System that do not extend.” This Subsection refers to Sections 4630 through 4654 and is sufficient. The additional language is not necessary and is therefore deleted for simplicity.

New Subsection 4977 (a) is repealed. This language is redundant and is included in Subsection (b) (4).

Subsections 4977.7(c)(2), 4978(c)(3), and 4981(d) were amended to include “there are” after the word “assuming.”

New Subsections 4977 (b) (8) and 4977.5 (b) (7) are amended to replace “below” with “in Section 4977.6.”

New Subsection 4977.7 (a) is amended to replace “below” with “within this section.”

New Subsection 4978(d)(1) is amended to replace the word “may” with “can.”

New Subsection 4980(f) is amended to replace the word “For” with “During.”

New Subsection 4981(a)(2) is amended to add the word “by” between the words “established the.”

Existing Subsection 4981(b)(1) is amended to change “him” to “him/her” for consistency.

CHANGES IN RESPONSE TO PUBLIC COMMENTS

The DJJ has made modifications to the proposed regulation text in response to written comments received during the comment periods as follows:

Section 4849 was amended to delete “an arrest and/or” from the new text for better clarity.

Section 4852(a) was amended to add the Accommodation and Assistance Grievance form DJJ 3.261 (NEW 01/09) as it was left out of the original text.

Section 4852(b) was amended to add the word “business” after 20 for better clarity.

Sections 4852 (c) and (e) were amended to delete the word “juvenile” as it is not needed.

Section 4853(b) was amended to delete the word “juvenile” and the text “Parolee shall be served with an actual notice of the alleged parole violation, including a short factual summary of the charged conduct” as the text is not needed. “Notice of Rights and Acknowledgement, Notice of Charges, and Accommodation and Assistance Grievance forms shall be served and explained to the parolee” was added for clarity. The words “a” “form” and the phrase “a written notice of the Juvenile Parolee’s rights regarding the Revocation Process and timeframes” were deleted as the text is not needed.

Section 4853(c) was amended to delete the word “juvenile” and “Parolee shall be served with an actual notice of the alleged parole violation, including a short factual summary of the charged conduct” as it is not needed. The Notice of Rights and Acknowledgement and Notice of Charges forms were added as they were previously left out of the text. The words “a” “form” and the text “a written notice of the Juvenile Parolee’s rights regarding the Revocation Process and timeframes” were deleted as the text is not needed. “Accommodation and Assistance Grievance” forms shall be served and explained to the parolee” was added for consistency and clarity.

Section 4853(e) was amended to delete the word “Juvenile” as it is not needed.

Section 4853(i) was amended to add “and must be consistent with the Revocation Matrix and hearing officer guidelines” for clarity. Also the word “Juvenile” was deleted.

Section 4853(k) was amended to add “Timely and reasonable accommodations for effective communication and meaningful participation shall be provided to parolees at all parole revocation proceedings. This includes accommodations for parolees with limited English skills, effective communication needs, and/or disabilities” for better clarity. The text “All Parole Revocation Hearings shall be accessible to and usable by individuals with disabilities” was deleted as the text is not needed.

Section 4853(l) was amended to delete “additional time,” “If a preponderance of the evidence shows that a Parolee committed such misconduct, the Parolee may be returned for,” “one,” and the text “in addition to his/her revocation term” as the text is not needed. The text “an additional” was added for clarity.

Section 4854(e) was amended to add “based on relevant assessments as provided in the Revocation Extension Matrix and hearing officer guidelines” for clarity.

Section 4854(g) was amended to delete “Juvenile Parole Board’s” and new text “DJJ’s” is being added to make the distinction between the Division of Juvenile Justice and the Juvenile Parole Board.

Section 4854(h) was amended to delete the word “calendar” as it is not needed.

Section 4900 (a) (2) was amended to change the words “violation hearings” to “revocation proceedings” for clarity.

Section 4900 (a) (4) was amended to add the word “conditions” for clarity.

Section 4900 (a) (5) through (8) were deleted as these terms are not included in any of the regulation sections.

Section 4900 (a) (6) was amended to delete “unless otherwise defined” for consistency.

Section 4900 (a) (8) was added to define the criteria for detention.

Section 4900 (a) (12) Detention Section was deleted because it is not needed.

Section 4900 (a) (9) was amended to add “a record of such impairment or condition; or being regarded as having such an impairment or condition” for clarity of the definition for disability.

Old Sections 4900 (a) (16), (19) and (21) were deleted as these terms are not included in any of the regulation sections.

New Section 4900 (a) (16) was added to define “Full Board Panel”.

New Section 4900 (a) (19) was added to define “Not-in-Custody”.

Old Sections 4900 (a) (25) and (32) were deleted as these terms are not included in any of the regulation sections.

New Section 4900 (a) (36) was amended to change the word “parolee” to “parole” and add the following text “A parole violator’s parole revocation period may not be extended because of the Division of Juvenile Justice’s failure to provide a recommended program at all or in a timely manner” for better clarity.

New Section 4900 (a) (37) was amended to change “juvenile parolee” to “parole violator” for clarity.

New Section 4900 (a) (39) was amended to delete “and a Welfare and Institutions Code 1767.3 hold may have been placed” and the word “Hearing” as the text is not needed.

Old Section 4900 (a) (51) was deleted as it is not necessary.

Section 4925 was restored as the section should not have been repealed.

Section 4928 was restored as the section should not have been repealed.

Section 4929 was amended to add “as appropriate and deemed necessary by the Juvenile Parole Board” for clarity. The text “either by the Juvenile Parole Board or by the parolee’s assigned parole agent. A parole agent, however, cannot change or delete orders by the Juvenile Parole Board” was deleted as it is not needed.

Section 4937.5 was restored to its original section number. “for Parole Revocation Administrative Appeals” was deleted as it is not needed.

Subsection 4937(a) was amended to delete “relating to the parole revocation and revocation extension process” for better clarity.

Subsection 4937(b) was amended to add “For appeals relating to the parole revocation and revocation extension proceedings” and the text “for these proceedings” was deleted for better clarity.

Subsection 4937(c) was amended to add “For appeals relating to all other proceedings: (a) The first level of appeal is the Executive Officer, or his/her designee. (b) The second level of appeal is the appeal panel which has the same composition as a full board panel. Whenever possible, the appeal panel shall not include those persons whose decision is being appealed. (c) The final level of appeal is the full board en banc” for better clarity.

Section 4938 was amended to delete “Parole Revocation Administrative Appeal” as it not needed.

Subsection 4938(a) was amended to delete “relating to a Parole Revocation or Revocation Extension Proceeding” for clarity

Section 4939 was amended to delete “all other” and add “Non-Revocation Related” to specify the type of appeal.

Subsection 4940(a) was amended to add “within five (5) business days from the date of decision” to indicate the time limit.

Subsection 4961.1(d)(2) was amended to delete the word “Criminal” as it is not needed.

Subsection 4961.1(d) (3) was amended to delete “(JPB) or postmarked within fifteen (15) business days following sentencing or final disposition at the trial court level in the criminal proceedings, and” as it is not needed.

Subsection 4961.1(e) was amended to change “Jurisdiction” to “Commitment” to use the correct word.

Subsection 4977(b)(3) was amended to add “parolee” for better clarity.

