BPH RN 21-03: INITIAL STATEMENT OF REASONS

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
TITLE 15. CRIME PREVENTION AND CORRECTIONS
DIVISION 2. BOARD OF PAROLE HEARINGS
CHAPTER 3. PAROLE RELEASE
ARTICLE 2. INFORMATION CONSIDERED

Amendment of Section 2240
Comprehensive Risk Assessments

INTRODUCTION

On February 5, 2021, emergency regulations amending section 2240 of title 15 of the California Code of Regulations (CCR) went into effect. The emergency regulations authorized the Board of Parole Hearings (board) to conduct parole consideration and subsequent parole reconsideration hearings scheduled to occur on or between April 1, 2021, and June 30, 2022, for specified inmates without preparing a Comprehensive Risk Assessment (CRA). Further, the emergency regulations established processes through which specified inmates could challenge the board's determination not to prepare a CRA for their hearing or request the board prepare a CRA for their hearing under certain circumstances. In accordance with Executive Orders N-40-20 and N-71-20 issued by the Governor of California, the emergency regulations are currently scheduled to expire on December 4, 2021.

This rulemaking seeks to adopt the regulatory language of the emergency regulations in accordance with Government Code sections 11346.2 to 11347.3, inclusive.

In addition, this rulemaking seeks to further amend section 2240 of title 15 of the CCR to clarify the board is not required to prepare a CRA before conducting a parole consideration or subsequent parole reconsideration hearing for inmates placed on medical parole supervision before the date the hearing is scheduled to occur.

LEGAL BACKGROUND

The Board's CRA Process

The board's Forensic Assessment Division (FAD) is responsible for preparing a CRA for an inmate's hearing prior to the inmate's upcoming parole consideration or subsequent reconsideration hearing. Licensed psychologists employed by the board consider factors impacting an inmate's risk of violence and prepare a CRA to assist the hearing panel to understand the inmate's potential risk for future violence. The psychologist uses evidence-based risk assessment tools to present the hearing panel with the psychologist's structured professional judgment or expert opinion concerning each inmate's potential risk for future violence. The psychologist's expert opinion includes findings

from a clinical interview with the inmate and a review of the inmate's institutional record. The CRA often includes, but is not limited to, an evaluation of the inmate's commitment offense, institutional programming, past and present mental state, and analysis of static and dynamic risk factors based on the inmate's behaviors and relationships, emotions and attitudes, and perceptions and attributions.

Current regulations require the board to prepare a CRA for all initial and subsequent parole consideration hearings and subsequent parole reconsideration hearings for inmates housed within the State of California if, on the date of the hearing, more than three years will have passed since the most recent CRA became final. (Cal. Code Regs., tit. 15, § 2240, subd. (d)(1).)

An Inmate's Protected Liberty Interest in Parole

An inmate subject to the board's parole-hearing jurisdiction has a protected liberty interest in parole consideration. Inmates have a right to an initial parole consideration hearing before the board based on their parole eligibility date, including their Minimum Eligible Parole Date (MEPD), Youth Parole Eligible Date (YPED), Elderly Parole Eligible Date (EPED), or, for indeterminately sentenced inmates only, their Nonviolent Parole Eligible Date (NPED). (Pen. Code, §§ 3041, subd. (a)(2); 3051, 3055; *In re Edwards* (2018) 26 Cal.App.5th 1181.) Further, inmates identified in Penal Code sections 3000, subdivision (b)(4), and 3000.1, who were remanded to the custody of the California Department of Corrections and Rehabilitation (department) because of a violation of law or condition of parole while on parole, are entitled to annual subsequent parole reconsideration hearings if the board, within one year of the violation, determines the circumstances and gravity of the violation are such that consideration of the public safety requires a more lengthy period of incarceration, unless there is a new prison commitment following a conviction.

At all parole consideration and subsequent reconsideration hearings, the board has broad discretion in making parole decisions and, because there is no ideal, error-free way to make decisions, "experimentation involving analysis of psychological factors combined with fact evaluation guided by practical experience" is encouraged in our system of government. (*Greenholtz v. Inmates of Nebraska Penal & Corr. Complex* (1979) 442 U.S. 1, 13.) At these hearings, hearing panels assess whether the inmate's release presents a current risk of danger to public safety. (*See In re Lawrence* (2008) 44 Cal.4th 1181.) Under Penal Code section 3041, subdivision (b)(1), if a hearing panel determines an inmate's release does not present a current risk of danger to public safety, the hearing panel must grant parole to the inmate.

The CRA is a tool that hearing panels use to assist them with gauging an inmate's risk of future violence and determining whether an inmate is suitable for parole. An inmate receiving parole consideration, however, does not have a right in the board preparing a CRA, as the CRA is intended to benefit the hearing panel by providing them information. (*See In re Lazor* (2009) 172 Cal.App.4th 1185, 1202 [CRA is information that bears on suitability for release, but it does not dictate the board's parole decision].) Further, the board may conserve and allocate its limited resources on inmates most likely to be suitable for parole. (*Garner v. Jones* (2000) 529 U.S. 244, 254.)

Johnson v. Shaffer *Settlement Agreement*

On April 20, 2012, the class action case *Johnson v. Shaffer* was filed, challenging the constitutionality of the protocol adopted governing the preparation of CRAs. On May 26, 2016,

the court approved the parties' negotiated settlement agreement. (*Johnson v. Shaffer* (E.D. Cal. May 26, 2016) No. 2:12-cv-1059, Doc. 167 [order approving stipulated agreement].) Under the settlement agreement, the board agreed to incorporate mechanisms that address concerns of possible bias in CRAs, including an opportunity for inmates to file objections to factual errors in the CRA. On April 17, 2018, the Office of Administrative Law (OAL) approved the board's regulations enacting a CRA process that complied with the *Johnson v. Shaffer* settlement agreement. The regulations took effect July 1, 2018.

In accordance with the *Johnson v. Shaffer* settlement agreement, the parties and court anticipated that changes would be made to the CRA process over time. Clause four of the settlement agreement's Terms and Conditions stated:

> If, before December 31, 2016, the Board proposes any changes in how or whether the CRA, including the HCR-20 Version 3, PCL-R, or Static 99-R will be administered, or proposes using a risk-assessment tool other than the HCR-20 Version 3, PCL-R, and Static 99-R, class counsel may present an expert to discuss the proposed changes to the Board's commissioners in open session.

Under this clause, the board could amend section 2240 of title 15 of the CCR, governing the board's CRA process, so long as the board complied with the provisions of the clause.

However, clause four no longer impacts the board's authority to amend section 2240 because the December 31, 2016 deadline has passed.

Additionally, clause 13 of the settlement agreement stated "[t]he Court will retain jurisdiction over this case until January 1, 2017." Further, clause 14 stated:

> If within 30 days after January 1, 2017, Plaintiffs believe that Defendants have not submitted regulations to the OAL, completed the agreed upon presentations to the Board, and provided language to the Board psychologists with instructions to include it in CRAs, Plaintiffs may seek extension of the Court's jurisdiction over this matter for a period not to exceed 12 months. . . . If plaintiffs do not seek an extension of the Court's jurisdiction within the period noted above, or the Court denies Plaintiffs' request for an extension, this agreement and the Court's jurisdiction shall automatically terminate, and the claims in this case shall be dismissed with prejudice.

