

BPH RN 18-02: INITIAL STATEMENT OF REASONS

TITLE 15. CRIME PREVENTION AND CORRECTIONS DIVISION 2. BOARD OF PAROLE HEARINGS CHAPTER 3. PAROLE RELEASE

Enactment of:

ARTICLE 14. PAROLE CONSIDERATION HEARINGS FOR YOUTH OFFENDERS

**Enactment of Sections 2440 – 2446, governing
parole consideration hearings for youth offenders.**

INTRODUCTION:

In 2005, the United States Supreme Court abolished capital punishment as a legal sentence for a juvenile offender, based on significant differences in the brain development between juveniles and adults. (*Roper v. Simmons* (2005) 543 U.S. 551.) Using this same reasoning, the United States Supreme Court later abolished the sentence of life without the possibility of parole for a juvenile who had committed a non-homicide crime (*Graham v. Florida* (2010) 560 U.S. 48), and subsequently prohibited courts from imposing a mandated sentence of life without the possibility of parole on a juvenile who committed a homicide crime without the court's individual consideration of specified youth factors and whether the life-without-parole sentence was appropriate for the circumstances of the particular juvenile (*Miller v. Alabama* (2012) 132 S.Ct. 2455).

The California Supreme Court extended the United States Supreme Court's holding in *Graham* to cases in which a non-homicide juvenile offender was sentenced to a term of *life with the possibility of parole* with a minimum term of years that would be expected to exceed the juvenile's natural life expectancy. Similarly, in 2013, the Ninth Circuit Court of Appeal used the same legal reasoning to extend the *Graham* decision to cases in which a non-homicide juvenile offender was sentenced to a *determinate term* of years that would be expected to exceed the juvenile's natural life expectancy. (*People v. Caballero* (2012) 55 Cal.4th 262; *Moore v. Biter* (2013) 725 F.3d 1184.)

On January 1, 2014, following these court rulings, the California Legislature enacted Senate Bill No. 260 (2013-2014 Reg. Sess.) (SB 260), which established parole consideration hearings for youth offenders. Specifically, this bill enacted Penal Code section 3051 and amended Penal Code sections 3046 and 4801 to establish alternative hearing deadlines and requirements for persons who were under the age of 18 when they committed their controlling offense, as defined by statute, and who were not disqualified under section 3051 from youth offender status. Section 3051, subdivision (e), mandated the Board of Parole Hearings (board) "revise

existing regulations and adopt new regulations” regarding determinations of suitability for qualified youth offenders under that section.

On January 1, 2016, before the board could file its proposed regulations, the California Legislature enacted Senate Bill No. 261 (2015-2016 Reg. Sess.) (SB 261), which amended Penal Code sections 3051 and 4801 to raise the qualifying age of youth offenders to persons who were under the age of 23 when they committed their controlling offenses, as defined by statute.

On January 27, 2016, the United States Supreme Court found that its prior decision in *Miller v. Alabama*, prohibiting mandatory life sentences without parole for juvenile offenders, was retroactive on state collateral review. (*Montgomery v. Louisiana* (2016) 136 S.Ct. 718.) Consequently, juveniles currently serving sentences of life without the possibility of parole have the right to request resentencing following individualized consideration of factors relating to their youth at any time. Alternatively, the court noted that “[a] State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them.” (*Id.* at 736.)

On January 1, 2018, again before the board could file its proposed regulations, the California Legislature enacted two bills that impacted parole consideration hearings for youth offenders. First, Assembly Bill No. 1308 (2017-2018 Reg. Sess.) (AB 1308) amended Penal Code sections 3051 and 4801 to raise the qualifying age of youth offenders to persons 25 years of age or younger when they committed their controlling offenses, as defined by statute. Second, in accordance with the *Montgomery* decision, Senate Bill No. 394 (2017-2018 Reg. Sess.) (SB 394) amended Penal Code section 3051 to establish hearing deadlines for persons who were sentenced to life without the possibility of parole for their controlling offense, as defined by statute, so long as they committed the offense under the age of 18, and were not disqualified from youth offender status under any exemptions in subdivision (h) of section 3051.

This proposed regulation package is submitted to comply with the statutory mandate to regulate the board’s process for providing parole consideration hearings for qualified youth offenders. In this package, the board is providing clarity on youth offender qualification, the board’s process for scheduling and holding youth offender parole consideration hearings, and the youth offender factors that require different levels of consideration throughout the hearing process.

