



## Board of Parole Hearings

### BPH RN 25-01: FINAL STATEMENT OF REASONS

#### Title 15. Crime Prevention and Corrections Division 2. Board of Parole Hearings

#### Enactment of:

#### Chapter 3, Article 4, Section 2267: Consultations

AND

#### Chapter 7.1: Commutation and Recall of Sentence Recommendation Assessment Process for Recommendation of Incarcerated Persons for Commutation of Sentence under Penal Code Section 4801 and Recommendation of Incarcerated Persons for Recall of Sentence and Resentencing under Penal Code Section 1172.1

**Enactment of Section 2267, governing consultations, and Sections 2840-2859, governing the commutation and recall of sentence recommendation assessment process.**

#### UPDATE OF INITIAL STATEMENT OF REASONS

At the Board of Parole Hearings' (Board) Executive Board Meeting on May 19, 2026, the Board voted to adopt the proposed text in the regulatory package identified as BPH RN 25-01, governing the Board's consultation process and the commutation and recall of sentence recommendation assessment process. During the 45-day public written comment period regarding the regulations, which ended on October 21, 2025, the Board received comments from 294 members of the public. The Board also received oral comments from 73 speakers and written comments from 9 members of the public during an October 30, 2025 public hearing on the regulations.

The Board considered the public comments received during the 45-day public written comment period and the public hearing regarding BPH RN 25-01 and elected to make substantial, but sufficiently-related, amendments to the regulations.

On February 20, 2026, the Board re-noticed the amended proposed regulations to all persons who submitted written comments during the original 45-day public comment period, all persons who submitted written or oral comments during the public hearing and provided contact information, and all persons on the Board's regulations registry who requested notifications. The 15-day public comment period for the re-noticed amended regulations ran from February 20, 2026, through March 9, 2026.

The Board received comments from 62 members of the public during the 15-day re-notice comment period and considered each public comment received. For reasons explained below in further detail under the section titled "Summary and Response to Comments Received during the Re-Notice Period of February 20, 2026, through March 9, 2026," the Board made no further amendments to RN 25-01. The amended proposed regulations were presented at the Board's

Executive Board Meeting on May 19, 2026, and a majority of the Board’s Commissioners voted to adopt the amended proposed regulations.

**SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF SEPTEMBER 5, 2025, THROUGH OCTOBER 21, 2025, AND THE PUBLIC HEARING HELD ON OCTOBER 30, 2025:**

Each comment was individually identified with a unique identification (“ID”) number as follows: [the number assigned to the commenter]-[the number of the comment in order of the comments received from that commenter]. For example, the comment identified as **02-01** would indicate that comment was made by the commenter identified by the Board as “02” and was the **first** comment received by the Board from that commenter.

The “Written Comments Submitted (during 45-day comment period)” tab includes copies of each correspondence received during the 45-day public comment period. The “Written Comments Submitted during 10/30/2025 public hearing” tab includes copies of each written comment received during the public hearing. The “Public Hearing Minutes Dated 10/30/2025” tab includes minutes of the October 30, 2025, public hearing, which documents oral comment received from members of the public during the public hearing. The Board annotated each written comment received during the 45-Day Public Comment Period and October 30, 2025, public hearing, as well as the minutes from the public hearing, to indicate the assigned unique ID number for that particular commenter and the number associated with each individual comment made by that commenter.

The Board placed each individual comment into a category based on the issue raised in the comment. Below, the Board identifies the specific comment ID numbers for the public comments directed at each category of issue and then addresses each comment within that category.

**ISSUE 1: Consultations – A person should not be precluded from receiving a consultation because their parole eligibility date falls within less than two years from receiving a consultation.**

Comment ID Number: 222-17

COMMENT: This comment requests the Board amend proposed section 2267, subsection (c), to remove the requirement that, for a person to receive a consultation, their consultation must be scheduled more than two years prior to their initial parole suitability hearing. This commenter requests an incarcerated person be provided a consultation even if they will be scheduled for their initial hearing within two years of their consultation. The commenter states that a consultation helps the incarcerated person determine whether they should waive their initial hearing; therefore, providing a consultation in these circumstances would reduce the administrative burden on the Board by avoiding the need to prepare for a hearing the person may ultimately waive, even if their hearing is less than two years away.