The court extended its jurisdiction over the matter until February 4, 2019, whereupon the court's jurisdiction over the case ended.

Nothing in the *Johnson v. Shaffer* settlement agreement stated or contemplated a permanent prohibition on the board from making any subsequently necessary changes to the board's CRA process described in section 2240 of title 15 of the CCR.

Expanded Medical Parole

Senate Bill number 1399 (2009-2010 Reg. Sess.) established a process under Penal Code section 3550 through which an inmate who is permanently medically incapacitated can be placed on medical parole supervision in a licensed health care facility in the community. Under this process, the head

physician of an institution refers eligible inmates at the institution to the board for a medical parole hearing. (Pen. Code, § 3550, subd. (c) & (d).) Inmates are eligible if they are permanently medically incapacitated with a medical condition that renders them permanently unable to perform activities of basic daily living and results in the inmate requiring 24-hour care. Further, the incapacitation cannot have existed at the time of sentencing.

As initially enacted, the medical parole process established in Penal Code section 3550 did not apply to a condemned inmate, an inmate sentenced to life without the possibility of parole, or an inmate serving a sentence for which parole is prohibited by an initiative statute. (Sen. Bill No. 1399 (2009-2010 Reg. Sess.) § 2.) On February 10, 2014, the Three-Judge Court in the Eastern and Northern District Courts of California in the cases *Coleman v. Brown* and *Plata v. Brown* issued an order requiring the department, in consultation with the Receiver's office, finalize and implement an expanded parole process for medically incapacitated inmates (*Coleman v. Brown* (E.D. Cal. February 10, 2014) No. 2:90-cv-0520, Doc. 2766; *Plata v. Brown* (N.D. Cal. February 10, 2014) No. C01-1351, Doc. 2766.) This expanded process applied to more inmates than those described in Penal Code section 3550. Specifically, to be eligible for the expanded process, an inmate must: 1) suffer from a significant and permanent condition, disease, or syndrome, resulting in the inmate being physically or cognitively debilitated or incapacitated; 2) qualify for placement in a licensed health care facility, as determined by the Resource Utilization Guide IV Assessment Tool (this is a tool used to evaluate eligibility for Medicare and Medicaid reimbursement for placement in a skilled nursing facility); 3) not pose an unreasonable risk to public safety if placed in a licensed health care facility; and 4) not be condemned or serving a sentence of life without the possibility of parole. The expanded process established by the February 10, 2014 order became known as "expanded medical parole." The court order continues to govern which inmates are eligible for the expanded medical parole process.

At a medical parole hearing, a board hearing panel must determine whether the conditions under which an inmate would be released would not reasonably pose a threat to public safety. (Pen. Code, § 3550, subd. (a).) If the board approves an inmate for placement on medical parole, the inmate is placed in a licensed health care facility in the community to continue serving their sentence from that facility. Thus, the department and California Correctional Health Care Services (CCHCS) monitor the inmate's medical condition and behavior while they are placed in a licensed health care facility. In the event the inmate shows significant improvements in their medical condition, such that the inmate is no longer eligible for placement on medical parole supervision, the inmate will be removed from expanded medical parole and returned to prison.

Because inmates continue to serve their criminal sentences while placed on medical parole supervision under the expanded medical parole program, an inmate is still eligible to receive parole consideration hearings under their MEPD, YPED, EPED, or NPED, or subsequent parole reconsideration hearings under Penal Code sections 3000, subdivision (b)(4), or 3000.1, as applicable.

PROBLEM STATEMENT

Inmates with Two or More Serious RVRs and Designated Security Level IV, as Specified

Under the board's regulations as they existed prior to the emergency regulations that went into effect February 5, 2021, the impact of the ongoing health crisis posed by COVID-19 on the board's parole hearing process and the increase in hearings due to changes in the Penal Code and California Constitution jeopardized the board's ability to timely conduct parole hearings for all inmates. If the board continued to be required to produce a CRA for all hearings under the prior regulatory language, the board projected it would need to postpone 864 to 1,411 hearings by the end of 2021.[1] Further, it was anticipated under the prior regulatory language that additional hearings would need to be postponed after December 31, 2021, so long as the COVID-19 pandemic continued. At the time of adopting the emergency regulations, the board viewed this as an emergency that disrupted its ability to protect the liberty interest of all inmates to receive a timely parole hearing, and should the emergency regulatory language expire on December 4, 2021, as currently scheduled, without adoption through this current rulemaking package, these significant concerns would continue to impact the board's hearing cycle.

The board seeks to adopt these regulations altering the board's obligation to prepare a CRA prior to a parole consideration hearing or subsequent parole reconsideration hearing. Specifically, the board seeks to adopt regulations enabling the board to conduct a parole consideration hearing or subsequent parole reconsideration hearing without needing to prepare a new CRA for an inmate who meets specified criteria. The specified criteria are: 1) the inmate was designated by the department as Security Level IV as of January 1, 2021, and 2) the inmate was found guilty by the department of two or more Serious Rules Violation Reports (RVRs) at a disciplinary hearing on or between January 1, 2018, and January 1, 2021. The regulations limit their impact to: 1) parole consideration hearings and subsequent parole reconsideration hearings scheduled to occur on or between April 1, 2021, and June 30, 2022, and 2) parole consideration hearings and subsequent parole reconsideration hearings previously scheduled to occur on or between April 1, 2021, and June 30, 2022, but which are postponed and rescheduled to occur on a date after June 30, 2022. The implementation of the regulations is necessary to protect the interest of all inmates to receive a timely parole consideration hearing or subsequent parole reconsideration hearing. This includes the inmates who will not receive a CRA, but who will receive a timely parole consideration hearing.

Under CCR, title 15, section 2240, subdivision (d)(1), as it existed prior to the adoption of the emergency regulations, the board was required to prepare a CRA for all parole consideration hearings and subsequent parole reconsideration hearings for inmates housed within California if, on the date of the hearing, more than three years will have passed since the most recent CRA became final. Under section 2240 as it existed prior to adoption of the emergency regulatory language, the board was required to postpone an inmate's scheduled parole consideration hearing or subsequent parole reconsideration hearing if it was unable to timely complete and serve a CRA on the inmate before the hearing. Multiple factors converged to create an emergency in which, if the board did not adopt the emergency regulations, 864 to 1,411 parole hearings would need to be postponed by the end of 2021 because the board would be unable to prepare a CRA before the hearing. These factors would continue to hinder the board's ability to provide timely hearings for inmates should the emergency regulatory language expire December 4, 2021, without adoption of the regulatory language in this rulemaking package

The primary factor resulting in the board's projected backlog of about 864 to 1,411 CRAs by the end of 2021 was the ongoing risk to public health and safety posed by COVID-19. On March 24,

[1] As of September 1, 2020.