PROBLEM STATEMENT:

First, the statutory language in Penal Code section 3051, as enacted by SB 260 and amended by SB 261, AB 1308, and SB 394, defining which inmates qualify as youth offenders for purposes of Penal Code sections 3051 and 4801 (youth offender laws) is split between subdivisions (a) and (h) of section 3051. By splitting the definition between two subdivisions, the statutory language creates confusion regarding how the subdivisions interact with each other. Additionally, the language in section 3051, subdivision (h), which exempts from youth offender status inmates with “cases” sentenced under Penal Code sections 1170.12, 667, subdivisions (b) through (i), or 667.61 (strike-sentencing laws), “cases” in which “individuals” are sentenced to life without parole for “a controlling offense” committed after he or she attained 18

years of age, and “individuals” convicted of malice aforethought or life term crimes committed after attaining 26 years of age, causes confusion because the language is subject to multiple interpretations. Moreover, the statute provides no guidance for resolving cases in which two or more offenses both meet the statutory definition of “controlling offense” in that they share identical sentence lengths that are the inmate’s longest terms of incarceration. This causes particular confusion when one of those offenses could potentially disqualify an inmate from youth offender status. Thus, the board needs to provide better clarification for inmates and the public to determine when an inmate qualifies as a youth offender.

Second, the statutory language in Penal Code section 3051 does not provide inmates with information on the proper legal mechanism through which to seek remedy if they feel they were improperly disqualified or their youth offender parole eligible dates were incorrectly calculated. Also, the statutory language does not specify which agency is responsible for determining whether an inmate qualifies as a youth offender and calculating the youth offender’s parole eligible date (youth offender determinations). Thus, the board needs to specify which agency conducts youth offender determinations and clarify the methods through which inmates can seek administrative remedies for any alleged errors.

Third, while the statutory language of Penal Code section 3051, subdivision (b), requires the board to hold initial parole consideration hearings for youth offenders no later than during the 15th, 20th, or 25th year of incarceration, depending on the length of the youth offender’s controlling offense, the statute does not explain how and when these hearings would be scheduled, particularly if the youth offender has another parole eligible date that entitles him or her to an earlier hearing. Thus, the board needs to clarify the timing for scheduling initial hearings for youth offenders so that inmates and the public can more easily understand how the board schedules these hearings as well as the interplay between different hearing eligibility dates. Further, for inmates who became eligible to receive a parole consideration hearing for a youth offender immediately upon enactment of SB 261, AB 1308, or SB 394, or shortly thereafter, the board needs to clarify by when they must receive their hearing based on the relevant provisions in Penal Code sections 3051, subdivision (i), and 3051.1. Additionally, section 3051, subdivision (g) notes that youth offenders denied parole remain subject to the same denial lengths under Penal Code section 3041.5, subdivision (b)(3), and may not receive a subsequent parole consideration hearing as a youth offender if they are released in accordance with other statutory provisions prior to the date of the subsequent hearing. However, the board needed to clarify these provisions in simpler terms for inmates and members of the public who are not familiar with these code sections.

Fourth, in mandating specific information for hearing panels assessing parole suitability and clinicians completing risk assessments to consider for youth offenders, Penal Code sections 3051, subdivision (f), and 4801, subdivision (c), reference three factors of youth (youth factors): “the diminished culpability of youth as compared to that of adults,” “the hallmark features of youth,” and the “subsequent growth and increased maturity of the individual.” However, the statute does not provide guidance on the meaning of these terms except for the legislature’s citation to the case law from which the terms were drawn. Thus, the board needs to interpret

and clarify the meaning of these terms, based on the cited case law, to provide better guidance to hearing panels and clinicians tasked with weighing these factors in their assessments.

Fifth, Penal Code section 3051 establishes several additional at-hearing requirements for panel members conducting parole consideration hearings for youth offenders, including the requirement that they give great weight to the youth factors, consider input from the inmate's family or other sources with information about the inmate, and enforce all applicable victims' rights. However, the statute listed these at-hearing requirements separately in different subdivisions, which causes confusion about which rights attach at the hearing itself. Thus, the board needs to collate these rights into a single location and clarify how these requirements apply during parole consideration hearings for youth offenders.

PURPOSE:

The board proposes to enact California Code of Regulations, title 15, article 14, which will include sections 2440 through 2446, as follows:

Section 2440 is *added* to clarify when an inmate will be deemed to qualify as a youth offender for the purpose of this article.