Subsection 4977.5(a) was amended to delete the word “have” and add the words “be a” for clarity.

Subsection 4977.5 (b) was amended to delete the words “in” and “status” for clarity.

Subsection 4977.5 (b)(1) and (2) was amended to delete the text “parole discovers the behavior” and add the text “the date of discovery” for clarity.

Subsection 4977.5 (b)(7) was amended to delete “revocation extension” as it is not needed.

Subsection 4977.5(c) was amended to delete the words “in” and “status” as they are not needed.

Subsection 4977.6(a) was amended to add “reasonable” added for clarity.

Subsection 4978(a)(1) and (2) were amended to add the text “Parolee is” to specify who, text “the person or property of another” was deleted and the text “himself/herself,” was added.

Subsection 4978(a)(3) was amended to add the text “Parolee is” is being added to specify who and the word “or” is added to how a continuation.

Subsection 4978(a)(4) was added as criteria for detention to address parolees whose mental state may be a threat to public safety.

Subsection 4978(d) (2) was amended to delete “a Member or Board Representative” and add “the Juvenile Parole Board” to state the official name of the Board and the role of the hearing officer.

Subsection 4980(a) was deleted because is it is not needed and the subsequent subsections were changed.

Subsection 4980(1) was amended to delete the text “parole revocation proceeding” and add “Revocation/Revocation Extension Hearing” and “/Optional Waiver Reviews” for clarity.

Subsection 4981(a) was amended to delete “action” and add “proceedings” for clarity.

Subsection 4983(a) was amended to delete “Hearings” and add “proceedings” or clarity.

Subsection 4983(b)(2) was amended to delete the text “under specific and extraordinary circumstances” as it is not needed.

Subsection 4983.5 (b) was amended to delete the text “within fifteen (15) business days following sentencing or final disposition at the trial court level in the criminal proceedings, and” is being deleted because it is not needed.

UPDATED INITIAL STATEMENT OF REASONS

There was a need to make extensive edits to the Initial Statement of Reasons that was submitted and filed with the Office of Administrative Law with the Proposed Regulations. The process was not explained completely in the Initial Statement of Reasons that was submitted and in accordance with the Administrative Procedures Act requirements, more clarity is needed. The Addendum to the Initial Statement of Reasons was made available to the public in the 15-Day Notice mailed on January 10, 2012.

We are submitting the Addendum to the Initial Statement of Reasons which addresses the numerous deficiencies that were in the original submission. The Addendum to the Initial Statement of Reasons is incorporated by reference.

FORMS/DOCUMENTS INCORPORATED BY REFERENCE

The forms/documents specified in this proposal are incorporated by reference because the documents are cumbersome, unduly expensive, and otherwise impractical to publish in the California Code of Regulations. The following forms are easily accessible to all DJJ staff:

- Request for Accommodation and Assistance, DJJ 3.260 (NEW 01/09)
- Accommodation and Assistance Grievance, DJJ 3.261 (NEW 01/09)
- Notice of Parole Revocation Rights and Acknowledgement, DJJ 3.270 (REV 08/10)
- Notice of Charges, DJJ 3.274 (REV 04/09)
- Corrective Action Plan, DJJ 3.221 (REV 04/09)
- Violation Report, DJJ 3.264A (REV 09/09)
- Appeal Form, DJJ 1.316 (Rev 10/07)
- Appeal of Parole Revocation Decisions, DJJ 3.290 (NEW 10/09)
- Appeal Board Order, DJJ 1.311 (rev 11/08)
- Parole Revocation Assessment Matrix, REV 11/2008
- Revocation Extension Matrix, REV 12/2008

SUMMARY OF WRITTEN COMMENTS AND RESPONSES TO COMMENTS RECEIVED DURING THE 45-DAY COMMENT PERIOD

Written Comment No. 1

Rosen, Bien & Galvan, LLP wrote that in Section 4846(c) - Section 4846(c) provides “Lawful searches that would otherwise violate any policies as prescribed in Sections 4846-4848 may be conducted under unusual circumstances upon approval of the supervising parole agent.” There is no guidance regarding what constitutes “unusual circumstances.” Such language needs to be added.

Also, this section refers to “Sections 4846 – 4848.” However, given that all sections have been renumbered, the reference should be to “Sections 4845 – 4847.”

Response:

The DJJ disagrees with the commenter. Section 4846(c) as written, requires that searches still be lawful, regardless of any unusual circumstances that would allow the DJJ to act outside of its regular policy with the approval of a supervising parole agent. The Test of Reasonableness for a warrantless search balances intrusion against legitimate government interest. (*People v. King* (2000) 82 Cal.App.4th 1363 [99 Cal.Rptr.2d 220]) Just as this reasonableness test for a lawful search is unable to be encompassed in an exhaustive list of what is not reasonable, it would be nearly impossible for the DJJ to comprise an exhaustive set of circumstances that would be unusual. As written, this section not only has the protection for any parolee or parole violator that the search be lawful, but it also includes an implied reasonableness test by requiring approval of the supervising parole agent before any deviation from policy.

The reference to Sections 4846 – 4848 is correct. Sections 4845 through 4854 were renumbered by a DJJ staff member unfamiliar with the regulatory process. It was determined by the DJJ that it was not necessary to change the section numbers within Article 5. Therefore, DJJ has changed the section numbers back to their original configuration.

Written Comment No. 2

Rosen, Bien & Galvan, LLP wrote that in Section 4848.5 - The text of this section has been revised to cite to Section 4978 for the parolee detention criteria. Plaintiffs continue to object to the language in Section 4978 that a "Parolee is a danger to himself/herself" is a criterion for arrest or detention, and we further object to any citation to such language.

Response:

The DJJ disagrees with the commenter. This criterion is a disputed item in the L.H. litigation matter and is currently included in the negotiated and agreed upon definition for "Detention Criteria" as it appears in the Division of Juvenile Parole Operations policies and procedures. The DJJ agrees that this criterion is not, on its own, an allowable basis for arrest (i.e. not a viable charge). However, the referenced section 4978(a) speaks specifically to "Criteria for Detention". See Response to Written Comment 46.

The DJJ has revised the proposed regulation text to clarify that the criteria included in Section 4848.5 is specific to only the detention of a parolee, eliminating the reference to the arrest of a parolee.

Written Comment No. 3

Rosen, Bien & Galvan, LLP wrote that in Section 4849 - The text of this section cites to Section 4978 for criteria and time constraints related to the detention of a parolee. Plaintiffs continue to object to the language in Section 4978 that a "Parolee is a danger to himself/herself" is a criterion for arrest or detention, and we further object to any citation to such language.

Response:

The DJJ disagrees with the commenter. See Response to Written Comments 2 and 46.

Written Comment No. 4

Rosen, Bien & Galvan, LLP wrote that in Section 4950 - There is no text for this Section.

Response:

Repealer filed 10-29-82 by OAL pursuant to Government Code Section 11349.7(j). Section 4850 is included for historical information only. There will be no text.

Written Comment No. 5

Rosen, Bien & Galvan, LLP wrote that in Section 4851(a) - Section 4851(a) provides that "prior to discussing a possible violation of any condition of parole with a parolee, the forms for "Notice of Rights and Acknowledgement," "Notice of Charges," and "Request for Accommodation and Assistance Grievance" (DJJ 3.261) should be included in this list. See Juvenile Parole Board Policies & Procedures ("JPB P&Ps") (CN410) at 18, section 3.3.4.4.