2020, in response to the growing risk posed by COVID-19 and through Executive Order Number N-36-20, the Governor directed the board to cease conducting in-person parole hearings and instead conduct hearings by video conference. Further, the Governor declared inmates scheduled for a parole hearing while the executive order was in effect could elect to receive their timely parole hearing by video conference, to accept a postponement of their parole hearing, or to waive their hearing. Finally, the executive order authorized the Secretary of the department to grant one or more 30-day extensions of the Governor's orders with regard to parole hearings if necessary to protect the health, safety, and welfare of inmates in the department's custody, staff who work in the facilities, hearing officers, victims and their representatives, and prosecutors. The Secretary has continuously extended these provisions to date.

Between March 23 and March 27, 2020, the board was forced to postpone all parole hearings due to the growing health risks COVID-19 posed to institutional staff and inmates, and the need for the board to develop policies and procedures to conduct parole hearings via video conference rather than in-person. The board began conducting parole hearings via video conference on April 1, 2020. At each video conference hearing, the inmate was provided an opportunity to postpone the hearing if the inmate preferred to wait to have the hearing at a time when the health risks posed by COVID-19 abated and the board could again conduct in-person parole hearings. Between March 23, 2020, and January 1, 2021, the board postponed 2,138 hearings. The majority of these hearings were postponed as a result of a variety of factors associated with COVID-19, such as inmates, panel members, and inmate counsel being unavailable due to illness or because of quarantine or isolation requirements, inmates requesting to postpone their hearings because they did not want to proceed by video conference, and technical difficulties associated with conducting hearings by video conference. Also during this time, inmates waived 787 hearings, as authorized by the Governor's Executive Order. Of the hearings that were postponed or waived between March 23, 2020, and January 1, 2021, 50 percent, or 1,463, were expected to need a new CRA prepared before the board conducted the inmate's next hearing.

In addition, the board is approaching a December 31, 2021 deadline by which it must provide initial parole hearings, each of which would have previously required a CRA, to various inmate populations. Specifically, under, Penal Code sections 3051, subparagraph (i)(3)(B), and 3051.1, subdivision (b), as well as CCR, title 15, section 2443, subdivision (b)(3), the board must conduct an initial youth offender parole hearing by December 31, 2021, for any determinately-sentenced youth offender who qualified as a youth offender under Senate Bill 261 (Chapter 471 of the Statutes of 2015) or Assembly Bill 1308 (Chapter 675 of the Statutes of 2017) and for whom Case Records Services of the department calculated a YPED as a date occurring prior to the effective date of the bill under which the inmate became qualified. Further, under CCR, title 15, section 2449.32, subdivision (b), the board must conduct an initial parole consideration hearing by December 31, 2021, for any indeterminately-sentenced nonviolent offender eligible for an initial hearing by December 31, 2021, as a result of article 16 of chapter 3 of division 2 of title 15 of the CCR.

Finally, the California Legislature recently amended Penal Code section 3055 to increase the number of inmates eligible for an initial parole consideration hearing under the statutory Elderly Parole Program. The amendments took effect January 1, 2021. The amended statute requires the board to conduct an initial parole consideration hearing by December 31, 2022, for all inmates who meet the new eligibility criteria for the statutory Elderly Parole Program and are entitled to an initial hearing before January 1, 2023. The board projected the amendments to Penal Code section 3055

would require the board conduct 779 additional initial parole consideration hearings by December 31, 2022.

The board is required by law to grant parole to inmates who no longer present an unreasonable risk of danger to the community if released. As such, inmates scheduled for a hearing during 2021 and 2022 who meet this legal standard would be released on parole. In 2019, 20% of scheduled parole hearings resulted in a grant of parole. Assuming a similar percentage of grants would occur for inmates at scheduled parole hearings the board projected it would need to postpone by the end of 2021, hearing panels would have found approximately 173[2] to 283[3] of those inmates suitable at their scheduled parole hearing if the hearings were timely conducted. However, if those same suitable inmates had their hearings postponed, their hearings would be delayed and they would not be granted parole at the time their hearing was initially scheduled to occur.

Therefore, each hearing postponed as a result of not enacting the emergency regulations potentially would have caused a suitable inmate to remain incarcerated, and the time of continued incarceration would have potentially been for a substantial period of time beyond when they legally could have been released. Specifically, numerous statutory and regulatory parole hearing scheduling requirements compete for calendar space on the board's hearing calendar. (*See* Pen. Code, §§ 3000, subd. (b)(4), 3000.1, 3041, 3041.5, 3051, 3051.1, & 3055, and Cal. Code Regs., title 15, §§ 2449.32 & 2443.) Further, the board must comply with statutory notice requirements before the scheduled date of a parole hearing. (*See* Pen. Code, § 3043, requiring the board notice registered victims of any hearing to review or consider the parole suitability of an inmate at least 90 days before the hearing.) Due to the board's current workload and statutory notice requirements, the board is generally unable to reschedule a postponed hearing to occur sooner than six months from the hearing's prior scheduled date and, given the current hearing load, postponements may run substantially longer. Thus, if the board did not enact the emergency regulations and instead was forced to postpone hearings for potentially suitable inmates, these inmates likely would have remained in prison at least six months longer than if the board was able to timely conduct the initial scheduled hearing.

Based on previous projections before the COVID-19 health crisis, the board had appropriate staffing to meet its CRA obligations under the regulations as they existed prior to adoption of the emergency regulations. However, the onset of COVID-19 and the continued ramifications of the contagious disease on the board's parole hearing process placed the board in a position where it needed to propose and adopt emergency regulations allowing it to proceed with specified parole consideration and reconsideration hearings without a CRA to protect the interests of all inmates in receiving a timely parole hearing. This need will continue beyond December 4, 2021, when the emergency regulatory text is scheduled to expire, necessitating the board adopt the same regulatory language through this rulemaking package.

For the board to timely conduct all parole consideration and reconsideration hearings for inmates under Penal Code sections 3000, subdivision (b)(4), 3000.1, 3041, 3041.5, 3051, 3051.1, and 3055, as well as CCR, title 15, sections 2449.32 and 2443, the board must adopt the proposed regulatory language, initially adopted as emergency regulations, through this rulemaking package. The proposed regulations are necessary for the board to continue to fulfill individuals' liberty interests

[2] 20% of 864.
[3] 20% of 1,411.

in receiving a timely parole hearing, even after the emergency regulations are scheduled to expire on December 4, 2021, and to avoid litigation regarding untimely parole hearings.

Inmates on Expanded Medical Parole

While an inmate is placed on medical parole supervision under the expanded medical parole program, the board is still required to conduct parole consideration and subsequent reconsideration hearings for the inmate, as applicable. Under current regulations, the board is required to prepare a CRA for all parole consideration hearings and subsequent parole reconsideration hearings for inmates housed within California. (Cal. Code Regs., tit. 15, § 2240, subdivision (d)(1).) The board has interpreted the word "housed" to not include inmates placed on medical parole supervision. However, the board determined the unique nature of expanded medical parole could cause confusion among stakeholders, inmates, and the public about whether the board's regulations required it prepare a CRA for parole consideration and subsequent parole reconsideration hearings for inmates placed on medical parole at the time of their hearing, warranting further clarification through regulation. While on medical parole supervision and placed in a licensed health care facility in the community, an inmate's health and behavior is still monitored by the department, as well as CCHCS. Because the inmate remains incarcerated under the department's legal custody, the inmate can be returned to prison if their medical condition improves to the extent they no longer qualify for medical parole. Thus, the inmate remains eligible for any other form of parole or release provided by law. Consequently, given these conditions under which an inmate is placed on medical parole supervision, the board determined enough ambiguity existed regarding whether inmates were still "housed" within California while on medical parole to warrant additional regulatory clarification.