- Subdivision (a) clarifies the three required criteria that an inmate serving a determinate term or term of life with the possibility of parole must meet to qualify as a youth offender under this article.
- Subdivision (b) clarifies the three required criteria that an inmate serving a term of life without the possibility of parole must meet to qualify as a youth offender under this article.
- Subdivision (c) defines controlling offense in accordance with Penal Code section 3051, subdivision (a)(2) to clarify that the same definition for this term as used in section 3051 is intended for this article.
- Subdivision (d) clarifies the six criteria that will render otherwise-qualifying inmates ineligible for youth offender status. Additionally, this section contains the board's interpretation of the language in Penal Code section 3051, subdivision (h) disqualifying inmates when their "cases" were sentenced pursuant to Penal Code sections 1170.12, 667(b)-(i), or 667.61 as well as "individuals" who committed non-youth offenses with malice aforethought or that result in new life terms.
- Subdivision (e) establishes the board's protocol for determining the controlling offense when an inmate has two or more offenses that meet the definition of "controlling offense" contained in subdivision (c).
- Subdivision (f) further clarifies the board's interpretation of the language in Penal Code section 3051, subdivision (h) disqualifying inmates when their "cases" were sentenced pursuant to Penal Code sections 1170.12, 667(b)-(i), or 667.61.

Section 2441 is *added* to clarify what decisions qualify as “youth offender determinations,” the appeal process for those determinations, and the definition of a Youth Parole Eligible Date (YPED).

- Subdivision (a) defines “youth offender determinations” to clarify that this term includes determinations regarding whether an inmate qualifies as a youth offender and calculations of a youth offender’s YPED. Further, this subdivision specifies Case Records Services (Case Records) of the California Department of Corrections and Rehabilitation (the department) is responsible for conducting youth offender determinations.
- Subdivision (b) clarifies how a youth offender’s YPED will be calculated.
- Subdivision (c) defines “incarceration” for the purpose of conducting YPED calculations.
- Subdivision (d) establishes that youth offender determinations, as defined in subdivision (a), are subject to the Inmate Appeal Process for the department.

Section 2442 is *added* to establish the board’s one-time review process for inmates who have been deemed ineligible as youth offenders by the department or who disagree with the department’s calculation of their YPED.

- Subdivision (a) establishes that an inmate may request a one-time review by the board of Case Records’ determination that the inmate does not qualify as a youth offender, and establishes the requirement that the inmate exhaust administrative remedies with the department before they will be eligible to submit a request for the one-time board review.
- Subdivision (b) establishes that a qualified youth offender may request a one-time review by the board of Case Records’ calculation of the inmate’s YPED, and establishes the requirement that the inmate exhaust administrative remedies with the department before they will be eligible to submit a request for the one-time board review.
- Subdivision (c) identifies additional documents that an inmate is encouraged, but not required, to submit with his or her request for one-time board review.
- Subdivision (d) establishes the board’s Chief Counsel will be responsible for responding to an inmate’s request for one-time board review by a specified deadline and requires the response to be provided to the inmate in writing.
- Subdivision (f) establishes the requirement for the board to issue a miscellaneous decision to amend the inmate’s youth offender status designation or YPED calculation if deemed warranted following the board’s one-time review, and forward a copy of the decision to Case Records.

Section 2443 is *added* to clarify the board’s procedure for determining when initial and subsequent parole consideration hearings should be scheduled for qualified youth offenders under this article.

- Subdivision (a) establishes the latest date on which a qualified youth offender may be scheduled for his or her initial parole consideration hearing as a youth offender.
- Subdivision (b) clarifies that a determinately-sentenced youth offender will not be scheduled for an initial youth offender parole hearing if he or she will be released from

prison under an earliest possible release date (EPRD) within 18 months of his or her YPED. Further, this subdivision specifies when inmates sentenced to a term of life with the possibility of parole who first became qualified as youth offenders under AB 1308 and have YPED that occur before January 1, 2020, inmates sentenced to a determinate term who first became qualified as a youth offender under SB 261 or AB 1308 and have YPED that occur before January 1, 2022, and inmates sentenced to a term of life without the possibility of parole who first became qualified as youth offenders under SB 394 and have YPED that occur before July 1, 2020, must be scheduled for an initial youth offender parole hearing.

- Subdivision (c) clarifies that, in accordance with Penal Code section 3051, subdivision (g), youth offenders remain subject to the denial length periods established by Marsy's Law in Penal Code section 3041.5, subdivision (b)(3).
- Subdivision (d) clarifies that a determinately-sentenced youth offender will not be scheduled for a subsequent youth offender parole hearing if he or she will be released under an EPRD within one year of the subsequent hearing date.