RESPONSE: DECLINED TO AMEND

A consultation is a brief meeting between an incarcerated person and parole hearing officer. At the meeting the parole hearing process is explained and recommendations are made that would assist the incarcerated person with being found suitable for parole. Under the Penal Code, consultations generally are scheduled six years before an incarcerated person will have a parole hearing. The commenter suggests that a consultation may assist an incarcerated person in deciding whether to waive their parole hearing and, therefore, it would benefit the Board to provide consultations to individuals within two years of their initial parole suitability hearing. However, at a consultation, the hearing officer does not advise or make recommendations regarding whether a person should waive their hearing. Moreover, even without a consultation, incarcerated persons have access to information about the Board's parole suitability hearing process and the factors relevant to determining parole suitability through regulations, the parole hearing process handbook, and materials on their tablets from Parole Justice Works. They also meet with their attorney several times before their parole hearing.

Within one year of their earliest eligible parole date, the person will be scheduled for a parole hearing and appointed counsel. During their meeting with appointed counsel, the individual may discuss whether waiving the hearing is appropriate. Under California Code of Regulations, title 15, section 2253, subsection (b)(2), an incarcerated person may request to waive their hearing at least 45 days before the scheduled date. Accordingly, it is unnecessary to provide consultations to individuals within two years of their parole eligibility date to address the commenter's concerns because an incarcerated person has access to other resources, including legal counsel, needed to prepare for their initial hearing and make a determination about whether to waive their hearing.

#### **ISSUE 2: Consultations – Allow periodic consultations.**

Comment ID Numbers: 207-04; 365-03; 374-04

**COMMENT:** This comment requests the Board allow periodic consultations. For example, the commenter requests a consultation every five years or upon new rehabilitative milestones. Commenters state that a consultation is the first step in the process, but the regulations do not provide for a verifiable record of the consultation or means to correct a misunderstanding; therefore, there should be periodic consultations.

#### **RESPONSE: DECLINED TO AMEND**

The Board declines to adopt the commenters' recommendation to require periodic consultations. A consultation is designed to serve a limited, informational purpose before a person receives a parole hearing: it provides the incarcerated person with an overview of the parole hearing cycle and individualized recommendations regarding their rehabilitative progress. It is not an adjudicatory proceeding, nor is it intended to create an ongoing review mechanism.

Once an individual enters the parole hearing cycle, they receive substantive recommendations and guidance at each parole suitability hearing. These hearings occur at regular, statutorily-defined intervals and provide multiple opportunities for the Board to assess progress, discuss rehabilitative milestones, and offer updated feedback.

In addition, under the proposed regulations, the Board must document in writing the commissioner's or deputy commissioner's findings at the consultation, including individual recommendations concerning the incarcerated person's programming, institutional behavior, and parole plans; if the incarcerated person believes this consultation record contains any inaccuracies, they may present corrective information prior to their parole suitability hearing, and with assistance of counsel, ensuring that the hearing panel has the most current and accurate information before it. Moreover, under California Code of Regulations, title 15, section 2247, the Board allows an incarcerated person to enter a written response to any material in their file, which would include entering a written response to errors they believe exist on their consultation document.

Because the parole hearing cycle already provides recurring, formal opportunities for review, guidance, and record correction, establishing periodic consultations would be duplicative, unnecessary, and inconsistent with the consultation's limited statutory function. Accordingly, the Board declines to require periodic consultations.

**ISSUE 3: Consultations – Require a written or audio summary of the consultation to be shared with the incarcerated person.**

Comment ID Numbers: 207-05; 313-03; 365-04; 374-03

COMMENT: These comments request the Board require a written or audio summary of a consultation to be kept in the central file and shared with the incarcerated person. One commenter requests that all consultations should be recorded to avoid any misunderstandings.