Further, the board determined the benefits to a board hearing panel of having a CRA for a parole consideration hearing or subsequent parole reconsideration hearing for an inmate on medical parole supervision do not outweigh the additional hurdles of preparing a CRA for their hearing. To facilitate the evaluation of relevant factors in a CRA for a particular inmate, a board psychologist preparing the CRA often interviews the inmate, either in person or via videoconference if in-person interviews are not possible. However, an inmate on medical parole supervision is placed in the community in a licensed health care facility, which may not be sufficiently equipped to accommodate an in person or videoconference interview. The facility may also be in a location within California to which it is difficult for a board psychologist to travel, requiring additional travel costs if an in person interview would be necessary. Together, these factors hinder the psychologist's ability to gather relevant information when preparing a CRA for an inmate on medical parole supervision. Additionally, because the inmate is not in a prison setting under the physical custody of the department, there is less information in the inmate's records regarding the inmate's recent activities and behaviors for the psychologist to analyze when evaluating an inmate's risk of violence in a CRA. Finally, CCHCS, which monitors inmates on expanded medical parole along with the department, provides monthly updates to the board on relevant medical information regarding these inmates, such as an inmate's prescriptions, mental health diagnoses, and recent behavior at the licensed health care facility, which further diminishes the utility of a CRA at hearings for these inmates. Thus, the board considered the diminished utility of a CRA prepared for an inmate placed on medical parole supervision due to limited information available to the board psychologist when assessing the inmate, the dynamic nature of medical conditions experienced by this inmate population, and the provision of recent relevant medical information to the board by CCHCS before the hearing, and determined CRAs for these inmates were not sufficiently beneficial for a hearing panel to justify the logistical issues and additional costs.

In adding clarifying language to subdivision (d)(1) of section 2240 of title 15 of the CCR, the board included language that its decision not to prepare a CRA for inmates on medical parole supervision will not conflict with its obligations under Penal Code section 3053.9 to consider the results of a CRA for specified sex offenders in considering parole.

PURPOSE

The board proposes to amend subdivision (d) of section 2240 of title 15 of the CCR as follows:

Paragraph (1) is *amended* to clarify the board will not prepare a CRA for a parole consideration or subsequent parole reconsideration hearing if the inmate for whom the hearing will be conducted is on medical parole supervision at the time of the hearing

Paragraph (3) is *added* to specify when the board will not prepare a CRA for a parole consideration or subsequent parole reconsideration hearing for specified inmates. Specifically, paragraph (3) clarifies the board will not prepare a CRA for a hearing scheduled to occur on or between April 1, 2021, and June 30, 2022, or previously scheduled to occur on or between April 1, 2021, and June 30, 2022, but postponed and rescheduled to occur after June 30, 2022, if the inmate for whom the board will conduct the hearing meets specified criteria that are identified in subparagraphs (A) and (B) of paragraph (3), except as required by Penal Code section 3053.9. The paragraph, including subparagraphs (A) and (B), clarifies that an inmate must meet both criteria.

- Subparagraph (A) is *added* to specify one of the criteria the board will use to identify inmates for whose hearings the board will not prepare a CRA is whether the inmate was designated by the department as Security Level IV as of January 1, 2021.
- Subparagraph (B) is *added* to specify the other criteria the board will use to identify inmates for whose hearings the board will not prepare a CRA is whether the inmate was found guilty at a disciplinary hearing of two or more Serious RVRs on or between January 1, 2018, and January 1, 2021. Further, subparagraph (B) clarifies how an RVR is defined as "serious."

Paragraph (4) is *added* to specify how and by when the board will provide notice to an inmate if the board is not preparing a risk assessment for the inmate's hearing under paragraph (3).

Paragraph (5) is *added* to specify the process an inmate or their attorney may use to challenge the board's determination that they meet the criteria in paragraph (3), if they believe they do not meet the criteria.

- Subparagraph (A) is *added* to specify an inmate or their attorney may challenge a determination the board made under paragraph (3) if they believe the inmate does not meet the criteria identified in paragraph (3). Further, subparagraph (A) specifies how an inmate or their attorney must submit a challenge to the board and when an inmate or their attorney may not submit a challenge to the board.
- Subparagraph (B) is *added* to further specify how an inmate or their attorney must submit a challenge to the board and clarify what information must be included in a challenge.
- Subparagraph (C) is *added* to specify by when a challenge must be received by the board for the challenge to be considered timely submitted. Additionally, subparagraph (C) clarifies by when the board will consider an electronic message received if sent after board business hours or on a non-business day.

- Subparagraph (D) is *added* to specify the board's process for responding to timely submitted challenges, including that the board's Chief Counsel is responsible for reviewing the inmate's records, evaluating whether the inmate meets the criteria in paragraph (3), and issuing an appropriate decision with regards to the challenge, as described in subparagraphs (E) and (F).
- Subparagraph (E) is *added* to specify the Chief Counsel will issue a decision explaining the results of its review of a challenge if the Chief Counsel determines the inmate meets the criteria in paragraph (3). Additionally, subparagraph (E) specifies the board will provide a copy of the decision to the inmate or inmate's attorney and by when.
- Subparagraph (F) is *added* to specify the Chief Counsel will also issue a decision explaining the results of its review of a challenge if the Chief Counsel determines the inmate does not meet the criteria in paragraph (3). Further, subparagraph (F) specifies if the Chief Counsel makes this determination, the board will prepare a risk assessment for the inmate's hearing and may postpone in inmate's hearing if appropriate under subdivision (d) of section 2253 of title 15 of the CCR. Finally, subparagraph (F) specifies the board will provide a copy of the decision to the inmate or inmate's attorney and by when.
- Subparagraph (G) is *added* to specify the board's processes when it receives a challenge from an inmate or inmate's attorney less than 30 calendar days before the inmate's hearing. Subdivision (G) specifies the board's Chief Counsel will determine whether sufficient time exists to complete the review process described in subparagraphs (D), (E), and (F) by no later than 10 calendar days before the inmate's hearing. Further, subdivision (G) specifies that, if the Chief Counsel determines sufficient time exists, the Chief Counsel will complete the review process in the time remaining before the hearing. However, subdivision (G) specifies that, if the Chief Counsel determines insufficient time exists, the Chief Counsel will not complete the review process and will promptly inform the inmate or inmate's attorney of the determination. Finally, subdivision (G) specifies that the Chief Counsel's determination insufficient time exists to review an untimely challenge will not alone constitute good cause for a postponement or waiver of a hearing under section 2253 of title 15 of the CCR.

Paragraph (6) is *added* to specify the process by which an inmate whom the board determined meets the criteria identified in paragraph (3), or their attorney, may request the board prepare a CRA in advance of the inmate's hearing, despite the inmate meeting the criteria identified in paragraph (3).

