

# **BPH RN 21-04: SUPPLEMENT TO INITIAL STATEMENT OF REASONS**

## **TITLE 15. CRIME PREVENTION AND CORRECTIONS DIVISION 2. BOARD OF PAROLE HEARINGS CHAPTER 3. PAROLE RELEASE ARTICLE 17. Parole Consideration for Elderly Inmates**

### **INTRODUCTION:**

The Board of Parole Hearings (board) is issuing this supplement to the Initial Statement of Reasons for Regulation Number (RN) 21-04 governing Parole Consideration for Elderly Inmates to provide additional information regarding the board's interpretation of the elderly factors. The board also explains why some of the criteria used in assessing how time served impacts an elderly inmate's risk of violence is no longer necessary.

### **PURPOSE OF AMENDMENTS:**

#### **Section 2449.43**

As noted in the Initial Statement of Reasons, the board added section 2449.43 to provide hearing panels with guidance about the meaning of the elderly factors to aid hearing panels in determining how the elderly factors reduce an inmate's risk of future violence. Interpreting and making specific the elderly factors also ensures inmates, staff, and the public have similar understandings of what is contemplated by each factor, so they understand how these factors will be interpreted and applied at hearings for elderly inmates. The board is providing additional information to explain the board's application of the elderly factors.

#### **Section 2449.43, subdivision (b)**

As noted in the Initial Statement of Reasons, the board proposed section 2449.43, subdivisions (b)(6) and (7), to add the following: "(6) detachment from family, friends, or other prosocial relationships that increase the feeling of hopelessness or depression; and (7) an unwillingness to develop parole plans," as criteria board hearing panels can consider in evaluating the time served elderly factor.

The board proposes to amend section 2449.43 as follows: Subdivisions (b)(6) and (7) are *deleted* to remove "(6) detachment from family, friends, or other prosocial relationships that increase the feeling of hopelessness or depression; and (7) an unwillingness to develop parole plans," as criteria board hearing panels can consider in assessing the impacts of time served on elderly inmates.

### **NECESSITY OF AMENDMENTS:**

#### **Section 2449.40**

After further review of *People v. Culp* (2002) 100 Cal.App.4th 1278, the board no longer finds it is necessary to rely on this case to clarify "continuous incarceration," because the meaning of this term is defined in the regulation and this case does not provide further clarification on this term. The board has removed this case as a reference in the Proposed Text and as authority in the original Initial Statement of Reasons.

**Section 2449.43**

The Legislature did not provide guidance on how the three statutory elderly factors should be interpreted by the board and no case law has yet interpreted or clarified these factors. However, board psychologists prepare Comprehensive Risk Assessments (CRAs) for inmates scheduled for parole hearings. If an inmate qualifies for elderly parole, board psychologists analyze and apply the three statutory elderly factors in the CRA to determine whether they mitigate an elderly inmate's risk of violence. Board hearing panels then consider the CRA in assessing whether an inmate's release would pose an unreasonable risk of danger to society, and whether the elderly factors mitigate an elderly inmate's risk of violence. The Chief Psychologist and Senior Forensic Psychologists are subject matter experts in assessing risk of inmates and the board relied on their collective education, training, and experience in assessing risk for elderly inmates to develop criteria that should be considered when analyzing the three elderly factors.

Based on the education, training, and experience of the Chief Psychologist and Senior Forensic Psychologists, the board reached the following determinations: (1) the primary consideration in assessing the potential impact of age is to analyze the mitigating effects of the normally expected cognitive and physiological changes associated with aging; (2) the primary consideration in assessing the potential impact of time served is to analyze the mitigating effects of expected changes in criminal attitudes, beliefs, and actions as inmates mature and engage in programming; and (3) the primary consideration in assessing the potential impact of diminished physical condition is to analyze the mitigating effects of the decline in physical capacity to engage in criminal conduct due to deterioration of physical health and condition associated with aging.

**Section 2449.43, subdivision (b)**

In addition, the board determined removing the criteria in paragraphs (6) and (7), in subdivision (b), of section 2449.43, is necessary to prevent victims, board hearing panels, inmates, the public, and institutional staff from misinterpreting how these factors mitigate an elderly inmate's risk of violence.

**\*\*END\*\***