

FINAL STATEMENT OF REASONS

TITLE 15. CRIME PREVENTION AND CORRECTIONS

DIVISION 2. BOARD OF PRISON TERMS

CHAPTER 6. PAROLE REVOCATION

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

The Board of Parole Hearings (BPH) amends California Code of Regulations, Title 15, Sections 2606, 2635.1, 2646.1, 2733, 2740, 2743, and 2744, governing Parole Revocation Proceedings. 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.))).

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 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. After a 45-day public comment period from December 2, 2011, through January 16, 2012, the regulatory package was put before the Board for final approval on February 22, 2012.

Following this, the Board of Parole Hearings made additional revisions to the regulatory package, necessitating a 15-day renote period for further public comment. Specifically, the Board of Parole Hearings elected to no longer pursue amendments to Section 2742 and the creation of a new Section 2742.1, both related to parole revocation extension proceedings. Additionally, the Board of Parole Hearings added a definition of "Discovery Date" in Section 2606 and clarified the proposed language in Section 2743 to replace use of the term "Return-to-Custody Action" with the term "Revocation Period", both for purposes of clarifying the regulations for the reader. These modifications to the regulatory package and a Revised Initial Statement of Reasons were approved by the Board of Parole Hearings on May 15, 2012, after which a 15-day renote period was held from June 1, 2012 through June 16, 2012. This regulatory package is being put forward before the Board of Parole Hearings on July 17, 2012 for final approval.

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. For the 15-day renote period, this section was amended to include a definition of "Discovery Date" as this is a term of art used throughout the regulatory chapter. 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 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. For the 15-day renote period, the proposed language in this section was amended to replace all use of the term “Return-to-Custody Action” with the term “Revocation Period” to make the language easier for a layperson to understand. 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 of the Government Code.

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.

Summaries and Responses to Comments Received During the Public Comment Periods

45-DAY COMMENT PERIOD

The Public Comment period on the initial proposed text was open for 45 days from December 2, 2011, through January 16, 2012. Two written comment letters were received during that period. Pursuant to Government Code section 11346.9(a)(3), the Board of Parole Hearings has summarized and responded to those comments as follows:

I. COMMENT REGARDING THE APPLICATION OF REVOCATION EXTENSION PROCEEDINGS TO NON-LIFE TERM INMATE PAROLEES ON AND AFTER OCTOBER 1, 2011

1 Comment: The comment lists a general objection to the application of revocation extension to any non-lifer parolees on and after October 1, 2011, through January 1, 2012. The comment claims that Penal Code section 3057, as amended by Criminal Justice Realignment, did not become operational until January 1, 2012, and that the Board of Parole Hearings could not lawfully conduct revocation extension proceedings according to the new Penal Code section 3057 until January 1, 2012.

Response: After the 45-day comment period, the Board of Parole Hearings elected to no longer pursue amendments to Section 2742 and the creation of a new Section 2742.1, both related to

parole revocation extension proceedings. These sections were not included in the 15-day renote period. Therefore, this comment is no longer relevant to this regulatory action.

Accommodation: None.

II. COMMENT REGARDING APPLICATION OF PENAL CODE SECTION 3057 TO PAROLEES PENDING REVOCATION PRIOR TO OCTOBER 1, 2011

1 Comment: Penal Code section 3057, subdivision (e) states, “Commencing October 1, 2011, this section shall only apply to inmates sentenced to a term of life imprisonment or parolees that on or before September 30, 2011, are pending a final adjudication of a parole revocation charge and subject to subdivision (c) of Section 3000.09.” The comment claims a natural reading of this language means that Penal Code section 3057 can only apply to parolees in pending revocation status on October 1, 2011, and cannot lawfully apply to parolees who were in pending revocation status at any point prior to October 1, 2011.

Response: After the 45-day comment period, the Board of Parole Hearings elected to no longer pursue amendments to Section 2742 and the creation of a new Section 2742.1, both related to parole revocation extension proceedings. These sections were not included in the 15-day renote period. Therefore, this comment is no longer relevant to this regulatory action.

Accommodation: None.