- Subparagraph (A) is *added* to specify an inmate whom the board determined meets the criteria identified in paragraph (3), or their attorney, may request the board prepare a CRA if, since the inmate's most recent RVR, the inmate has experienced a change to their physical or mental health that would be relevant to determining the inmate's suitability for parole. Further, subparagraph (A) specifies how an inmate or their attorney must submit the request to the board and under what circumstances an inmate or their attorney may not submit a request.
- Subparagraph (B) is *added* to further specify how an inmate or their attorney must submit a request and clarify what information must be included in the request.
- Subparagraph (C) is *added* to specify by when a request must be received by the board to be considered timely submitted. Further, subparagraph (C) clarifies by when the board will deem an electronic message received if sent after board business hours or on a non-business day
- Subparagraph (D) is *added* to clarify the board's process for responding to timely submitted requests, including that the board's Chief Counsel is responsible for reviewing the inmate's

records, evaluating whether the information in the request and inmate's records demonstrate a CRA would provide relevant information necessary for a board hearing panel to determine the inmate's suitability for parole, and issuing an appropriate decision with regard to the request, as described in subparagraphs (E) and (F).

- Subparagraph (E) is *added* to clarify the Chief Counsel will issue a decision explaining the results of its review of a request if the Chief Counsel determines the information in the request and the inmate's records do not demonstrate a CRA would provide relevant information necessary for the panel to determine the inmate's suitability for parole. Additionally, subparagraph (E) clarifies the board will provide a copy of the decision to the inmate or inmate's attorney and by when.
- Subparagraph (F) is *added* to clarify the Chief Counsel will also issue a decision explaining the results of its review of a request if the Chief Counsel determines the information in the request and the inmate's records demonstrate a CRA would provide relevant information necessary for the panel to determine the inmate's suitability for parole. Further, subparagraph (F) clarifies, if the Chief Counsel makes this determination, the board will prepare a CRA for the inmate's hearing and may postpone in inmate's hearing if appropriate under subdivision (d) of section 2253 of title 15 of the CCR. Finally, subparagraph (F) clarifies the board will provide a copy of the decision to the inmate or inmate's attorney and by when.
- Subparagraph (G) is *added* to clarify the board's processes when it receives a request from an inmate or inmate's attorney less than 30 calendar days before the inmate's hearing. Subparagraph (G) clarifies the board's Chief Counsel will determine whether sufficient time exists to complete the review process described in subparagraphs (D), (E), and (F) by no later than 10 calendar days before the inmate's hearing. Further, subparagraph (G) specifies that, if the Chief Counsel determines sufficient time exists, the Chief Counsel will complete the review process in the time remaining before the hearing. However, subparagraph (G) specifies that, if the Chief Counsel determines insufficient time exists, the Chief Counsel will not complete the review process and will promptly inform the inmate or inmate's attorney of the determination. Finally, subparagraph (G) clarifies the Chief Counsel's determination that insufficient time exists to review an untimely request will not alone constitute good cause for a postponement or waiver of a hearing under section 2253 of title 15 of the CCR.

Paragraph (7) is *added* to clarify a hearing panel conducting an inmate's hearing before which the board did not prepare a CRA under paragraph (3) must continue the hearing and require the board prepare a CRA if it finds a CRA is necessary to reach a determination on the inmate's suitability for parole. Further, paragraph (7) clarifies the panel's finding constitutes good cause for a continuance under subdivision (e) of section 2253 of title 15 of the CCR.

NECESSITY

As explained above, these regulations are necessary to protect the liberty interest of all inmates within the board's parole jurisdiction to receive a timely parole hearing and to clarify whether the board must prepare a CRA before a parole consideration or subsequent parole reconsideration hearing for an inmate on medical parole supervision at the time of the hearing.

Inmates with Two or More Serious RVRs and Designated Security Level IV, as Specified

CCR, title 15, section 2240, subdivision (d)(3), of the proposed regulations allows the board to conduct initial or subsequent parole consideration hearings or subsequent parole reconsideration hearings scheduled to occur on or between April 1, 2021, and June 30, 2022, for specified inmates without preparing a CRA. The board determined permitting hearings in this manner over the specified time is necessary to allow the board to address its CRA backlog that resulted from the continued impact of COVID-19 on parole hearings and the scheduling requirements placed on the board by Penal Code sections 3000, paragraph (b)(4), 3000.1, 3041, 3041.5, 3051, 3051.1, and 3055, as well as CCR, title 15, sections 2449.32 and 2443. As discussed above, these scheduling requirements include deadlines of December 31, 2021, and December 31, 2022, to provide certain inmate populations with an initial parole consideration hearing. The board would have to prepare a CRA for all of these initial hearings without the proposed regulations because a prior CRA does not exist.

Paragraph (d)(3) of the proposed regulations similarly allows the board not to prepare CRAs for inmates meeting the same criteria and who were previously scheduled for hearings on or between April 1, 2021, and June 30, 2022, but whose hearings were postponed and rescheduled to occur on a date after June 30, 2022. This provision is necessary to prevent the backlog from simply shifting back one year due to voluntary postponements. This provision discourages inmates from postponing their hearing until a date after June 30, 2022, for the sole purpose of requiring the board to prepare a CRA prior to their hearing. If inmates were able to do so, it would have a detrimental impact on the board's projected CRA backlog, which these regulations are intended to address.

Additionally, Penal Code section 3053.9 requires the board to consider the results of a CRA for an inmate incarcerated within California with a prior conviction for a sexually violent offense, as defined in subdivision (b) of section 6600 of the Welfare and Institutions Code. The board added necessary language to clarify that the board would continue to meet its statutory requirement in Penal Code section 3053.9, despite the additional proposed regulatory text in paragraphs (3) to (7). This language is necessary to remove any potential interpretation of the proposed regulations that would create conflict with this statute, and to clarify the board is applying the statute exactly as written.

Subparagraphs (A) and (B) of paragraph (3) of subdivision (d) of the proposed regulations include the criteria the board is using to identify the inmates whose hearings will go forward without a CRA under the proposed regulations. The criteria are inmates designated by CDCR as Security Level IV as of January 1, 2021, and who received two or more Serious RVRs for which CDCR found the inmate guilty at a disciplinary hearing on or between January 1, 2018, and January 1, 2021. Selecting these criteria is necessary because, when analyzing parole hearings conducted in 2019, the board found that 99% of hearings that were not postponed and that were for inmates designated Security Level IV and who had two or more RVRs in the three years preceding their hearing resulted in a denial of parole, waiver of the hearing, or stipulation by the inmate to unsuitability for parole. Thus, in selecting these criteria, the proposed regulations allow the board to address its projected CRA backlog in a manner that allows it to focus available CRA resources on inmates more likely to go forward with their hearing and be found suitable for parole at their hearing. Moreover, the board must identify a static date on which CDCR must have designated the inmate as Security Level

IV and a static time over which CDCR must have found the inmate guilty of two or more Serious RVRs so the board can determine through analysis that the proposed regulations are sufficient to address the board's CRA backlog.

In analyzing how to address the board's projected CRA backlog, the board began by identifying common factors of inmates for whom a hearing panel would least likely need a CRA to determine the inmate's suitability for parole at a parole hearing. Next, the board identified the number of hearings scheduled to occur before December 31, 2021, for which the board could not timely complete a CRA, forcing the board to postpone the hearing under the current regulations. The board compared that number against the number of hearings that would no longer require a CRA under these regulations. The board determined the regulations would eliminate enough CRAs to match the board's projected backlog through 2021, but not allow the board to fully eliminate the remaining backlog for the following six months.