Section 2444 is *added* to clarify the requirements for clinicians administering comprehensive risk assessments for qualified youth offenders to consider the mitigating effects of the three youth offender factors, as interpreted in section 2446.

Section 2445 is *added* to establish the board's requirements and processes for conducting youth offender parole hearings.

- Subdivision (a) clarifies that youth offender parole hearings are subject to the same general rules and requirements as other parole consideration hearings, with the exception of the variations contained in the other subdivisions of this section.
- Subdivision (b) establishes the requirement that, when weighing the various factors to assess the parole suitability of a qualified youth offender during his or her hearing, the hearing panel must assign great weight to the three youth offender factors in section 2446.
- Subdivision (c) clarifies the requirement for the panel to consider written submissions from a qualified youth offender's family, friends, school personnel, faith leaders, or community organization representatives if the submissions contain information either about the youth offender at the time of the crime or the youth offender's growth and maturity since the crime.
- Subdivision (d) clarifies that youth offenders must be granted parole unless the panel finds the youth offender remains a current, unreasonable risk to public safety even after the panel has assigned great weight to the youth offender factors, as required by subdivision (b). Further, this subdivision establishes the hearing panel's requirements for articulating a decision to deny parole to a youth offender.
- Subdivision (e) clarifies that youth offenders are subject to the denial length periods established by Marsy's Law in Penal Code section 3041.5, subdivision (b)(3).
- Subdivision (f) clarifies that all victim rights at parole consideration hearings still apply at youth offender parole hearings.

Section 2446 is *added* to clarify the board's interpretation of the youth offender factors identified in Penal Code sections 3051, subdivision (f), and 4801, subdivision (c), based on a review of the case law leading to the enactment of these sections.

- Subdivision (a) provides the board's interpretation of the meaning of "diminished culpability of youth as compared to adults" from the above statutes, based on the case law cited in the reference note for this section.
- Subdivision (b) provides the board's interpretation of the meaning of "hallmark features of youth" from the above statutes, based on the case law cited in the reference note for this section.
- Subdivision (c) provides the board's interpretation of the meaning of "subsequent growth and increased maturity" from the above statutes, based on the case law cited in the reference note for this section.

NECESSITY:

Section 2440

Defining who qualifies as a youth offender in section 2440 of the proposed regulations is necessary because the board needs to provide clarity to institution staff, inmates, and the public about how to determine if an inmate properly qualifies as a youth offender under Penal Code section 3051, subdivisions (a) and (h). Specifically, the board needed to define "youth offender" in two subdivisions within section 2440 (subdivisions (a) and (b)) to clarify for institution staff, inmates, and the public that different criteria apply when determining whether an inmate sentenced to a term of life without the possibility of parole for a controlling offense qualifies as a youth offender, as opposed to an inmate sentenced to a term of life with the possibility of parole or a determinate term for a controlling offense, specifically, the age at which an inmate committed the controlling offense. The board also found it necessary to define "controlling offense" in this section, in accordance with the definition provided by Penal Code section 3051, for the convenience of institution staff, inmates, and the public when reviewing the entire regulatory scheme governing the qualification of youth offenders and verifying the veracity of an inmate's qualification or disqualification as a youth offender.

Additionally, the board deemed it necessary to interpret the statutory disqualification in section 3051, subdivision (h), for offenses sentenced under California's strike-sentencing laws to apply only when the strike is attached to the controlling offense so as to harmonize the statutory language and best carry out the intended purpose of the youth offender laws and their exemptions. Specifically, in accordance with statutory construction laws, the board determined that, by using the word "cases" for this exemption, instead of "individuals" as used in the exemption for crimes committed after age 26 in the same subdivision, the legislature must have intended this word to have a different meaning than the word "individuals." Thus, the board could not interpret this disqualification to apply to any individual who had ever been convicted of a strike. In reviewing the remaining possible interpretations for the word "cases," the board notes that the statute deliberately allowed for youth offenders to commit additional crimes after reaching age 26, so long as the post-26 crimes did not involve malice aforethought and did not

result in a sentence for a term of life or for a term of sufficient length to become the inmate's new controlling offense. The board determined that interpreting the word "cases" in subdivision (h) of section 3051 in this manner, in relation to "controlling offense," as defined in subdivision (a), best captured the intent and purpose of this disqualifying exemption. Based on the above, the board deemed it necessary in subdivision (d) of section 2440 of these proposed regulations to clarify that an inmate will be disqualified from youth offender status if his or her controlling offense was sentenced under Penal Code sections 1170.12, 667, subdivisions (b) through (i), or 667.61. The board chose to include this portion in the same subdivision where the board clarified the other factors that will disqualify an otherwise qualified youth offender from youth offender status based on the provisions of Penal Code section 3051. Additionally, the board found it necessary to include subdivision (f) in section 2440 of the proposed regulations to make it clear for the public, inmates, and institutional staff that an inmate is not disqualified from the youth offender parole process merely by being sentenced under the strike sentencing laws.