RESPONSE: DECLINED TO AMEND (elements of request already included in proposed regulations)

The regulations already require that the Board provide the incarcerated person a written document summarizing recommendations from the hearing officer at the consultation. The Board declines to adopt the commenters' further recommendation to require a written or audio summary of a consultation beyond what is already mandated in the proposed regulations. The Board is statutorily required to record *parole suitability hearings* and make transcripts available to the incarcerated person and the public; however, the Legislature did not impose any comparable requirement for consultations. For consultations, the Board is only statutorily-required to issue its recommendations and findings from the consultation to the incarcerated person in writing within 30 days following the consultation. This regulation requires the Board to fully comply with this statutory requirement by detailing each consultation in a document that includes the hearing officer's recommendations and findings. This document is provided to the incarcerated person and placed in their central file, ensuring an accurate and accessible record of the consultation.

The Board also maintains procedures to ensure effective communication during consultations, including the use of staff assistants and interpreters when appropriate. The Board provides disability accommodations at consultations to facilitate effective communication as required by the proposed regulations and separate legal authorities, including the Americans with Disabilities Act (ADA). Incarcerated persons remain free to submit written correspondence to the Board if they have concerns about the content or conduct of their consultation. Requiring audio recordings of consultations would significantly increase fiscal and operational burdens without improving the

consultation's purpose, which is informational rather than adjudicatory. Further, providing access to the audio recording for incarcerated persons would be difficult and costly, as the incarcerated population is not able to receive audio recordings or possess thumb drives under the California Department of Corrections and Rehabilitation's regulations. For these reasons, the Board declines to adopt a requirement to audio record or otherwise expand the documentation of consultations.

**ISSUE 4: Consultations – Establish a reconsideration process for consultations that do not result in a referral to the C&R hearing.**

Comment ID Numbers: 207-06; 365-05

COMMENT: This comment requests the Board create a reconsideration process for consultations that do not result in a referral to a C&R hearing.

RESPONSE: DECLINED TO AMEND

The Board declines to establish a reconsideration process for consultations that do not result in a referral for a C&R hearing. A consultation is not a hearing; rather, it is an informational meeting intended to provide guidance to the incarcerated person regarding the parole process and their individual rehabilitative progress. The standard process is for people to have their consultation in order to prepare for their parole suitability hearing. There are, however extraordinary cases where a person has already worked diligently on their rehabilitation, and a hearing officer determines the person could be suitable for release. The proposed regulations establish a process for these extraordinary cases only. If a person is not referred for a C&R hearing at a consultation, they will still proceed to a parole suitability hearing in less than six years, where they will have the opportunity to be found suitable for parole through the Board's established hearing process under the same legal standard these regulations establish for C&R recommendations.

Further, the absence of a referral does not foreclose other avenues of relief. An incarcerated person who is not referred for a C&R hearing may still apply directly to the Governor for a commutation of sentence or pursue relief through the courts. Because multiple existing mechanisms already allow individuals to seek review or relief, creating a separate reconsideration process for consultation outcomes is unnecessary and would impose additional administrative burdens without providing substantive benefit. Accordingly, the Board declines to adopt the commenter's recommendation.

**ISSUE 5: Notification of consultations and hearings to family members and advocates of the incarcerated person.**

Comment ID Number: 207-12

COMMENT: This comment requests the Board provide timely notice to designated family members or advocates of an incarcerated person's consultation and hearing and allow submission of support letters and reentry plans.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulations to require notice of consultations or C&R hearings to designated family members or advocates. Under the proposed regulations, the Board will provide timely notice of all scheduled consultations and C&R hearings directly to the incarcerated person, who may then inform any family member, advocate, or other individual they choose. Nothing in statute or regulation grants family members or stakeholders a legal right to direct notice of these proceedings. To the extent the commenter was also requesting notice of other Board hearings, like parole suitability hearings, to designated family members or advocates, such a request is outside the scope of the proposed regulations.

Members of the public—including family, advocates, and community supporters—may submit letters of support to the Board at any time, and such materials will be reviewed and considered by the Board’s hearing officers. The existing process therefore already allows the submission of support letters, reentry plans, or other information without the need for additional notification requirements.