Response:

The DJJ has revised the proposed regulation text to correct the list of referenced forms.

Written Comment No. 6

Rosen, Bien & Galvan, LLP wrote that in Section 4851(a) - Additionally, this section should also indicate that the agent must conduct a field file and electronic database review to complete Section 1 of the DJJ Form 3.260 prior to service, conduct an interactive review with the parolee, have the parolee sign Section 2 and complete Section 3 of the 3.260 prior to the serve.

Response:

The DJJ disagrees with the commenter. The recommendation provides detailed language already contained in the controlling policies and procedures. These steps are inherent in the preparation of these forms that are required to be served.

Written Comment No. 7

Rosen, Bien & Galvan, LLP wrote that in Section 4851(b) - The proposed text of Section 4851(b) states that violation reports for Not-in-Custody parolees must be submitted to the Board for review within “twenty (20) days of the Notice of rights and charges.” According to the Division of Juvenile Parole Policies and Procedures (“DJPO P&Ps”), such reports must be completed within 15 business days of the date of discovery in such cases. See DJPO P&Ps at 16, section 3.2.6. The text of this section should be revised to be consistent with the DJPO P&Ps, reflecting a deadline of fifteen (15) business days after the date of discovery.

Response:

The DJJ disagrees with the commenter. The twenty (20) day timeframe is correct as currently provided for in the negotiated and agreed upon policies and procedures.

Written Comment No. 8

Rosen, Bien & Galvan, LLP wrote that in Section 4851(b)(1) through 4851(b)(3) - Plaintiffs have concerns that Sections 4851(b)(1)-(3) are not clearly written, and are not consistent with recent Standards and Criteria discussions the parties have had. Therefore, we suggest deleting Sections 4851(b)(1)-(3) as they are currently written and replacing them with the following text: “(1) Charge Section: A detailed description of the facts and elements for each charge, including the sources and information that the AOR relied on determining whether there was probable cause to sustain the charges against the parolee and statements from any witnesses and/or victims; (2) Detention Section: If the AOR’s recommendation is to detain the parolee, at least one of the three detention criteria listed in the Detention Section; (3) Disposition Section: An identifiable correlation between the parolee’s alleged behavior and the recommended disposition, including a clear statement of the AOR’s reasoning for making any deviations from the disposition recommended by the revocation matrix.”

Response:

DJJ disagrees that the text in Section 4851(b) (1)-(3) should be deleted and changed in its entirety. For reasons stated above, and in accordance with the Administrative Procedures Act, the DJJ wishes to amend this section to be as clear as possible. The commenter’s suggested language would add unnecessary complexity and confusion. Language of this detail is more appropriate for the DJJ’s policies and procedures, which the juvenile parole agents frequently look to for guidance. The commenter’s suggested language will not only add confusion to the regulations, but also to the existing policies and procedures, because the suggested language extracts language from the Definitions section of the negotiated policies and procedures and makes

substantive changes to the definitions. Therefore, the definitions in the regulations and in the policies and procedures would not match. This would result in confusion for our juvenile parole agents and could essentially revise policies that have already been negotiated in good faith.

Written Comment No. 9

Rosen, Bien & Galvan, LLP wrote that in Section 4851(b)(2) - Section 4851(b)(2) as currently written indicates that the violation report shall contain “A summary of the alleged facts including the parolee’s version, if any.” However, Plaintiffs object to the taking of statements from parolees outside the presence of their attorneys - a dangerous return to the prior unconstitutional system in which parolees were asked to make statements and admissions in violation of their right to due process.

Response:

The DJJ disagrees with the commenter that the phrase “including the parolee’s version, if any” should be deleted from Section 4851(b) (2). Conducting an investigation of parole violation allegations is a requirement of the parole agent as provided for in the negotiated and agreed upon policies and procedures. Accepting oral statements from parolees during the notice of rights serve and later recording those statements as part of the parolee file is a component of the investigative process. This issue is currently a disputed item in the L.H. litigation matter. DJJ has ceased the routine practice of asking parolees to sign written admission forms since 2009. (This is the practice that the commenter refers to). The regulations as written are consistent with the L.H. Injunction.

Written Comment No. 10

Rosen, Bien & Galvan, LLP wrote that in Section 4852(a) - Section 4852(a) provides that the parole revocation process shall address Level III parolee behavior, which parole staff are required to report to the JPB, including any serious technical and/or law violations, and/or “any Level I or Level II behavior which the Parole Agent and Unit Supervisor deem serious or reportable.” There is no guidance regarding what constitutes “serious or reportable” behavior. Plaintiffs continue to object to this vague and standardless language, and Defendants’ refusal to provide their internal criteria regarding Level I and II offenses.

Response:

The DJJ disagrees with the commenter. What constitutes serious or reportable Level I or II behavior is left to supervisor discretion, which can then be reviewed by the Juvenile Parole Board. DJJ has already provided internal criteria regarding Level I and II offenses to Plaintiffs in the form of policies & procedures. In any event, the resolution of disputed items regarding what information Plaintiffs are entitled to should be resolved through the dispute resolution process, rather than through amendment to the regulation text here.

Written Comment No. 11

Rosen, Bien & Galvan, LLP wrote that in Section 4852(b) - Section 4852(b) states that for Not-in-Custody parolees, no later than ten (10) business days after the date of discovery, “the Parolee shall be served with an actual notice of the alleged parole violation, including a short factual summary of the charged conduct, a Request for Accommodation and Assistance form, and a written notice of the Juvenile Parolee’s rights regarding the Revocation Process and timeframes.” This section should be revised to be consistent with the DJPO P&Ps, which include the “Accommodation and Assistance Grievance” form among the various forms to be served to

parolees at the Notice of Rights stage. Thus, the text should be revised to read as follows: “If a Juvenile Parolee is not in custody, no later than ten (10) business days after the date of discovery, the forms for Notice of Rights and Acknowledgement, Notice of Charges, Request for Accommodation and Assistance, and Accommodation and Assistance Grievance shall be served and explained to the parolee.”

Response:

The DJJ has revised the proposed regulation text to the titles of the specific forms as recommended.

Written Comment No. 12

Rosen, Bien & Galvan, LLP wrote that in Section 4852(c) - Section 4852(c) reads similarly to Section 4852(b) with regard to the documents that are to be served the in-custody parolee. As with Section 4852(b), this section should be revised so as to be consistent with the DJPO P&Ps, which include the Accommodation and Assistance Grievance form among the forms to be provided to the parolee at the Notice of Rights stage. Thus, the text should be revised to read as follows: “If a Juvenile Parolee remains in custody, no later than three (3) business days after the placement of the Parole hold, the forms for Notice of Rights and Acknowledgement, Notice of Charges, Request for Accommodation and Assistance, and Accommodation and Assistance Grievance shall be served and explained to the parolee.”

Response:

The DJJ has revised the proposed regulation text for consistency with the language associated with the detained and Not-In-Custody cases.