Moreover, the board deemed it necessary to clarify that condemned inmates were disqualified from the youth offender process and receiving youth offender parole hearings because, while not explicitly barred from the youth offender parole process in Penal Code section 3051, interpreting the statute as providing youth offender consideration to condemned inmates would be antithetical to the statute as a whole. As the legislature explicitly amended Penal Code section 3051 through SB 394 to provide youth offender consideration for specified inmates sentenced to life without the possibility of parole, but did not do so for condemned inmates, it would not be a reasonable interpretation of the statute to allow for qualification of any condemned inmates as a youth offender. Thus, the board found it necessary to make it clear for the public, inmates, and institutional staff that inmates sentenced to death could not qualify as a youth offender, regardless of what age they committed the offense for which they were sentenced to death.

Additionally, establishing in section 2440, subdivision (e), of the proposed regulations the board's process for identifying the controlling offense when an inmate has two or more offenses with identical longest sentence lengths is necessary to provide guidance for institutional staff, inmates, and the public about how to resolve these cases. This is particularly important if one offense would qualify the inmate as a youth offender, but others appear to disqualify the inmate. Because of the inclusive nature of the youth offender statute, the board determined that, as a general rule, the offense committed first in time should serve as the controlling offense as this best captures the legislative allowance for a youth offender to commit additional crimes so long as the crimes are not increasing in severity. However, to also capture the disqualification of an inmate whose controlling offenses were sentenced under one of the disqualifying strike-sentencing laws, the board found it necessary to retain that exemption such that, if one of the tied longest offenses is sentenced under the strike-sentencing laws, that offense will be identified as the controlling offense and the inmate will be disqualified from youth offender status.

Section 2441

Clarifying in section 2441 of the proposed regulations the methods through which inmates may seek administrative remedy if they feel they were improperly disqualified or their YPED was incorrectly calculated is necessary to provide inmates with proper due process. Identifying in section 2441, subdivision (a), that the department is responsible for initially determining which inmates qualify as a youth offender and calculating a youth offenders YPED is necessary so that inmates, the public, and institutional staff are aware of the process through which youth offender determinations are made and who to contact should they believe there is an issue with a youth offender determination. Further, clarifying that both determinations referenced in subdivision (a) will be referred to as “youth offender determinations” is necessary because this allows the board to communicate how these determinations may be challenged throughout the rest of the proposed regulations without being overly redundant and difficult to comprehend. Also in the interest of clarity and simplicity, the board found it necessary to define the earliest date on which a youth offender is eligible for a youth offender parole hearing (if not eligible earlier under other law), as specified by Penal Code section 3051, subdivision (b), using the acronym “YPED” in section 2441, subdivision (b), of the proposed regulations for consistency with how the department is identifying these dates. The board further deemed it necessary to define “incarceration” in subdivision (c) of section 2441 of the proposed regulations, as required by Penal Code section 3051, subdivision (a)(2)(A), to clarify the calculations outlined in subdivision (b) of the same section. Since youth offender determinations regarding eligibility and YPED calculations are handled by the department, directing inmates to the department’s appeal process in subdivision (d) of section 2441 of the proposed regulations was necessary to inform inmates of the proper remedy for seeking redress when they believe errors were made.

Establishing the process for calculating a YPED in section 2441, subdivision (b), is necessary to clarify the calculation for department staff, inmates, and the public. Specifically, since section 3051, subdivision (b), established the maximum date for a youth offender to begin receiving hearings as being “during” the 15th, 20th, or 25th year of incarceration, the board determined that youth offenders first become eligible for hearings after completing 14, 19, or 24 years, since this is when an inmate’s 15th, 20th, or 25th year of incarceration begins to run. Moreover, since the board needs to track the date on which youth offenders first become eligible for hearings under the youth offender laws, establishing the YPED at the completion of 14, 19, or 24 years is necessary to provide the board with proper tracking so that the board can establish scheduling requirements in relation to that eligibility date.