III. COMMENT REGARDING APPLICATION OF REVOCATION EXTENSION PROCEDURES TO IN-CUSTODY MISCONDUCT DISCOVERED AFTER THE REVOCATION RELEASE DATE

1 Comment: The comment challenges the premise that a discovery date for a parole revocation extension could occur after a Revocation Release Date, but while the parolee is still in custody following a parole revocation term. The comment states that situation should not exist as a parolee would be released on his or her Revocation Release Date. The comment objects to the application in these situations of the revocation extension maximum return-to-custody parole revocation term of 12 months (Pen. Code, § 3057, subd. (c)), which is longer than the maximum return-to-custody parole revocation term of 180 days for regular parole revocation adjudications, as set forth in Penal Code section 3056, as modified by Criminal Justice Realignment.

Response: After the 45-day comment period, the Board of Parole Hearings elected to no longer pursue amendments to Section 2742 and the creation of a new Section 2742.1, both related to parole revocation extension proceedings. These sections were not included in the 15-day renote period. Therefore, this comment is no longer relevant to this regulatory action.

Accommodation: None.

IV. COMMENT REGARDING APPLICATION OF REVOCATION EXTENSION PROCEDURES TO INSTANCES OF THE PAROLEE REFUSING TO SIGN CONDITIONS OF PAROLE, REFUSING TO SIGN FORMS REQUIRED BY THE DEPARTMENT OF JUSTICE EXPLAINING PENAL CODE SECTION 290 REGISTRATION, OR REFUSING TO PROVIDE DNA SAMPLES

1 Comment: The comment objects to proposed amendments to Section 2742 and the proposed new Section 2742.1, which were put forward during the initial 45-day comment period, but are no longer part of this regulatory action. Specifically, the comment objects that parolees who refuse to sign conditions of parole, who refuse to sign forms required by the Department of Justice explaining Penal Code section 290 registration, or who refuse to provide samples of blood or saliva for DNA samples, be processed for revocation as revocation extension proceedings. The comment objects based on its belief the Board of Parole Hearings could apply the revocation extension maximum return-to-custody parole revocation term of 12 months (Pen. Code, § 3057, subd. (c)) to these revocation actions.

Response: After the 45-day comment period, the Board of Parole Hearings elected to no longer pursue amendments to Section 2742 and the creation of a new Section 2742.1, both related to parole revocation extension proceedings. These sections were not included in the 15-day renote period. Therefore, this comment is no longer relevant to this regulatory action.

Accommodation: None.

V. COMMENT REGARDING THE DEFINITION OF DISCOVERY DATE FOR IN-CUSTODY MISCONDUCT AT A NON-CDCR INSTITUTION

1 Comment: The comment objects to proposed amendments to Section 2742 and the proposed new Section 2742.1, which were put forward during the initial 45-day comment period, but are no longer part of this regulatory action. Specifically, the comment objects to the definition of the discovery date for in-custody misconduct which occurs at a non-California Department of Corrections and Rehabilitation institution as the date Division of Adult Parole Operations receives the information and/or evidence amounting to reportable misconduct. The comment argues that to ensure parity in the timing of revocation extension referrals when the parolee is incarcerated in a California Department of Corrections and Rehabilitation institution and when the parolee is incarcerated in a non-California Department of Corrections and Rehabilitation institution, for misconduct which occurs in a non-California Department of Corrections and Rehabilitation institution, the discovery date should be the date the non-California Department of Corrections and Rehabilitation institution's staff persons receive information and/or evidence amounting to reportable misconduct.

Response: After the 45-day comment period, the Board of Parole Hearings elected to no longer pursue amendments to Section 2742 and the creation of a new Section 2742.1, both related to parole revocation extension proceedings. These sections were not included in the 15-day renote period. Therefore, this comment is no longer relevant to this regulatory action.

Accommodation: None.