Written Comment No. 13

Rosen, Bien & Galvan, LLP wrote that in Section 4852(d) - Additionally, Section 4852(d) references Sections 4977 through 4983.5. For Plaintiffs’ comments and objections regarding Sections 4977 through 4983.5, please see pages 9-11, *infra*. Those comments and objections apply to every instance in which citations and/or references to these sections appear.

Response:

The DJJ disagrees with the commenter. For DJJ Response to commenter regarding Section 4852(d) references Sections 4977 through 4983.5. For Plaintiffs’ comments and objections regarding Sections 4977 through 4983.5, please see below.

Written Comment No. 14

Rosen, Bien & Galvan, LLP wrote that in Section 4852(g) – The language in Subsection (g) is problematic. The Injunction prohibits the splitting of charges beyond 35 days absent good cause. See Paragraph 34 of Stipulated Order for Permanent Injunctive Relief. Thus, Plaintiffs propose revising Subsection (g) to read as follows: “(g) If chargeable behavior that could not be previously discovered by Parole, is discovered after the Notice of Rights, but before the revocation packet has been submitted to the Juvenile Parole Board, the parolee can be served on the new charges, and the new charges incorporated into the initial packet.”

Response:

The DJJ disagrees with the commenter. Subsection (g) as written is consistent with the L.H. Injunction which states at Paragraph 34 that “all known charges arising from conduct known to

Defendants must be brought at a reasonable time prior to the hearing.” The suggestion to add behavior that “could not have been discovered” goes beyond known conduct and raises the bar to an undefined standard that is not required by the L.H. Injunction.

Written Comment No. 15

Rosen, Bien & Galvan, LLP wrote that in Section 4852(i) – Subsection (i) states that “The parole revocation term imposed by the Juvenile Parole Board may not exceed twelve (12) months. A Juvenile Parolee’s revocation period can only be extended through the Revocation Extension process as described in Section 4853.” There should be a reference to the revocation matrix in this section. Thus, the first sentence of this subsection should be revised as follows: “The parole revocation term imposed by the Juvenile Parole Board may not exceed (12) months and must be consistent with the revocation matrix and hearing officer guidelines.”

Response:

The DJJ has revised the proposed regulation text to include reference to the recommended matrix and hearing officer guidelines.

Written Comment No. 16

Rosen, Bien & Galvan, LLP wrote that in Section 4852(k) – Subsection (k) states that “All Parole Revocation Hearings shall be accessible to and usable by individuals with disabilities.” This language is unclear and should be revised to read as follows: “Timely and reasonable accommodations for effective communication and meaningful participation shall be provided to Juvenile Parolees at all Parole Revocation Hearings. Juvenile Parolees with limited English skills, effective communication needs, and/or disabilities shall be provided with accommodations needed to communicate effectively and meaningfully participate.” See Paragraph 48 of Stipulated Order for Permanent Injunctive Relief.

Response:

The DJJ has revised the proposed regulation to provide clarification of expectations.

Written Comment No. 17

Rosen, Bien & Galvan, LLP wrote that in Section 4852(l) – Subsection (l) should be revised to be consistent with the Joint Stipulation Regarding Modifications to Division of Juvenile Justice Parole Revocation Policies and Procedures, dated September 8, 2009. Thus, this subsection should read as follows: “Parolees charged with serious in-custody misconduct involving violence against a person that occurs while the parolee is in custody pending revocation proceedings may be assessed up to an additional twelve (12) months, based upon relevant assessments as provided in the Revocation Extension Matrix.”

Response:

The DJJ has revised the proposed regulation as recommended with omission of the reference to the matrix and hearing officer guideline reference as this statement is already provided for in Section 4853(e) and would be redundant.

Written Comment No. 18

Rosen, Bien & Galvan, LLP wrote that in Section 4853(e) – In Subsection (e), a reference to the Revocation Extension Matrix should be added and the numeral “12” should also be written out. Thus, this subsection should read as follows: “If the Juvenile Parole Board sustains revocation

extension charges, the period of revocation may be extended up to twelve (12) months from the current Revocation Release Date (RRD), based on relevant assessments as provided in the Revocation Extension Matrix.”

Response:

The DJJ has revised the proposed regulation as recommended.

Written Comment No. 19

Rosen, Bien & Galvan, LLP wrote that in Section 4853(f) – In the first sentence of Subsection (f), there should be a comma after the phrase “Probable Cause Hearing and...”

Response:

The DJJ has revised the proposed regulation as recommended.

Written Comment No. 20

Rosen, Bien & Galvan, LLP wrote that in Section 4853(h) – Subsection (h) discusses the timeliness requirements for Revocation Extension Hearings when the alleged conduct that is grounds for a charge occurs within thirty (30) days prior to a parole violator’s Revocation Release Date (RRD). However, there is no mention of the timeliness requirements for a Revocation Extension Hearing when the alleged conduct that is grounds for a charge occurs more than thirty (30) days prior to a parole violator’s RRD. Thus, the following language should be added as a subsection following Subsection (h): “Where alleged conduct that is grounds for a charge occurs more than thirty (30) days prior to a parole violator’s Revocation Release Date, a Revocation Extension Hearing must occur as soon as possible but no later than thirty-five (35) calendar days after the notice of charges is served on the parole violator.”

Response:

The DJJ disagrees with the commenter. Timeliness requirements for Revocation Extension Hearings, when a charge occurs more than 30 days prior to RRD, are included as a general requirement in Section 4853(f).

Written Comment No. 21

Rosen, Bien & Galvan, LLP wrote that in Section 4853(j) – Subsection (j) references Section “4080(d).” This is a typographical error. The section that should be referenced is Section “4980(d)” (regarding Revocation Extension Probable Cause Hearings). Additionally, Subsection 4853(j) references Sections 4977, 4977.6, 4977.7, 4979, “4080(d)” [which should be “4980(d)”], 4980.5, and 4983.5. For Plaintiffs comments and objections regarding these Sections, please see pages 9-11, *infra*. Those comments and objections apply to every instance in which citations and/or references to these sections appear.

Response:

The DJJ has revised the proposed regulation to correct the Section references.

The DJJ disagrees with the commenter with regard to any objections of these referenced sections as this is a disputed item in the L.H. litigation matter. For Plaintiffs’ comments and objections regarding Sections 4977 through 4983.5, please see below.

Written Comment No. 22

Rosen, Bien & Galvan, LLP wrote that in Section 4900 – This entire section is missing some of the definitions that appear in Defendants’ P&Ps. For example, “Detention Criteria,” “Developmental Disability,” “Minor Victim/Witness,” “Not in Custody,” “Physical Impairment,” “Revocation Release Report,” “Supplemental Charges,” and “Unit Supervisor” are not included in this section, but appear in the “Definition(s)” section of all P&Ps. See, e.g., DJPO P&Ps (CN410); JPB P&Ps (CN416). These missing definitions should be added to this section of the Regulations so that the Regulations and P&Ps are consistent.

Response:

The DJJ disagrees with the commenter in part. Only definitions for those terms actually appearing in the regulation text should be included in the definitions section of the regulations. Definitions have been removed and added accordingly as identified in the following amendments to Section 4900.

Written Comment No. 23

Rosen, Bien & Galvan, LLP wrote that in Section 4900(a)(4) – At the end of Subsection 4900(a)(4) (the definition of “Charges”), the word “conditions” should be added so that the definition is consistent with DJPO P&Ps.