Section 2442

Since the determination of who is eligible to receive a hearing by the board is ultimately under the board’s jurisdiction, establishing a one-time process for board review of youth offender determinations in section 2442 of the proposed regulations was necessary to allow the board the opportunity to ensure that all hearings for eligible inmates are properly scheduled. Additionally, separating the board’s review jurisdiction between subdivisions (a) and (b) of section 2442 is necessary to clarify that the one-time review by the board applies independently to each type of review. Specifically, this clarifies that an inmate may seek a one-time review of

his or her qualification as a youth offender and a one-time review of his or her YPED, and is not limited to a one-time review of only one of those youth offender determinations.

The board also deemed it necessary to identify three specific documents in section 2442, subdivision (c), that an inmate may choose to submit along with their request for board-review of a youth offender determination so as to clarify for inmates which documents, depending on the nature of their particular situation, may be particularly helpful for the board when making their case that an error has occurred. However, the board did not find it necessary to mandate inmates to submit any of these documents because inmates may not possess some of the documents and the board wanted to ensure maximum flexibility for inmates to use this process to ensure accuracy in youth offender determinations. The board determined it was necessary in section 2442, subdivisions (d) and (e), for the board's Chief Counsel to conduct these reviews and issue any necessary responses and miscellaneous decisions because whether an inmate qualifies as a youth offender and should receive youth offender consideration at a parole consideration hearing is a legal determination.

Section 2443

Establishing the board's process for how and when parole consideration hearings will be scheduled for youth offenders in section 2443 of the proposed regulations is necessary to clarify the interplay between different hearing eligibility dates and release dates, as well as to clarify for inmates and the public when the board will schedule hearings following a YPED. Specifically, requiring in section 2443, subdivision (a), initial hearings to be scheduled within one year of when a youth offender reaches his or her YPED ensures that hearings are held during the year following the YPED, since this will be the inmate's 15th, 20th, or 25th year in accordance with section 3051, subdivision (b). Additionally, since section 3051, subdivision (b), sets the maximum date by which youth offenders must begin receiving hearings before the board, it is necessary to clarify that, if an inmate is entitled to an earlier hearing under a different parole eligibility date, the board will not schedule the hearing within one year of the YPED because the youth offender will already have begun receiving hearings. For subsequent hearings, explaining what it means that youth offenders remain subject to Penal Code section 3041.5 in simpler terms in section 2443, subdivision (c), is necessary to clarify the denial lengths to which youth offenders are subject so that inmates and the public will understand when their subsequent hearings will be scheduled.

Moreover, clarifying in section 2443, subdivision (b)(1), that a determinately-sentenced inmate will not be scheduled for a hearing if the EPRD is within 18 months of the YPED is necessary to explain the interplay between EPRD and YPED and to avoid wasting hearing resources. Specifically, a determinately-sentenced youth offender's initial hearing is generally scheduled by approximately one year after the YPED in accordance with Penal Code section 3051(b)(1). However, even if the inmate received a grant at his or her initial hearing, Penal Code sections 3041, 3041.1, and 3041.2 provide for additional review periods by the board's Legal Division and the Governor, which added together take several months. This means any impact on a determinately-sentenced youth offender's length of incarceration is negligible because the youth offender will be released on parole under other law at approximately the same time as the

release would be finalized from the board's grant. Thus, providing a youth offender parole hearing to a determinately-sentenced youth offender who's EPRD is within 18 months of his or her YPED unnecessarily redirects board hearing resources damaging the board's ability to fulfill its other statutory requirements and obligations with regard to parole consideration hearings. For the same reasons, it is also necessary in section 2443, subdivision (d), to clarify that a subsequent youth offender parole hearing will not be scheduled within one year of an inmate's EPRD. Establishing the timelines for specified youth offender parole hearings in section 2443, subdivisions (b)(2) through (b)(4), are necessary because these timelines are required by Penal Code sections 3051, subdivision (i)(3) and (i)(4), and 3051.1, subdivision (b).

Section 2444

The board deemed it necessary to specify in section 2444 of the proposed regulations that board psychologists must consider the youth offender factors when completing a comprehensive risk assessment for a qualified youth offender because it is required by Penal Code section 3051, subdivision (f)(2). Further, it was necessary to require psychologists to document their consideration of the youth offender factors under a unique heading in the risk assessment so that it is clear to the inmate and hearing panel that the youth offender factors were considered by the psychologist when conducting the risk assessment. While consideration of youth factors in comprehensive risk assessments is also included in section 2240, the board's regulation governing comprehensive risk assessments, the board found it necessary to include it again in the portion of the regulations discussing youth offender requirements to avoid this requirement being missed by a person who was not aware of the need to review the comprehensive risk assessment regulation.