For these reasons, the Board declines to adopt the commenter’s recommendations to provide notification to family and advocates of consultations and hearings.

**ISSUE 6: Publish data on consultations, reviews, and recommendations.**

Comment ID Number: 207-13

COMMENT: This comment requests the Board publish aggregate data on consultations, reviews, and recommendations to ensure transparency and oversight.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulations to require publication of aggregate data on consultations, reviews, or recommendations. The Board already prepares and publicly releases its annual Report of Significant Events, which includes the number of consultations conducted each year. Consistent with its existing reporting practices for other Board proceedings, the Board will also include in future annual reports the number of C&R reviews and hearings held annually and the outcomes of those proceedings.

Because the Board already provides this information through established, publicly available annual reporting mechanisms, and because the data can also be requested by members of the public through other processes, an additional regulatory requirement is unnecessary. Additionally, there is no legal requirement for the Board to publish this data. Therefore, the Board declines to amend the regulations to mandate publication of aggregate data.

**ISSUE 7: Comprehensive Risk Assessment (CRA) - Expand the Population who Receives a CRA.**

Comment ID Numbers: 1-01; 2-01; 3-01; 11-01; 268-06

COMMENT: These comments request the Board expand access to a CRA. The commenters also request that those determined to be a low risk to public safety have the opportunity to appear before

the Board and be considered for release by the Governor. Another commenter requests the Board provide a CRA to condemned incarcerated persons; however, this commenter also requests that, if the recommendation will be for the condemned to be commuted to life without the possibility of parole, then a CRA not be conducted in those cases.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulations in response to these comments. The proposed regulations already expand access to a CRA for individuals who are referred for a C&R hearing. When an incarcerated person receives a referral to a C&R hearing at a C&R review or consultation, they will be interviewed by a Board psychologist and provided with a CRA prior to their C&R hearing.

A CRA is a tool used to assist the hearing officers in determining whether an individual poses a current risk to public safety. Although the CRA provides valuable information, it does not dictate the outcome of a C&R hearing. The hearing panel considers the totality of the evidence, including the person's central file, their testimony, and all other relevant factors, when determining whether to recommend the individual to the Governor for possible commutation or to the sentencing court for a recall of sentence. A low-risk rating on the CRA alone is insufficient to determine whether a C&R recommendation is appropriate.

The Board also declines to provide CRAs to individuals who are not eligible for the proposed C&R recommendation assessment process or the parole suitability hearing process, including condemned incarcerated persons. These individuals are not eligible to be considered by the Board under current and proposed processes, and conducting CRAs for persons who cannot be considered for release or referred to the Governor or sentencing court would divert resources from those who are eligible for review and may ultimately appear before the Board. The Board must prioritize its resources to ensure timely assessments and hearings for individuals within its jurisdiction.

Finally, to the extent commenters were requesting the Board amend the proposed C&R recommendation assessment process to prepare CRAs for certain incarcerated persons prior to, or in place of, conducting C&R reviews for those persons, doing so would incur significant costs for the Board. CRAs take substantial time and resources to prepare. By waiting to prepare CRAs in this proposed action until after a referral for a C&R hearing is made, the Board ensures that these limited resources are focused on individuals who have already undergone preliminary scrutiny and are more likely to be assessed as lower risk and receive a C&R recommendation.

For the foregoing reasons, the Board declines to amend the regulations as requested.

**ISSUE 8: CRA - Provide an updated CRA for a subsequent C&R Hearing if the CRA is more than three years old.**

Comment ID Number: 236-03

**COMMENT:** This comment requests an expiration date for a CRA and a requirement that a new CRA be prepared if the CRA will be more than three years old at the time of the C&R hearing. The commenter requests the Board match the CRA rules in place for suitability hearings.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulations as requested. Proposed section 2848 already requires that a Comprehensive Risk Assessment (CRA) be prepared prior to a C&R hearing. Under the Board's proposed regulatory framework, a minimum of three years must elapse before a subsequent C&R hearing may be scheduled. As a result, any CRA older than three years would, by operation of the proposed regulations, necessarily be replaced with a new CRA before a subsequent C&R hearing occurs.