Response:

The DJJ has revised the proposed regulation to include the word “conditions” consistent with the negotiated and agreed upon policies and procedures.

Written Comment No. 24

Rosen, Bien & Galvan, LLP wrote that in Section 4900(a)(10) – In Subsection (a)(10), the “Date of Discovery” is defined as “The date that the Division of Juvenile Justice obtains knowledge that an alleged violation of parole has occurred, unless otherwise defined.” Plaintiffs object to the addition of this last phrase (“unless otherwise defined”). Moreover, such addition is inconsistent with the definition of “Date of Discovery” in Defendants’ Policies and Procedures. See, e.g., DJPO P&Ps (CN410), page 2.

Response:

The DJJ disagrees with the commenter. The phrase "unless otherwise defined" is correctly defined as stated. The "date of discovery" may, under certain circumstances such as in extradition cases, be defined differently as the date a parolee is returned to California.

Written Comment No. 25

Rosen, Bien & Galvan, LLP wrote that in Section 4900(a)(13) – In Subsection (a)(13), the definition of “Disability” does not match the definition in Defendants’ P&Ps. See e.g., DJPO P&Ps (CN410). The definition in Subsection (a)(13) is missing the following phrase: “a record of such impairment or condition; or being regarded as having such an impairment or condition.” This phrase should be added to this subsection so that the definition is consistent with the P&Ps.

Response:

The DJJ has revised the proposed regulation as recommended consistent with the negotiated and agreed upon policies and procedures.

Written Comment No. 26

Rosen, Bien & Galvan, LLP wrote that in Section 4900(a)(15) – In Subsection (a)(15), the word “or” should be added after “Action required if there is insufficient evidence to support a probable cause finding at the Probable Cause Hearing,” and before “if there is insufficient admissible evidence...”

Response:

The DJJ disagrees with the commenter. The proposed regulation text is consistent with the negotiated and agreed upon policies and procedures.

Written Comment No. 27

Rosen, Bien & Galvan, LLP wrote that in Section 4900(a)(23) – In Subsection (a)(23), the definition of “Good Cause” is as follows: “Justifiable, legitimate, and unforeseen reason for the delay, asserted in good faith and caused by factors that are beyond the control of the Division of Juvenile Justice.” This definition should be revised to be consistent with that in the P&Ps. Thus, the full definition should read: “Justifiable, legitimate, and unforeseen reason for the delay, asserted in good faith and caused by factors that are beyond the control of the Division of Juvenile Parole Operations, the Juvenile Parole Board, or the Division of Juvenile Justice.”

Response:

The DJJ has revised the proposed regulation as recommended consistent with the negotiated and agreed upon policies and procedures.

Written Comment No. 28

Rosen, Bien & Galvan, LLP wrote that in Section 4900(a)(42) – In Subsection (a)(42), the definition of “Revocation Extension Hearing” does not match the definition in Defendants’ P&Ps. See, e.g., DJPO P&Ps (CN410). The following sentence should be added to the definition in this subsection to make the two definitions consistent: “A parolee’s parole revocation period may not be extended because of the Division of Juvenile Justice’s failure to provide a recommended program at all or in a timely manner.”

Response:

The DJJ has revised the proposed regulation as recommended. Although the suggested language should most likely not have been part of the definition as it is not a 'definition of the term' but simply part of the policy language, it is consistent with the negotiated and agreed upon policies and procedures.

Written Comment No. 29

Rosen, Bien & Galvan, LLP wrote that in Section 4900(a)(45) – In Subsection (a)(45), the definition of “Revocation Proceeding/Revocation Process” does not match the definition in Defendants’ P&Ps. See, e.g., DJPO P&Ps. Additionally, this subsection contains some additional language that is confusing. This subsection should be revised to be consistent with the P&Ps, but if the additional language is retained despite being inconsistent with the P&Ps, the text of this subsection should be revised as follows: “All stages of the revocation process by which a parolee may be returned or retained in custody following an alleged parole violation and a Welfare and Institutions Code 1767.3 hold, up to and including the Revocation Hearing or Revocation Extension Hearing and any administrative appeal. In the case of parole violators who are not in

custody, the revocation process begins when the parolee is notified of the pending charges and of his or her rights.”

Response:

The DJJ has revised the proposed regulation as recommended.

Written Comment No. 30

Rosen, Bien & Galvan, LLP wrote that in Section 4927(c) – Subsection (c) states that Subsection (b) does not apply “to Revocation or Revocation Extension proceedings.” This phrase is too narrow and should be revised to read “to Revocation Proceedings.” This way, the phrase is a direct reference to the broader definition of “Revocation Proceeding,” which includes all stages of the process by which a parolee may be returned to or retained in custody following an alleged parole violation, up to and including the Revocation Hearing or Revocation Extension Hearing and any administrative appeal.

Response:

The DJJ has revised the proposed regulation as recommended.

Written Comment No. 31

Rosen, Bien & Galvan, LLP wrote that in Section 4929 – The introductory paragraph of this section contains a typographical error (“Juvenile Patole Board” instead of “Juvenile Parole Board”). Additionally, Plaintiffs suggest that the language in this paragraph be revised to read more clearly and accurately. We suggest that Defendants add the following language to be consistent with agreements made pursuant to the L.H. Injunction: “The Board shall set conditions of parole at the time parole is granted. The Juvenile Parole Board may delete special conditions of parole before the parolee begins parole. Additional special conditions of parole, not requested in the Parole Placement Plans that do not impact the parolee’s placement may be added as appropriate and deemed necessary. A parole agent may add or delete special conditions of parole during the time a parolee is on parole, so long as the parole agent is not changing or deleting special conditions that have been imposed by the Juvenile Parole Board.” Plaintiffs note that the proposed language above does not constitute a waiver of our position that no special conditions of parole should be added at the Exit Interview. See Page 5, fn.5 of Joint Stipulation Regarding Modifications to Division of Juvenile Justice Parole Revocation Policies and Procedures, filed 09/08/2009.

Response:

The DJJ disagrees with the commenter. The proposed language regarding the addition/deletion of special conditions of parole is correct and appropriate. Any amendments to conditions of parole would only occur after a youth is placed on parole as conditions are set upon release. Additionally, parole agents do not add/delete conditions of parole as this is a statutory authority of the Board.

The DJJ has revised the proposed regulation to include the phrase “as appropriate and deemed necessary”.

Written Comment No. 32

Rosen, Bien & Galvan, LLP wrote that in Section 4929(a)(3) – In Subsection (3), “You shall not avoid parole supervision” should be changed to “You must not avoid parole supervision” to be consistent with the language used in the other subsections.

Response:

The DJJ agrees with the commenter. The proposed regulation reflects “must” as recommended.

Written Comment No. 33

Rosen, Bien & Galvan, LLP wrote that in Section 4929(a)(6) – Subsection (6) contains a typographical error (“explosives devices” instead of “explosive devices”).

Response:

The DJJ has revised the proposed regulation as recommended.

Written Comment No. 34

Rosen, Bien & Galvan, LLP wrote that in Section 4929(a)(15) – Subsection (15) contains a typographical error (there should not be a period before the parenthesis at the end of the sentence).