Section 2445

Collating each of the at-hearing rights and requirements into a single subdivision (section 2445, subdivision (a)) is necessary to simplify for hearing panels, inmates, and the public all of the variations for parole consideration hearings for youth offenders. As an initial matter, requiring these hearings to generally be conducted in accordance with the board's regulations for suitability hearings is necessary to establish that, but for the remaining subdivisions under this section, these hearings are conducted in the same manner as suitability hearings for all other inmates in accordance with Penal Code section 3051, subdivision (d). Then, establishing in section 2445, subdivision (b), the great weight requirement for the youth factors with reference to the proposed regulation interpreting these factors is necessary to clarify that, in giving great weight to these factors, panels must be guided by the board's specified interpretations. Additionally, requiring in section 2445, subdivision (c) that panels review and consider information about the youth offender at the time of the controlling offense and the growth and maturity while incarcerated is necessary to give meaning to section 3051, subdivision (f)(2), which allows family members, friends, school personnel, faith leaders, or community representatives to submit this information. Moreover, clarifying in section 2445, subdivisions (d) and (e), when a panel may deny parole, what a hearing panel must do when the panel denies parole, the denial lengths to which youth offenders are subject, and the rights of victims at these

hearings is necessary to ensure that hearing panels, inmates, and the public can find all of the variations for youth offender parole hearings in a single location.

Section 2446

Interpreting and making specific in section 2446 of the proposed regulations the three youth factors listed in Penal Code sections 3051, subdivision (f)(1), and 4801, subdivision (c), is necessary to provide greater guidance from the case law about the meaning of these terms to the hearing panels and clinicians tasked with giving these factors specified amounts of weight. Providing guidance to the panels and clinicians is necessary to ensure that our hearing officers and clinicians have similar understandings of what is contemplated by each of these terms so that they will discuss and apply them similarly to cases involving youth offenders. In specifying these legal terms, the board relied heavily on the case law cited by the bills that enacted and amended the youth offender laws to ensure consistency with court interpretations of these terms.

ANTICIPATED BENEFITS:

Defining who qualifies as a youth offender benefits all stakeholders by resolving several ambiguities and clarifying how to determine whether an inmate will qualify for youth offender protections. Additionally, clarifying the methods through which inmates may seek administrative remedy or one-time board review for erroneous disqualifications or YPED calculations benefits inmates by clarifying how to resolve potential errors. These processes also benefit public safety by ensuring the greatest possible accuracy in qualifying inmates for youth offender status and calculating their parole eligibility dates.

Clarifying the process for calculating a YPED as well as how initial and subsequent hearings will be scheduled benefits inmates, victims, and other hearing participants because each stakeholder will have a better understanding of when to prepare for a youth offender's initial or subsequent parole consideration hearing. Also, specifying how a board psychologist will consider the youth offender factors when preparing a risk assessment for a youth offender and document the consideration in the risk assessment benefits hearing participants by ensuring a more unified approach to presenting this information in a risk assessment. Interpreting the three youth factors also benefits each stakeholder by clarifying what information will be discussed and given weight at hearings for youth offenders and considered by board psychologists in risk assessments for youth offenders. Moreover, collating each of the at-hearing rights and requirements into a single subdivision further benefits these stakeholders by providing a single location from which to identify all of the ways in which hearings for youth offenders differ from other parole consideration hearings, which allows each hearing participant to better prepare for their role in the hearings.

DOCUMENTS RELIED UPON:

In interpreting and making specific the three youth factors in section 2446 of these proposed regulations, the board relied on the following court decisions:

- *Roper v. Simmons* (2005) 543 U.S. 551
- *Graham v. Florida* (2010) 560 U.S. 48
- *Miller v. Alabama* (2012) 132 S.Ct. 2455
- *People v. Caballero* (2012) 55 Cal.4th 262
- *Moore v. Biter* (2013) 725 F.3d 1184

Additionally, in interpreting other provisions of these proposed regulations, the board relied on the following additional court decisions:

- *People v. Franklin* (2016) 63 Cal.4th 261
- *Montgomery v. Louisiana* (2016) 136 S.Ct. 718
- *In re Lawrence* (2008) 44 Cal.4th 1181

The board has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document not already included in this section.

ECONOMIC IMPACT ANALYSIS:

Creation or Elimination of Jobs within the State of California

The proposed action is designed to bring the board's regulations into compliance with Penal Code sections 3046, 3051, and 4801, as enacted and amended by SB 260, SB 261, AB 1308, and SB 394, as well as the line of case law on youth offenders. However, the board has determined that the proposed action will have no impact on the creation or elimination of jobs within the State of California because the impact on board staffing was already mandated by the legislation prompting these regulations and the proposed regulatory requirements have been absorbed by current staff positions.