Because the regulatory scheme already ensures that a new CRA will be generated prior to a C&R hearing, adding an explicit expiration date is unnecessary.

ISSUE 9: CRA - Allow written objections to the CRA.

Comment ID Numbers: 251-06; 253-04; 254-05

COMMENT: Commenters request that the Board allow written objections to the CRA, similar to the process established for parole suitability hearings. Commenters assert that limiting CRA objections to the day of the C&R hearing is inadequate because Board psychologists cannot evaluate whether an alleged error materially affects the assessment. They also express concern that a C&R hearing could be canceled based on a high-risk rating that may stem from a material error the incarcerated person had no opportunity to challenge in advance.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulations to allow written prehearing objections to a CRA prepared in advance of a C&R hearing. Each year, the Board receives hundreds of letters from incarcerated persons and their attorneys alleging factual errors in CRAs. Of these, very few result in a finding of a material error that changes the CRA's risk rating. Despite the low rate of identified errors, the Board's attorneys and psychologists devote substantial time and resources to reviewing and responding to each objection. Expanding the opportunity for prehearing objections in the C&R process would significantly increase this workload with minimal demonstrated benefit.

The existing process already provides an adequate and efficient mechanism for addressing alleged errors. Incarcerated persons may raise concerns about the CRA directly with the hearing panel at the C&R hearing. Hearing panels are specifically trained to evaluate alleged inaccuracies, assess the CRA in the context of the full record, and give appropriate weight to the assessment. Moreover, a risk rating does not determine the outcome of the hearing by itself; the panel considers all relevant information, including the individual's testimony at the hearing and their central file.

Further, before any CRA is finalized, the proposed regulations require all CRAs prepared in advance of a C&R hearing be reviewed by the Board's Chief Psychologist or a senior psychologist, to ensure the preparing psychologist's opinions are based upon adequate scientific foundation.

Given the limited impact of pre-hearing objections on risk ratings, the significant administrative burden associated with processing such objections, and the effectiveness of the hearing process in

addressing alleged errors, the Board declines to establish a process for written pre-hearing CRA objections.

**ISSUE 10: CRA - The CRA should be designated confidential.**

Comment ID Number: 222-13

COMMENT: This comment requests the Board add a provision to the regulations to specify that a CRA completed under this process is confidential, maintained with the incarcerated person's psychological prison records, and provided to prosecuting agencies, including District Attorney offices or the Attorney General's Office, only upon a properly noticed, served, and judicially endorsed subpoena that specifically requests the CRA. The commenter opines a negative CRA would burden an incarcerated person whose current or future litigation of their conviction may be prejudiced by the report.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulations as requested. Under existing law and practice, the CRA is already subject to defined confidentiality and disclosure rules. The CRA is provided to the prosecuting agency solely for purpose of participation in the C&R hearing process. If a prosecuting agency seeks to use a CRA in any court proceeding outside the C&R recommendation assessment process, the Board requires a properly issued court order or subpoena before releasing the document.

The CRA is not maintained in the incarcerated person's psychological prison records because the Board's psychologists do not have a psychotherapist-patient relationship with the individual. Instead, the CRA is placed in the incarcerated person's central file, where it is protected from public disclosure under the Public Records Act. Consistent with the treatment of other documents necessary for participation in a hearing, the prosecuting agency, the incarcerated person's attorney, and the incarcerated person receive a copy of the CRA so that each party may fully and fairly participate in the proposed C&R hearing. The incarcerated person is also informed that the CRA interview is not confidential and may decline the interview if they wish.

Requiring a subpoena for the prosecuting agency to obtain a CRA in every instance would impose unnecessary administrative burdens on both the Board and prosecuting agencies, while ultimately still resulting in the CRA being provided. Such a requirement would not enhance confidentiality protections or materially affect how CRAs are used in litigation. For these reasons, the Board declines to amend the regulations.