Response:

The DJJ has revised the proposed regulation as recommended.

Written Comment No. 35

Rosen, Bien & Galvan, LLP wrote that in Section 4929(b) – Subsection (b) states that the Board “may prescribe special conditions of parole based on an individual parolee's offense history, commitment offense/current violation, or future criminality broadly defined to take into account the parolee's entire social history.” Plaintiffs object to the language that has been added into this section because this language is overly broad and vague. Moreover, this additional language is not necessary in light of the fact that special conditions can be imposed based on a parolee’s past offense history and commitment offense (which encompasses any current violations and past social history).

Response:

DJJ disagrees with the commenter. This section as written is consistent with case law. Under *People v. Lent* (1975) 15 Cal.3d 481 [124 Cal.Rptr. 905] and *People v. Dominguez* (1967) 256 Cal.App.2d 623 [64 Cal.Rptr. 290], A condition of probation will not be held invalid unless it (1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality.

Written Comment No. 36

Rosen, Bien & Galvan, LLP wrote that in Section 4935 – In the last sentence of this section (regarding the Executive Officer’s ability to waive the time limitations in which an appeal may be filed), the phrase “good cause” has been deleted in the proposed text. Plaintiffs object to this deletion of “good cause.” The language should be added back into the regulation. Without this phrase, the proposed regulation text would allow an Executive Officer or his/her designee to waive the time limitations for appeals without good cause – i.e., for any reason in any situation.

Such a scenario is too broad in scope, and must be narrowed the specific set of circumstances prescribed by the definition of “good cause.”

Response:

The DJJ disagrees with the commenter. What is being stated is that the timeframes in which an appeal "may be filed" can be waived. This is the 20 day timeframe in which the parolee is to submit an appeal, not the timeframes required for processing an appeal. The proposed regulation is consistent with the negotiated and agreed upon policies and procedures.

Written Comment No. 37

Rosen, Bien & Galvan, LLP wrote that in Section 4938(b) – Plaintiffs suggest moving Subsection (b) from its current position to between what are now Subsections (e) and (f). Appeals from the decision of Executive Officer or his designee should come after the appeal process itself has been discussed.

Response:

The DJJ has revised the proposed regulation as recommended.

Written Comment No. 38

Rosen, Bien & Galvan, LLP wrote that in Section 4938(c) – In Subsection (c), the word “on” (appearing after “shall decide” and before “the appeal”) should be deleted.

Response:

The DJJ has revised the proposed regulation as recommended.

Written Comment No. 39

Rosen, Bien & Galvan, LLP wrote that in Section 4939.5(b) – Subsection (b) currently reads as follows: “If a new hearing is granted solely because the audio recording was inaudible, at the rehearing the Juvenile Parole Board shall not order a revocation term longer than the term imposed at the initial hearing.” No appeal should lead to a longer revocation period than originally assessed (not just appeals based on inaudible recordings). Plaintiffs strongly object to any provision that would only prohibit the imposition of greater revocation terms in appeals brought on the basis of inaudible recordings, and not in appeals brought on other bases as well. Thus, this subsection should read as follows: “After considering an appeal, the Juvenile Parole Board shall not order a revocation term longer than the term imposed at the initial hearing.”

Response:

DJJ disagrees with the commenter. This section as written is consistent with negotiated policies and procedures. The commenter’s proposed language is inconsistent with the policies and procedures, because a longer revocation term than that originally imposed may be provided so long as a new hearing has been conducted. A new hearing based solely on an inaudible recording is the exception. In a new hearing after an appeal, a parolee / parole violator is subject to a higher or lower revocation term, so long as it is consistent with policy and the Revocation Matrix.

Written Comment No. 40

Rosen, Bien & Galvan, LLP wrote that in Section 4940 – In the second sentence of Subsection (a), the “o” of “officer” should be capitalized to be consistent with the text of the Regulations.

Additionally, Subsection (a) should include a reference to the five business day deadline by which the parolee must be served with the appeal decision. See, e.g., Section 4938(e).

Response:

The DJJ has revised the proposed regulation as recommended.

Written Comment No. 41

Rosen, Bien & Galvan, LLP wrote that in Section 4977(b)(7)(b) – Subsection 4977(b)(7)(b) reads as follows: “For Revocation Extension Hearings, the right to call witnesses and present documentary evidence is limited by institutional safety and correctional goals.” Plaintiffs object to the inclusion of the phrase “limited by institutional safety and correctional goals,” as such phrase is inconsistent with the Injunction and the confrontation rights of parolees.

Response:

The DJJ disagrees with the commenter. The language as written is consistent with the L.H. Stipulated Injunction. Both the ninth circuit and the U.S. Supreme Court have upheld similar policy in *Bartholomew v. Watson* 665 F.2d 915 and *Wolff v. McDonnell* 418 U.S. 539, respectively. In *Wolff*, the Supreme Court stated that inmates facing disciplinary proceedings should be allowed to call witnesses and present documentary evidence in his defense when allowing him to do so will not be unduly hazardous to institutional safety or correctional goals.

Written Comment No. 42

Rosen, Bien & Galvan, LLP wrote that in Section 4977.7(b)(1) and 4977.7 (b)(2) – For Subsections 4977.7(b)(1)-(2), regarding remedies for late probable cause hearings, Plaintiffs note the existence of a dispute between the parties regarding the nature of the remedy for any violation of any stage of the Injunction. It is Plaintiffs’ position that there should be a remedy – other than the Probable Cause Hearing itself – for a parolee whose Probable Cause Hearing is occurs after the 13th business day but before the 35th calendar day following the placement of the parolee hold without a showing of good cause.

Response:

The DJJ disagrees with the commenter. The proposed regulation is consistent with the negotiated and agreed upon policies and procedures, and with the L.H. Stipulated Injunction. The Stipulated Injunction does not include a section on remedies for time frame violations, except for a footnote stating that DJJ will develop Policies and Procedures for remedies for time frame violations. These policies and procedures have been negotiated and developed, and the language as written is consistent with those policies and procedures.

Written Comment No. 43

Rosen, Bien & Galvan, LLP wrote that in Section 4977.7(c)(1) and 4977.7 (c)(2) – For Subsections 4977.7(c)(1)-(2), regarding remedies for late revocation hearings, Plaintiffs note the existence of a dispute between the parties regarding the nature of the remedy for any violation of any stage of the Injunction.

In Subsection 4977.7(c)(1), the following sentence should be added: “Good cause shall be defined as follows: Justifiable, legitimate and unforeseeable reason for the delay, asserted in good faith and caused by factors that are beyond the control of the Defendants.”

Response:

The DJJ disagrees with the commenter. The proposed regulation is consistent with the negotiated and agreed upon policies and procedures, and with the L.H. Stipulated Injunction. The Stipulated Injunction does not include a section on remedies for time frame violations, except for a footnote stating that DJJ will develop Policies and Procedures for remedies for time frame violations. These policies and procedures have been negotiated and developed, and the language as written is consistent with those policies and procedures. Additionally, the definition of “good cause” is provided for in the definitions section of the regulation.