The board next completed the same analysis for hearings scheduled to occur through the end of the 2021-2022 fiscal year and determined the selected criteria would eliminate sufficient CRAs for hearings scheduled to occur through June 30, 2022, to completely eliminate the projected CRA backlog. Notably, these projections are contingent on the outcome of some unknown variables, such as continued postponements of hearings under Executive Order Number N-36-20; however, the projections indicate that, even with some unexpected variances, the backlog should be eliminated by June 30, 2022.

The board also considered applying the criteria for not receiving a CRA to hearings scheduled to occur through the end of the calendar year 2022. However, the board determined that, since these regulations should eliminate the projected CRA backlog by June 30, 2022, the board could return at that time to preparing CRAs with current psychologist staffing levels for all parole consideration and subsequent reconsideration hearings required by CCR, title 15, section 2240, subdivision (d)(1).

Paragraph (d)(4) of the proposed regulations requires the board to mail notice to the inmate at least 60 calendar days before the inmate's hearing if the board is not preparing a CRA for the hearing. This provision is necessary to clarify how the board will inform inmates who will not receive a CRA before their hearing. Further, requiring the notice be mailed at least 60 calendar days before the hearing allows the inmate or inmate's attorney of record time to assess whether to submit a challenge under paragraph (d)(5) or submit a request under paragraph (d)(6) to the board.

Subparagraph (d)(5)(A) of the proposed regulations states an inmate or inmate's attorney of record may challenge a board determination not to prepare a CRA for the inmate's hearing if the inmate or inmate's attorney of record believes the inmate did not meet the criteria in subdivision (d)(3). This provision is necessary to clarify how inmates may seek remedy if they believe the board erroneously identified them as meeting the criteria to not receive a CRA. This subdivision also prohibits the inmate or attorney of record from submitting a challenge to the board based on the same grounds as a previous challenge. This provision is necessary to allow the board to focus resources on challenges not previously addressed by the board, but still clarify that the inmate or attorney may submit multiple challenges, so long as they are based on different grounds. This subdivision also requires challenges to be submitted via mail or electronic message, which is necessary to clarify the means by which inmates may submit a challenge to the board.

Subparagraph (d)(5)(B) of the proposed regulations requires that, when the inmate or attorney of record submits a challenge under (d)(5)(A), it must be submitted to the board's Chief Counsel in writing and must explain why the inmate does not meet the criteria outlined in paragraph (d)(3). This provision is necessary to clarify how and to whom inmates must submit a challenge.

Subparagraph (d)(5)(C) of the proposed regulations specifies that the board must receive a challenge at least 30 calendar days before a hearing to be considered timely submitted. This provision is necessary to clarify what the board will consider a timely submitted challenge, which requires the board's evaluation and response. Mandating that the board must receive the challenge at least 30 calendar days before the hearing is necessary to ensure the board has sufficient time to evaluate and respond to the challenge before the hearing. This subdivision also specifies the board will deem electronic messages received on the next business day if sent after board business hours or on a non-business day. This provision is necessary to clarify on which day the board will deem a challenge submitted via electronic message received.

Subparagraph (d)(5)(D) of the proposed regulations requires, upon receipt of a timely submitted challenge, the Chief Counsel to review the inmate's records, evaluate whether the inmate meets the criteria identified in paragraph (d)(3), and issue an appropriate decision. This provision is necessary to clarify the board's process upon receipt of a timely submitted challenge.

Subparagraph (d)(5)(E) of the proposed regulations specifies, if the Chief Counsel determines an inmate meets the criteria in paragraph (d)(3), the Chief Counsel must issue a decision explaining the result of the review and the board must promptly provide a copy of the decision to the inmate or inmate's attorney of record, but in no case less than 10 calendar days prior to the date the hearing is scheduled to occur. Conversely, subparagraph (d)(5)(F) of the proposed regulations specifies, if the Chief Counsel determines an inmate does not meet the criteria in paragraph (d)(3), the Chief Counsel must issue a decision explaining the result of the review and require the board prepare a CRA under section 2240. The Chief Counsel may also postpone a hearing if appropriate under subdivision (d) of section 2253 of article 3 of this chapter. These provisions are necessary to clarify what the board must do after receiving a challenge, based on the Chief Counsel's determination as to whether the inmate meets the criteria in paragraph (d)(3). These provisions clarify when an inmate or attorney of record will be informed of the board's determination. Requiring notification by no less than 10 calendar days prior to a hearing is necessary to preserve the inmate's disclosure rights under Penal Code section 3041.5, paragraph (a)(1). Moreover, when the inmate does not meet the criteria and should receive a CRA, specifying that the board must prepare a CRA under section 2240 is necessary to clarify that all of the other provisions regarding the CRA process in section 2240 apply. Additionally, the provision specifying hearing postponement is necessary to clarify how the Chief Counsel will exercise discretion in deciding whether to postpone an inmate's hearing.

Subparagraph (d)(5)(G) of the proposed regulations specifies, if the board receives a challenge less than 30 calendar days before a hearing, the Chief Counsel must determine whether sufficient time exists to complete the review process described in subparagraphs (d)(5)(D), (d)(5)(E), and (d)(5)(F) no later than 10 calendar days prior to the hearing. Subparagraph (d)(5)(G) further specifies that, if the Chief Counsel determines sufficient time exists, the Chief Counsel must complete the review process in the time remaining before the hearing. However, if the Chief Counsel determines insufficient time exists, the Chief Counsel must not complete the review process and must promptly inform the inmate or inmate's attorney of record of the determination. This provision is necessary to clarify how the board will review a challenge received within 30 calendar days of a hearing,

including how the board will notify an inmate of a determination that there was insufficient time for the board to review the challenge before the hearing. Requiring notification by no less than 10 calendar days prior to a hearing is necessary to preserve the inmate's disclosure rights under Penal Code section 3041.5, paragraph (a)(1).

Subparagraph (d)(6)(A) of the proposed regulations states an inmate or attorney of record may request the board to prepare a CRA if, since the inmate's most recent RVR, the inmate has experienced a change to the inmate's physical or mental health that would be relevant to determining the inmate's suitability for parole. This provision is necessary to clarify the process by which the inmate may request a CRA under circumstances in which the CRA is likely to provide relevant information for a hearing panel when determining the inmate's suitability for parole; namely, an assessment by a licensed psychologist as to how the change to the inmate's physical or mental health impacts the inmate's risk of violence. This provision again prohibits the inmate or attorney from submitting a request to the board based on the same grounds as a previous request, which is necessary to allow the board to focus resources on requests not previously addressed by the board, but still clarify that inmates may submit multiple requests based on different grounds. This subdivision also requires requests to be submitted via mail or electronic message, which is necessary to clarify the means by which inmates may submit a challenge or request to the board.

Subparagraph (d)(6)(B) of the proposed regulations requires an inmate or inmate's attorney of record to submit a request to the board's Chief Counsel in writing explaining why the board should prepare a CRA for an inmate despite the inmate meeting the criteria identified in paragraph (d)(3). Further, the provision requires the explanation include a description of the inmate's physical or mental health change and how the change is relevant to determining the inmate's suitability for parole. This provision is necessary to clarify how and to whom inmates must submit a request.