**ISSUE 11: CRA - When an incarcerated person receives a low risk rating on the CRA, the Board should not look to additional criteria to deny issuing a C&R recommendation.**

Comment ID Number: 312-03

COMMENT: This comment requests the Board not look to additional criteria to deny issuing a C&R recommendation when an incarcerated person receives a low-risk rating in a CRA.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulations as requested. A CRA is one source of information considered in the C&R hearing process. It is not designed or intended to substitute for legal judgment, nor does it operate as a standalone basis for determining the outcome of a C&R hearing. The hearing panel evaluates the CRA in conjunction with all other relevant and reliable information, including the incarcerated person's central file, testimony, institutional behavior, statements from the victims and victim family members, and any additional relevant and reliable evidence. A "low" CRA risk rating does not, by itself, establish that a person should receive a C&R recommendation, nor does it limit the panel's consideration of other relevant factors.

Because the CRA is one component of a broader evidentiary record and the panel must consider all relevant information in making its determination, the Board declines to amend the regulations to require a specific outcome or prohibit consideration of additional criteria when an individual receives a low-risk rating.

**ISSUE 12: CRA – The Board’s psychologist should be required to provide notice to the incarcerated person that the CRA interview does not enjoy the protection of the psychotherapist-patient privilege under the Evidence Code.**

Comment ID Number: 288-06

COMMENT: This comment requests the Board’s psychologist provide notice to the incarcerated person prior to the CRA interview that they do not enjoy a psychotherapist-patient privilege under the Evidence Code.

RESPONSE: DECLINED TO AMEND

At the outset of every CRA interview, the Board’s psychologist informs the incarcerated person that the interview is not confidential and that the information discussed will be used to prepare a CRA. This advisement is consistent with longstanding Board practice and ensures individuals understand the nature and purpose of the interview.

Board psychologists do not operate in a psychotherapist–patient capacity, and the CRA process does not create such a privileged relationship. Because the existing advisement already conveys that the interview is not confidential and the underlying legal framework is clear that no privilege applies, regulating an additional advisement is unnecessary and outside the scope of this rulemaking. There is no legal requirement to expressly advise the incarcerated person regarding the absence of a psychotherapist–patient privilege. For these reasons, the Board declines to amend the regulations.

**ISSUE 13: Medical Information – The Board should not be allowed to use information found in an incarcerated person’s medical record without an incarcerated person’s consent and knowledge.**

Comment ID Number: 288-05

COMMENT: Commenter requests that the Board refrain from using an incarcerated person’s medical information in preparing a CRA or in deciding whether to recommend a commutation or

recall of sentence unless the individual consents to its use. Commenter also asserts that it violates due process for incarcerated persons not to be expressly informed that they do not have a right to privacy in their medical or mental health records.

**RESPONSE: DECLINED TO AMEND**

An incarcerated person's medical and mental health records are not confidential from the Board, and individuals appearing before the Board do not have a right to withhold such records. (*See Seaton v. Mayberg* (9th Cir. 2010) 610 F.3d 530 [there is no right to confidentiality when the state is making a public safety determination]). The Board is required to consider all relevant and reliable information when evaluating an individual, which includes medical and mental health information when it bears on risk and rehabilitation.

Courts have recognized that incarcerated individuals do not have a protected right to privacy in treatment records where the state has a legitimate penological interest in accessing and using those records. (*Id.*) The Board has such an interest, as public safety and the assessment of an individual's current dangerousness are central considerations in its decision making. (See *In re Lawrence* (2008) 44 Cal.4th 169, 188.)

To the extent people appearing before the Board assert a right to privacy of medical information, the Board's authority to access the medical records of incarcerated people for purposes of parole consideration is permitted by both the Health Insurance Portability and Accountability Act (HIPAA) and California law. (*See Seaton v. Mayberg, supra*, 610 F.3d at p. 534. In fact, California law requires that an incarcerated person's records be made available for the Board to decide when a person can be safely allowed to return to society, and this exception obviates the need for a signed disclosure under HIPAA. (Pen. Code, §§ 2081.5, 3051, 3055, 4801, subd. (c); Cal. Code Regs., tit. 15, §§ 2281, 2402, 2844, 2850.) Further, HIPAA is not designed to "invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, child abuse, birth, or death, public health surveillance, or public health investigation or intervention." (45 U.S.C.A. § 1320d-7.)