Specifically, the main substantive changes in this proposed action require the board to conduct hearings for youth offenders who either (a) were already in the board's hearing cycle but are now entitled to have their hearings conducted as youth offender hearings or (b) were not previously entitled to receive hearings until the passage of the youth offender laws. For youth offenders in the second category, the board was required to add into its hearing schedule the hearings for these newly-eligible inmates. Thus, with the increase in workload associated specifically with implementing the youth offender laws and conducting the increased number of parole consideration hearings for youth offenders, in Fiscal Year 2014-2015, the board requested and was granted funding for 2.5 psychologist positions, one limited-term attorney III position, and associate governmental program analyst overtime pay. Also specifically for the purpose of implementing the youth offender laws, in Fiscal Year 2015-2016, the board was granted funding for one psychologist position and 0.5 limited-term attorney III positions, and in Fiscal Year 2016-2017, the board was granted additional funding for eight psychologist positions, two senior psychologist positions, four administrative law judges, two commissioners, one associate governmental program analyst, and one office technician. In Fiscal Years 2017-2018 and 2018-2019, the board did not request additional funding solely for the purpose of

implementing the youth offender laws. Instead additional funding is being requested to enable the board to continue to effectively carry out all general board functions, which includes the board's continued obligation under the youth offender laws to provide youth offender parole hearings to qualified youth offenders. With regard to Fiscal Years 2019-2020 and 2020-2021, the board does not anticipate requesting additional funding solely to implement the youth offender laws or these proposed youth offender regulations as these costs have been assumed by funding-requests in prior fiscal years, as noted above. While the board may request additional funding during the current and two subsequent fiscal years due to an anticipated general increase in workload across all board functions, which again may include youth offender parole hearings, the board does not anticipate any necessary increase in budget solely to implement these regulations. Additionally, the anticipated budget increase requests would not be necessary solely to complete all anticipated youth offender parole hearings over these fiscal years.

Moreover, the board had no discretion under SB 260 or SB 261 with respect to adding youth offender parole hearings into the board's current hearing schedule. This means the prior budget change requests for new positions in Fiscal Years 2014-2015, 2015-2016, and 2016-2017 were already required following the enactment of those legislative bills; therefore, the enactment of these regulations will not result in the creation of any additional new jobs that were not already mandated by statute. Additionally, the new hearings added following the enactment of AB 1308 and SB 394 were absorbed by current resources in Fiscal Year 2017-2018, when those bills took effect. Finally, while the creation of the one-time review process by the board also requires additional work hours, this function will be absorbed by current staff positions and will not result in the creation of any additional jobs. Therefore, the adoption of this regulation is not resulting in the creation of any new jobs in California. No jobs in California have been eliminated as a result of these changes.

Creation of New or Elimination of Existing Businesses Within the State of California

This regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, because private businesses are not affected by a shift in rights and hearing requirements for youth offenders seeking parole. These proposed regulations will have no additional effect on the creation or elimination of businesses in California.

Expansion of Businesses within the State of California

This regulatory action will not have a significant, statewide adverse economic impact directly affecting the expansion of business in California because private businesses are not affected by a shift in rights and hearing requirements for youth offenders seeking parole. These proposed regulations will have no additional effect on business expansion in California.

Anticipated Benefits of the Regulations

As explained above in greater detail, these proposed regulations will benefit all stakeholders by providing greater clarity on how to determine which inmates qualify as youth offenders and when each hearing participant should prepare for the youth offender's hearings. The proposed regulations also benefit public safety by reducing the risk of error through the appeal and review processes, and ensuring greater uniformity in how the youth factors are considered and applied to inmate cases.

ADDITIONAL FINDINGS:

The board has made an initial determination this regulatory action will not have a significant adverse economic impact on business. Neither the rights and requirements for youth offender hearings nor the process through which youth offender determinations are made and corrected and these hearings are held affects operation of businesses in California. No facts, evidence, documents, testimony, or other evidence to the contrary has been provided to or reviewed by the board.

The board has determined this action imposes no mandates on local agencies or school districts, or mandates which require reimbursement pursuant to Part 7 (Section 17561) of Division 4 of the Government Code.

The board, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document not already included above in the "Documents Relied Upon" section.

The board has determined that no alternative considered would be (1) more effective in carrying out the purpose of this action, (2) as effective and less burdensome to affected private persons than the action proposed, or (3) more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

END