Subparagraph (d)(6)(C) of the proposed regulations specifies that the board must receive a request at least 30 calendar days before a hearing to be considered timely submitted. This provision is necessary to clarify what the board will consider a timely submitted request, which the board is required to evaluate and to which the board must respond. Mandating that the board must receive the request at least 30 calendar days before the hearing is necessary to ensure the board has sufficient time to evaluate and respond to the request before the hearing. This provision also specifies the board will deem electronic messages received on the next business day if sent after board business hours or on a non-business day, which is necessary to clarify on which day the board will deem a request sent via electronic message received.

Subparagraph (d)(6)(D) of the proposed regulations requires, upon receipt of a timely submitted request, the Chief Counsel to review the inmate's records, evaluate whether the explanation and inmate's records demonstrate a CRA would provide relevant information necessary for the panel to determine the inmate's suitability for parole, and issue an appropriate decision. This provision is necessary to clarify what the board must do upon receipt of a timely submitted request.

Subparagraph (d)(6)(E) of the proposed regulations specifies, if the Chief Counsel determines the explanation and information in the inmate's records do not demonstrate that a CRA would provide relevant information necessary for the panel to determine the inmate's suitability for parole, the Chief Counsel must issue a decision explaining the result of the review and the board must promptly provide a copy of the decision to the inmate or inmate's attorney of record, but in no case less than 10 calendar days prior to the date the hearing is scheduled to occur. Conversely, subparagraph

(d)(6)(F) specifies, if the Chief Counsel determines the explanation and information in the inmate's records demonstrate that a CRA would provide relevant information necessary for the panel to determine the inmate's suitability for parole, the Chief Counsel must issue a decision explaining the result of the review and require the board prepare a CRA under section 2240. This subdivision also specifies the Chief Counsel may postpone a hearing if appropriate under subdivision (d) of section 2253 of article 3 of this chapter. These provisions are necessary to clarify what the board must do after receiving a request, based on the Chief Counsel's determination. Further, the provisions clarify when an inmate or attorney of record will be informed of the board's determination regarding the request. Requiring notification no less than 10 calendar days prior to a hearing is necessary to preserve the inmate's disclosure rights under Penal Code section 3041.5, paragraph (a)(1). Moreover, if the Chief Counsel determines a CRA would provide relevant information necessary for the panel to determine the inmate's suitability, specifying the board must prepare a CRA under section 2240 is necessary to clarify that all of the other provisions regarding the CRA process in section 2240 apply. Additionally, the provision specifying hearing postponement is necessary to clarify how the Chief Counsel will exercise discretion in deciding whether to postpone an inmate's hearing.

Subparagraph (d)(6)(G) of the proposed regulations specifies, if the board receives a request less than 30 calendar days before a hearing, the Chief Counsel must determine whether sufficient time exists to complete the review process described in subparagraph (d)(6)(D), (d)(6)(E), and (d)(6)(F) no later than 10 calendar days prior to the hearing. Subparagraph (d)(6)(G) further specifies that, if the Chief Counsel determines sufficient time exists, the Chief Counsel must complete the review process in the time remaining before the hearing. However, if the Chief Counsel determines insufficient time exists, the Chief Counsel must not complete the review process and must promptly inform the inmate or inmate's attorney of record of the determination. This provision is necessary to clarify how the board will review a request received within 30 calendar days of a hearing, including how the board will notify an inmate of a determination that there was insufficient time for the board to review the request before the hearing. Requiring notification by no less than 10 calendar days prior to a hearing is necessary to preserve the inmate's disclosure rights under Penal Code section 3041.5, paragraph (a)(1).

Paragraph (d)(7) of the proposed regulations requires a hearing panel to continue a hearing and require the board prepare a CRA if it finds a CRA is necessary to reach a determination on the inmate's suitability for parole. Paragraph (d)(7) clarifies the finding by the panel shall constitute good cause for a continuance under subdivision (e) of section 2253 of article 3 of chapter 3 of division 2 of title 15 of the CCR. These provisions are necessary to ensure a hearing panel does not have to make a determination regarding an inmate's suitability for parole without all necessary information the board has the authority to provide. The provisions clarify how and when a panel must continue a hearing and require the board prepare a CRA.

Inmates on Expanded Medical Parole

CCR, title 15, section 2240, subdivision (d)(1), of the proposed regulations is amended to allow the board to conduct initial or subsequent parole consideration hearings or subsequent parole reconsideration hearings for inmates placed on medical parole supervision without preparing a CRA, unless required to prepare a CRA for the inmate under Penal Code section 3053.9. This is necessary to clarify for inmates and other hearing participants that the board does not prepare a CRA for a parole consideration or subsequent parole reconsideration hearing for an inmate who is on medical

parole supervision at the time of their hearing. As stated above, the board considered the diminished utility of a CRA prepared for an inmate placed on medical parole supervision due to limited information available to the board psychologist when assessing the inmate, the dynamic nature of medical conditions experienced by this population, and the provision of recent relevant medical information to the board by CCHCS before the hearing, and determined CRAs for these inmates were not sufficiently beneficial for a hearing panel to justify the logistical issues and additional costs. However, the current regulatory language was vague as to whether a CRA will be prepared for parole consideration and subsequent parole reconsideration hearings for this inmate population and needed further clarification for stakeholders.

In clarifying this matter, it was also necessary for the board to make clear that its policy not to prepare CRAs for these inmates will not conflict with its mandates under Penal Code section 3053.9.

ANTICIPATED BENEFITS

Identifying the inmates for whose parole consideration or subsequent parole reconsideration hearing the board will not prepare a CRA, allowing the board to continue to timely provide hearings for all inmates and address the board's CRA backlog, benefits stakeholders because hearing participants will know whether to expect a CRA for a particular hearing, and attorneys for inmates will have clarity on whether to anticipate needing to review a CRA for potential objectionable errors before the inmate's hearing. Further, specifying how and by when an inmate will be informed if the board determines the inmate meets the criteria to not receive a CRA for their hearing benefits the inmate and inmate's attorney by clarifying how the inmate can expect to be informed and identifying the point in time by which the inmate and inmate's attorney will know whether or not a CRA will be prepared for the inmate's hearing, enabling the inmate's attorney to appropriately allocate time and resources to effectively represent their client.

Additionally, providing a process by which an inmate or inmate's attorney can challenge the board's determination the inmate meets the criteria for inmates who will not receive a CRA benefits inmates by ensuring there is an administrative remedy through which they and their attorney can seek redress of an alleged error by the board. Specifying how an inmate or inmate's attorney can submit a timely challenge to the board benefits the inmate and inmate's attorney because they have clear guidelines regarding the process for submitting a challenge and what information should be included in a challenge. Further, specifying how the board will analyze and respond to a timely challenge benefits the inmate and inmate's attorney by ensuring the inmate and attorney have a clear expectation for what type of response or action may be given or taken by the board after receiving a challenge. It ensures the process under which the board must provide a response to and take any necessary actions as a result of a timely submitted challenge by an inmate or attorney is clearly communicated to all stakeholders. Finally, specifying how the board will analyze and respond to an untimely challenge benefits the inmate and inmate's attorney by ensuring the inmate and attorney have a clear expectation for what type of response or action may be given or taken by the board after receiving an untimely challenge. It ensures the process under which the board will determine whether sufficient time exists to address the challenge, inform the inmate or inmate's attorney if there was insufficient time, and conduct the required review and take the necessary actions if there was sufficient time is clearly communicated to all stakeholders.