Although a C&R hearing does not result in a parole determination, the Board is still evaluating whether an individual currently poses an unreasonable risk to public safety. Access to medical and mental health information is therefore necessary and appropriate for the Board to fulfill its duties. Because the Board already uses this information in a manner consistent with statutory requirements, no amendment is necessary.

**ISSUE 14: Time Required to Serve - Shorten the amount of time a person must serve before consideration from 25 years to 15 to 20 years.**

Comment ID Numbers: 76-02; 207-01; 236-07; 262-02; 300-01; 313-02; 365-02; 374-02

**COMMENT:** This comment requests the Board require an incarcerated person to serve 15 to 20 years of incarceration before being considered under this process instead of 25 years. Another comment requests the person only be required to serve 15 years before being considered for a C&R review. Another commenter states that allowing the judicial system the opportunity to revisit cases after 20 years can lead to more informed and humane decisions about whether rehabilitation is

possible. Another comment requests the Board require an incarcerated person to serve 15 years of incarceration before being considered for a parole hearing instead of 25 years or allow a discretionary waiver when there is clear evidence of rehabilitation. The commenters believe that requiring 25 years of continuous incarceration is overly restrictive and excludes individuals who have shown rehabilitation and growth.

**RESPONSE: DECLINED TO AMEND**

As explained in the Initial Statement of Reasons (ISOR) for this rulemaking, the requirement that an incarcerated person serve 25 years before becoming eligible for consideration under this process is intentionally aligned with the statutory sentencing framework for the most serious offenses in the California Penal Code, including first degree murder. Establishing eligibility at the 25-year mark ensures consistency with existing legislative judgments regarding the minimum time appropriate for individuals convicted of the state's most serious crimes.

This requirement is also consistent with timelines found in other longstanding Board processes, including the court-ordered elderly parole program and the statutory youth offender parole process for juveniles sentenced to life in prison without the possibility of parole (Pen. Code, § 3051, subd. (b)(4)), both of which reflect similar thresholds for meaningful evaluation of rehabilitation.

Additionally, these regulations do not limit an incarcerated person's ability to seek commutation on their own before reaching 25 years of incarceration. Any individual who believes their sentence should be commuted earlier may apply directly to the Governor for a commutation of sentence. That option remains fully available and is not affected by this rulemaking.

For these reasons, the Board declines to amend the regulations to shorten the required period of incarceration for eligibility under this proposed process.

**ISSUE 15: Time Required to Serve - Clarify what constitutes a “break in custody” for the purposes of calculating eligibility for this process.**

Comment ID Number: 207-02

**COMMENT:** This comment requests the Board clarify that a “break in custody” does not reset eligibility for temporary releases or minor returns such as a person's release on parole, release to a different jurisdiction, or transfer to a non-CDCR custody. The requester asks the Board to amend the language to require 25 years of total incarceration.

**RESPONSE: DECLINED TO AMEND**

Section 2840, subsection (b), expressly defines a “break in custody” as occurring when an incarcerated person escapes from custody or is released on parole. The definition does not suggest any other action may constitute a “break in custody” for purposes of calculating a CRED under the proposed regulations. Further, the definition of “incarceration” in section 2840, subsection (1), makes clear that only continuous custody in “any city or county jail, local juvenile facility, mental health facility, former Division of Juvenile Justice facility, or department facility” counts toward the calculation of the length of continuous incarceration. The Board disagrees that further

clarification is needed. Instances where an individual is eligible for a temporary release that does not constitute parole would not be a break in custody, but time on temporary release would also not count toward continuous incarceration as they would not be incarcerated under the regulatory definition; calculation of continuous incarceration would continue from any point in which the person might be returned to incarceration from temporary release. Under the regulations, this would be the same for any release to a different jurisdiction or transfer to a non-CDCR custody, unless any such release or transfer would still meet the definition of “incarceration” (e.g. transfer to a city or county jail), in which case time after the release or transfer would still count toward the calculation of continuous incarceration.