Written Comment No. 44

Rosen, Bien & Galvan, LLP wrote that in Section 4977.7(e)(1) through 4977.7 (e)(3) – For Subsections 4977.7(e)(1)-(3), regarding remedies for late revocation extension hearings, Plaintiffs note the existence of a dispute between the parties regarding the nature of the remedy for any violation of any stage of the Injunction.

Response:

The DJJ disagrees with the commenter. The proposed regulation is consistent with the negotiated and agreed upon policies and procedures, and with the L.H. Stipulated Injunction. The Stipulated Injunction does not include a section on remedies for time frame violations, except for a footnote stating that DJJ will develop Policies and Procedures for remedies for time frame violations. These policies and procedures have been negotiated and developed, and the language as written is consistent with those policies and procedures.

Written Comment No. 45

Rosen, Bien & Galvan, LLP wrote that in Section 4977.7 (e)(3) – In Subsection 4977.7(e)(3), there is a typographical error (the “a” is missing from the word “and” after “the Division’s hold must be withdrawn”).

Response:

The DJJ has made grammatical amendments to this section.

Written Comment No. 46

Rosen, Bien & Galvan, LLP wrote that in Section 4978(a)(2) and 4978(a)(3) - In Subsection (a)(2), Plaintiffs continue to object to “Parolee is a danger to himself/herself” as a criterion for arrest or detention. Additionally, there should be a period at the end of the phrase “a risk to abscond from parole supervision” in Subsection (a)(3).

Response:

The DJJ disagrees with the commenter. This criterion is a disputed item in the L.H. litigation matter and is currently included in the negotiated and agreed upon definition for "Detention Criteria". The language as written is consistent with controlling case law. Although not a viable charge, Danger to self is a valid criteria for detention purposes. This is consistent with *In Re Arlene Kimie Naito*, which upheld an administrative regulation which required parole agents to report to the Board of Prison Terms any behavior exhibited by a parolee which indicates that the parolee may be suffering from a mental disorder which impairs the parolee's ability to maintain himself in the community, or makes the parolee a danger to himself or others when the mental disorder cannot be adequately treated while in the community, as related future criminality, and which the petitioner's parole was ultimately revoked for separate behavior.

However, the DJJ has made amendments to this section consistent with the definition for “Detention Criteria”.

Written Comment No. 47

Rosen, Bien & Galvan, LLP wrote that in Section 4979(b)(3) – In Subsection (b)(3), the phrase “parolee/parole violator” should be plural to match the syntax of the rest of the sentence (i.e., “parolees/parole violators”).

Response:

The DJJ has revised the proposed regulation as recommended.

Written Comment No. 48

Rosen, Bien & Galvan, LLP wrote that in Section 4980(d) and 4980(e) – In this section, the phrase “parole violator” is used, but in Section 4900 the phrases “juvenile parolee” and the word “parolee” are used. Seeing as these two sections define the same terms, the phrases should be consistent. Plaintiffs prefer the word “parolee.”

In Subsection 4980(e), regarding Revocation Extension Hearings, the following sentence should be added: “A parolee’s parole revocation period may not be extended because of the Division of Juvenile Justice’s failure to provide a recommended program at all or in a timely manner.”

Response:

The DJJ disagrees with the commenter. These subsections are specific to the revocation extension process. Therefore the term "parole violator" is correct.

DJJ disagrees with the commenter. The purpose of this section is only to provide a definition that distinguishes between the different types of hearings in the juvenile parole revocation process, rather than describing the rules and policies which must be followed during those hearings.

Written Comment No. 49

Rosen, Bien & Galvan, LLP wrote that in Section 4980(f) and 4980(g) – Subsection 4980(f) and (g) are duplicative, and one subsection should be deleted.

Response:

The DJJ does not find a subsection “g” in the proposed language.

Written Comment No. 50

Rosen, Bien & Galvan, LLP wrote that in Section 4980.5(a) – Subsection (a) reads as follows: “When appropriate the Board may conduct more than one type of hearing in the violation series on the same date.” Plaintiffs object to this provision. There is no basis in Defendants’ Policies and Procedures for this provision, and it should be deleted.

Response:

The DJJ has removed the proposed regulation as recommended. Enumeration adjusted accordingly.

Written Comment No. 51

Rosen, Bien & Galvan, LLP wrote that in Section 4980.5(g) – Subsection (g) reads as follows: “For Probable Cause Hearings the hearing officer may assume staff reports are true unless the accuracy of the information is successfully challenged at the hearing.” This sentence is unclear and inappropriate. What does it mean for a parolee to “successfully challenge” the accuracy of the information? How would a parolee do so? Is it the accuracy of the information that is being challenged or the veracity of the information? Plaintiffs request that this new standard of proof, not previously discussed, be omitted from the L.H. Regulations.

Response:

The DJJ disagrees with the commenter. The proposed regulation is sufficiently clear. A challenge to accuracy of information includes a challenge to whether or not the information is true. That challenge would be successful if it convinced the hearing officer that the information in the report was not true.

Written Comment No. 52

Rosen, Bien & Galvan, LLP wrote that in Section 4980.5(j) – In Subsection (j), the phrase “or Revocation Extension Hearing” should be added after the phrase “The use of hearsay evidence in a Revocation Hearing...” It is Plaintiffs’ position that parolees’ confrontation rights apply in both Revocation Hearings and Revocation Extension Hearings.

Response:

The DJJ disagrees with the commenter. The language as written is consistent with the L.H. Stipulated Injunction. The Stipulated Injunction specifically addresses Revocation Extension hearings and the rights of parolees at such hearings. The right to call and cross-examine witnesses is not included in the language regarding Revocation Extension hearings, whereas it was specifically included in the language regarding Revocation Hearings.

Written Comment No. 53

Rosen, Bien & Galvan, LLP wrote that in Section 4981(a) – In Subsection (a), an “s” is missing from the word “shall” in the second sentence.

Response:

The DJJ has amended the proposed regulation as recommended.

Written Comment No. 54

Rosen, Bien & Galvan, LLP wrote that in Section 4983(b) and 4983(b)(2) – Subsection (b) discusses the dispositions that a Board may consider. One such disposition (in Subsection (b)(2)) is “Continuing the parolee on parole under specific and extraordinary circumstances.” Plaintiffs object to the addition of the phrase under specific and extraordinary circumstances.” A hearing officer’s decision to COP a parolee is not dependent on a finding of “specific and extraordinary circumstances,” but rather the existence of facts or circumstances that lead the hearing officer to believe that continuing the parolee on parole is in the best interests of the parolee and the community. Thus, Plaintiffs suggest the following language for Subsection (b)(2): “Continuing the parolee on parole, with or without new or modified conditions of parole or placement when the Board believes that it is in the best interests of the parolee and the community.” Plaintiffs note that a version of this language was in a prior draft of the Regulations, sent to Plaintiffs on September 14, 2009.

Response:

The DJJ has amended the proposed regulation as recommended, removing the phrase “under specific and extraordinary circumstances”.

Written Comment No. 55

Rosen, Bien & Galvan, LLP wrote that in Section 4983.5(b) – In Subsection (b), the phrase “no-more-than-one” need not have hyphens between each word. Additionally, “one” should also be numerically expressed. Thus, Plaintiffs suggest the following language for the second sentence of this subsection: “He/she is entitled to no more than one (1) activation of an optional waiver.”