VI. COMMENT REGARDING COORDINATION WITH COUNTY JAILS FOR APPLICATION OF REVOCATION EXTENSION PROCEDURES TO INSTANCES OF PAROLEE MISCONDUCT IN NON-CDCR INSTITUTIONS

1 Comment: The comment asks whether procedures or mechanisms have been established to ensure the provision of information from county jails to the Division of Adult Parole Operations or Board of Parole Hearings regarding alleged in-custody misconduct by parolees serving revocation terms in county jails, and how the California Department of Corrections and Rehabilitation and the counties are working to ensure the Division of Adult Parole Operations is alerted in a timely manner to alleged in-custody misconduct in non-California Department of Corrections and Rehabilitation institutions.

Response: After the 45-day comment period, the Board of Parole Hearings elected to no longer pursue amendments to Section 2742 and the creation of a new Section 2742.1, both related to parole revocation extension proceedings. These sections were not included in the 15-day renote period. Therefore, this comment is no longer relevant to this regulatory action.

Accommodation: None.

VII. COMMENT THAT THE BOARD OF PAROLE HEARINGS' APPLICATION OF REVOCATION EXTENSION PROCEEDINGS IS AGAINST PUBLIC POLICY AND THE GOALS OF CRIMINAL JUSTICE REALIGNMENT

1 Comment: The comment argues it is against public policy for the Board of Parole Hearings to maintain jurisdiction to conduct revocation extension proceedings for all parolees who conduct in-custody misconduct while serving a parole revocation term based on a parole hold/discovery date prior to October 1, 2011. The comment argues this may lead to further overcrowding of California Department of Corrections and Rehabilitation prisons and county jails, and places a strain on county resources. The comment argues application of revocation extension proceedings to instances of misconduct in county jails is unnecessary given the county jails' independent ability to discipline jail inmates for misconduct.

Response: After the 45-day comment period, the Board of Parole Hearings elected to no longer pursue amendments to Section 2742 and the creation of a new Section 2742.1, both related to parole revocation extension proceedings. These sections were not included in the 15-day renote period. Therefore, this comment is no longer relevant to this regulatory action.

Accommodation: None.

VIII. GENERAL COMMENT REGARDING CRIMINAL JUSTICE REALIGNMENT

2 Comment: The comment lists general ideas for reduction in state prison overcrowding, including various provisions of Criminal Justice Realignment.

Response: There is no substantive comment to which to respond.

Accommodation: None.

IX. MISCELLANEOUS

L1 Comment: These comments were received after January 16, 2012, the comment period deadline.

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

Accommodation: None.

15-DAY RENOTICE PERIOD

The Public Comment period on the revised proposed text was open for 15 days from June 1, 2012, through June 16, 2012. One written comment letter was received during that period. Pursuant to Government Code section 11346.9(a)(3), the Board of Parole Hearings has summarized and responded to those comments as follows:

I. COMMENT TO ADD REFERENCE TO *IN RE SHAPIRO* TO SECTION 2733 FOR MULTIJURISDICTIONAL PAROLEES

R1 Comment: The comment alleges a failure in Section 2733 to provide a parolee who is serving a criminal sentence in another state or federal jurisdiction the option of having his or her parole revocation period run concurrently with the criminal sentence as set forth in *In re Shapiro* (1975) 14 Cal.3d 711, 721. The comment notes that such procedures were negotiated in *Valdivia v. Brown*, Case No. C-94-0671-LKK, (E.D. Cal.), and suggests the addition of the following sentence to the last paragraph of Section 2733: “The parolee shall have the right to start any revocation period running in California by waiving a personal appearance at a revocation hearing, so that any revocation period is served concurrently with time served in the receiving state.”

Response: The comment suggests amendments to existing text in Section 2733, and does not address the proposed text as modified in the 15-day rennotice period.

Accommodation: None.

II. GENERAL COMMENT REGARDING OUTDATED REGULATIONS

R1 Comment: The comment makes a general statement regarding the relevancy of the regulations of Title 15, Division 2, advocating that “further regulatory revisions are needed to incorporate necessary requirements of the *Valdivia* Permanent Injunction into regulation” and that the current regulations “omit fundamental rights such that they are clearly unconstitutional”.

Response: The comment does not address the proposed text as modified in the 15-day rennotice period.

Accommodation: None.