Providing a process by which an inmate or inmate's attorney can request the board prepare a CRA for an inmate's parole consideration or subsequent parole reconsideration hearing if, since the inmate's most recent RVR, the inmate has experienced a change to the inmate's physical or mental health that would be relevant to determining the inmate's suitability for parole benefits the board because it provides a process through which an inmate or their attorney can notify the board of a situation, i.e. change in health status, in which preparing a CRA may be more beneficial to the board when assessing the inmate's risk to public safety. Specifying how an inmate or inmate's attorney can submit a timely request to the board benefits the inmate and inmate's attorney because they have clear guidelines regarding the process for submitting a request and what information should be included in a request. Further, specifying how the board will analyze and respond to a timely request benefits the inmate and inmate's attorney by ensuring the inmate and attorney have a clear expectation for what type of response or action may be given or taken by the board after receiving a request. It ensures the process under which the board must provide a response to and take any necessary actions as a result of a timely submitted request by an inmate or attorney is clearly communicated to all stakeholders. Finally, specifying how the board will analyze and respond to an untimely request benefits the inmate and inmate's attorney by ensuring the inmate and attorney have a clear expectation for what type of response or action may be given or taken by the board after receiving an untimely request. It ensures the process under which the board will determine whether sufficient time exists to address the request, inform the inmate or inmate's attorney if there was sufficient time, and conduct the required review and take the necessary actions if there was sufficient time is clearly communicated to all stakeholders.

Allowing a hearing panel to continue a hearing and require the board prepare a CRA if the panel finds a CRA is necessary to reach a determination on the inmate's suitability for parole benefits the board, stakeholders, and the safety of the general public by ensuring a hearing panel has all necessary information to make a parole suitability determination.

Finally, clarifying that the board will not prepare a CRA for a parole consideration or subsequent parole reconsideration hearing for an inmate placed on medical parole supervision on the date of the hearing benefits stakeholders because the value of the CRA in these hearings does not outweigh the additional costs; thus, the omission of these CRAs allows the board to focus its resources on CRAs that will provide valuable information to hearing panels making suitability assessments. Moreover, through this clarification, all hearing participants will have a better understanding of what information will be available for a hearing panel to consider when evaluating an inmate's suitability for parole. Further, an inmate's attorney will have more clarity regarding whether to anticipate a CRA being prepared for a client's parole hearing, which, if prepared, may require analysis by the attorney and discussion with their client to decide whether to submit timely objections to the CRA before the hearing. Knowing whether a CRA will be prepared for a client's hearing will enable the attorney to better allocate time and resources to effectively represent their client within the board's parole hearing process.

ECONOMIC IMPACT ANALYSIS

Creation or Elimination of Jobs within the State of California

The proposed action is designed to allow for the board to conduct parole consideration hearings or subsequent reconsideration hearings for specified inmates without needing to prepare a CRA, and

to provide an administrative remedy for inmates to challenge the board's determination that they are within the inmate population for whose hearings the board will not prepare a CRA and a process through which an inmate or their attorney may request a CRA under specified circumstances. Additionally, the proposed regulations allow a hearing panel to continue an inmate's hearing and require a CRA be prepared if it is necessary for the board to make a determination regarding the inmate's risk to public safety. The proposed regulations reflect current board procedure or additional regulatory authority to address a CRA backlog in a manner that will enable the board to continue providing timely parole hearings for all inmates without the need to hire additional staff. Thus, the board has determined the proposed action will have no impact on the creation or elimination of jobs within the State of California.

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 whether the board prepares a CRA in advance of an inmate's parole consideration or subsequent parole reconsideration hearing. 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 whether the board prepares a CRA in advance of an inmate's parole consideration or subsequent parole reconsideration hearing. 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 whether a CRA will be prepared for an inmate's parole consideration or subsequent parole reconsideration hearing and how the board will address its CRA backlog in a manner that protects an inmate's liberty interest in receiving a timely parole hearing. Further, the proposed regulations benefit an inmate by providing an administrative process through which the inmate or inmate's attorney may challenge the board's determination not to prepare a CRA in advance of their parole hearing or request the board prepare a CRA for an inmate under circumstances in which a CRA may be more beneficial to a hearing panel in assessing the inmate's current risk to public safety, i.e. change in health status. Finally, the proposed regulations also benefit public safety and hearing participants by allowing a hearing panel to continue a hearing and require a CRA be prepared when it finds a CRA is necessary to reach a determination on the inmate's suitability for parole, which ensures the hearing panel will not have to reach a determination without all necessary information that is within the board's power and authority to produce.

REASONABLE ALTERNATIVES

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.

Hiring More Psychologists

One alternative considered by the board was hiring more psychologists to facilitate completion of all CRAs required under current regulations. However, the board would not be able to address the short-term concerns regarding the projected postponements of 864 to 1,411 parole hearings by the end of December 2021 by hiring more psychologists to prepare CRAs. Preparing CRAs for parole consideration hearings is a specialized field of psychology and it requires an extensive working knowledge of the state's correctional system so they can review and interpret the inmate's prison record. There is a limited supply of forensic psychologists who possess both the necessary skills and experience for this work. Moreover, it takes a minimum of six months to fully train new psychologists to prepare CRAs. Thus, even if the board could have hired new psychologists immediately, as opposed to enacting the emergency regulations, those psychologists would not have been fully trained until around September 2021. Then, drafting CRAs and completing the required review and approval process takes at least another month. Further, the board is required to serve CRAs on inmates at least 60 calendar days prior to their upcoming hearing. (Cal. Code Regs., title 15, § 2240, subd. (d)(2).) Thus, assuming the board could have served CRAs prepared by the newly hired psychologists on inmates starting on October 1, 2021, there would not have been enough time remaining for them to complete all the CRAs necessary for the required hearings.

Finally, as noted above, the pool of psychologists who possess the necessarily skills and experience is already limited. Complicating this situation further is that the board would be unlikely to find enough of these qualified psychologists willing to take a limited term position. Once the board passes the December 31, 2021 scheduling deadline discussed above, projections indicated the board should be able to address any remaining CRA backlog by June 30, 2022. Once the backlog is addressed, it is expected current staffing levels should be sufficient to complete CRAs for hearings after June 30, 2022. Thus, the board would not need to retain the newly hired psychologists past that date and, consequently, would only be able to offer the new psychologist positions on a limited-term basis. This would undoubtedly have further reduced the number of qualified psychologists who would apply for the position, further hindering the board's ability to hire and train enough qualified psychologists to address the projected CRA backlog

ADDITIONAL FINDINGS

The board has made an initial determination this regulatory action will not have a significant adverse economic impact on business. Whether the board prepares a CRA in advance of an inmate's parole consideration or subsequent parole reconsideration hearing does not affect the 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.

****END****