Response:

The DJJ has amended the proposed regulation as recommended.

The DJJ has removed “within fifteen (15) business days following sentencing or final disposition at the trial court level in the criminal proceedings, and” from the last sentence of this section, consistent with the negotiated and agreed upon polices and procedures.

COMMENTS RECEIVED DURING THE 1st 15-DAY COMMENT PERIOD

The modified text was made available to the affected public from March 2, 2011 through March 17, 2011. The DJJ received the following additional comments on the modified text:

Written Comments 1 through 4 are duplicative and were addressed under the responses to the 45-Day Comment Period Section.

Written Comment No. 5

Rosen, Bien and Galvan, LLP wrote that while the name of the “Accommodation and Assistance Grievance form” has been added to Section 4851, DJJ has failed to include the number of the form (“DJJ 3.261”). The other forms referenced in this section contain their numbers (as well as the date of latest revision), so this information should also be included for the Accommodation and Assistance Grievance form for consistency’s sake.

The proposed text of Section 4851(b) currently states as follows: “Parole staff shall prepare reports for Board review when parole violation reporting criteria set forth in Section 4982 are met. Reports shall be submitted to the Board for review with seven (7) business days from the date of the Division’s parole hold, or in the case of Not-In-Custody violation reports within twenty (20) business days of the notice of rights and charges.

While technically accurate, this statement should be further clarified to reflect the different deadlines from parole agents and unit supervisors. According to the Division of Juvenile Parole Policies and Procedures (“DJPO P&Ps), the parole agent must assemble a revocation packet to present to the Unit Supervisor (including the Violation Report) by the close of the fifteenth (15th) business day after the date of discovery for Not-In-Custody cases. *See* DJPO P&Ps at 16, section .2.6 – 3.2.6.2.9. The DJPO P&Ps then state that for Not-In-Custody cases, the Unit Supervisor shall review the revocation packet (including the Violation Report) and mail the originals of various documents (including the Violation Report) to the JPB by the close of the twentieth (20th) business day from the date of notice of rights and charges. *See* DJPO P&Ps at 17, sections

3.2.8-3.2.8.4.4. The proposed text of Section 4851(b) should reflect both timelines at issue: 1) the deadline for the parole agent to submit the revocation packet (including the Violation Report) to the Unit Supervisor, and 2) the deadline for the Unit Supervisor to send the originals of various revocation packet documents (including the Violation Report) to the Board. Thus, the text of this section should be revised as follows:

Parole staff shall prepare reports for Board review when parole violation reporting criteria set forth in Section 4982 are met. Specifically, parole agents shall assemble reports and send them to the Unit Supervisor by the close of the sixth (6th) business day after the hold is placed, or in the case of the Not-In-Custody violation reports, by the close of the fifteenth (15th) business day after the date of discovery. After reviewing the reports, the Unit Supervisor shall submit the reports to the Board for review by the close of the seventh (7th) business day after the parole hold is placed, or in the case of Not-In-Custody violation reports, by the close of the twentieth (20th) business day after the date of discovery.

Response:

DJJ has revised the text to include the form number for the Accommodation and Assistance Grievance form.

DJJ disagrees that the text in Section 4851(b) should be changed to include the deadline for the parole agent to submit the revocation packet to the Unit Supervisor. The commenter acknowledges in their comments that this section is accurate as written. Adding an additional timeline into the text of the regulation would potentially lead to confusion, and is not necessary, because the people who would need to be able to follow the regulation are the juvenile parole agents, who have access to detailed policies and procedures, which are referenced by the commenter. Article one of the Administrative Procedures Act states that the legislature previously found that the language of many regulations is frequently unclear and unnecessarily complex, even when the complicated and technical nature is taken into account. (Government Code Section 11340, subdivision (b)). DJJ wishes to avoid making these regulations overly complex, which would result from adopting all language found in the policies and procedures and incorporating it into the regulations.

All other comments made under Written Comment 5 are duplicative and were addressed under the responses to the 45-Day Comment Period Section.

Written Comment No. 6

Rosen, Bien and Galvan, LLP wrote: In Subsection (1), Defendants added almost all of Plaintiffs' suggested language except for the phrase "based upon relevant assessments as provided in the Revocation Extension Matrix." Plaintiffs suggest that Defendants incorporate this last phrase, so that the entire subsection is consistent with the Joint Stipulation Regarding Modifications to Division of Juvenile Justice Parole Revocation Policies and Procedures, dated September 8, 2009. Thus, Subsection (1) should read as follows: "Parolees charged with Serious In-Custody Misconduct involving violence against a person that occurs while the parolee is in custody pending revocation proceedings may be assessed up to an additional twelve (12) months, based upon relevant assessments at provided in the Revocation Extension Matrix."

Response:

DJJ agrees to add the suggested reference to the Revocation Extension Matrix in Subsection (1).

All other comments made under Written Comment 6 are duplicative and were addressed under the responses to the 45-Day Comment Period Section.

Written Comment 7 is duplicative and was addressed under the responses to the 45-Day Comment Period Section.

Written Comment No. 8

Rosen, Bien and Galvan, LLP wrote: In Subsection (a)(8), the newly added “Detention Criteria” definition includes part (d) that reads as follows: “Parolee’s mental state has deteriorated to the point where it is likely that there is a threat to public safety.” Plaintiffs strongly object to a parolee’s deteriorated mental state being used as a criterion for detention. If a parolee’s mental state has deteriorated to this point, the Psych Suspension Policies and Procedures (or Welfare & Institutions Code 5150 process) should be followed. A parolee’s deteriorated mental state alone does not demonstrate a need for detention.

In Subsection (a)(10), defining “Disciplinary Decision-Making System,” the word “denying” should be revised to “deny” so that the verb tenses in this Subsection are consistent.

Response:

DJJ disagrees with the comment regarding Subsection (a)(8). This criterion is a disputed item in the L.H. litigation matter and is currently included in the negotiated and agreed upon definition for "Detention Criteria" as it appears in the Division of Juvenile Parole Operations policies and procedures. The DJJ agrees that this criterion is not, on its own, an allowable basis for arrest (i.e. not a viable charge). However, the referenced section speaks specifically to “Detention Criteria”. This is consistent with *In Re Naito* (1986) 186 Cal.App.3d 1656 [231 Cal.Rptr. 506]

DJJ agrees with the commenter’s grammatical amendment to Subsection (a)(10).

All other comments made under Written Comment 8 are duplicative and were addressed under the responses to the 45-Day Comment Period Section.

Written Comments 9 through 14 are duplicative and were addressed under the responses to the 45-Day Comment Period Section.

COMMENTS RECEIVED DURING THE 2nd 15-DAY COMMENT PERIOD

The modified text was made available to the affected public from May 26, 2011 through June 10, 2011. The DJJ received no further comments.

COMMENTS RECEIVED DURING THE 3rd 15-DAY COMMENT PERIOD

The modified text was made available to the affected public from January 10, 2012 through January 25, 2012. The DJJ received no further comments.

ALTERNATIVES DETERMINATION

No other alternatives have been considered by the DJJ. The parole revocation process is governed by the L.H. Injunction and therefore, there are no alternatives to be considered.

LOCAL MANDATE DETERMINATION

This action imposes no mandates on local agencies, school districts or the business community.