Persons who have escaped from custody during their term of incarceration or previously did not succeed while on parole have demonstrated conduct indicative of an increased risk to public safety. By waiting for such individuals to serve at least 25 years of continuous incarceration following such an incident, it provides a consistent period for the Board to observe sustained rehabilitative efforts, programming participation, and institutional conduct that may warrant a C&R recommendation from the Board. A C&R recommendation is a discretionary act by the Board and the Board intends to focus its limited resources for this discretionary act on persons most likely to have earned such an act of mercy after a lengthy period of incarceration for a California conviction.

For these reasons, the Board declines to amend the regulations to alter the definition of a “break in custody” or to allow eligibility to be based on total, rather than continuous, time incarcerated.

**ISSUE 16: Implementation Deadline - Shorten the Board’s deadline to hold C&R reviews from 2035 to 2030.**

Comment ID Numbers: 194-02; 220-02

COMMENT: This comment requests the Board modify the implementation date from December 31, 2035, to December 31, 2030.

RESPONSE: DECLINED TO AMEND

As explained in the Board’s ISOR, the Board requires a ten-year implementation deadline because of the need to build technology for the process, to allow case records to determine eligibility of individuals and set eligibility dates, and then for the Board to schedule C&R reviews within our existing workload. The Board estimates 2,456 incarcerated persons to be immediately eligible for an initial C&R review upon enactment of these regulations. Further, the Board estimates 3,959 incarcerated persons will be eligible for an initial C&R review by December 31, 2035. By spreading the initial C&R reviews for these cases over a roughly 10-year period, the Board can better absorb the additional workload with the Board’s current staff. The Board determined that a shorter timeline would require increases to staffing and the Board’s budget. Specifically, a shorter timeframe would require the Board hire additional hearing officers, psychologists, attorneys, and support staff in order to carry out the C&R reviews and C&R hearings. The Board also needs time to build out technology for the process, allocate appropriate staff, and complete all of the required initial C&R reviews; therefore, the Board requires additional time to complete the necessary initial reviews.

Moreover, nothing in these regulations prevents an incarcerated person from seeking relief before the C&R recommendation assessment process is fully implemented. Individuals who would like to be considered for commutation of sentence earlier may submit an application for commutation directly to the Governor, independent of this process. Therefore, the Board declines to amend the implementation deadline.

**ISSUE 17: Implementation Deadline - Shorten the Board's deadline to hold C&R reviews from a 10-year implementation to a 2-year implementation timeline.**

Comment ID Number: 307-02

COMMENT: This comment requests the Board modify the implementation timeline to two years from the proposed 10 years. The commenter believes 10 years is unnecessary.

RESPONSE: DECLINED TO AMEND

As explained in the Board's ISOR, the Board requires a ten-year implementation deadline because of the need to build technology for the process, to allow case records to determine eligibility of individuals and set eligibility dates, and then for the Board to schedule C&R reviews within our existing workload. The Board estimates 2,456 incarcerated persons to be immediately eligible for an initial C&R review upon enactment of these regulations. Further, the Board estimates 3,959 incarcerated persons will be eligible for an initial C&R review by December 31, 2035. By spreading the initial C&R reviews for these cases over a roughly 10-year period, the Board can better absorb the additional workload with the Board's current staff. The Board determined that a shorter timeline would require increases to staffing and the Board's budget. Specifically, a shorter timeframe would require the Board hire additional hearing officers, psychologists, attorneys, and support staff in order to carry out the C&R reviews and C&R hearings. The Board also needs time to build out technology for the process, allocate appropriate staff, and complete all of the required initial C&R reviews, which cannot be done in one year; therefore, the Board requires additional time to complete the necessary initial reviews.

Moreover, nothing in these regulations prevents an incarcerated person from seeking relief before the C&R recommendation assessment process is fully implemented. Individuals who would like to be considered for commutation of sentence earlier may submit an application for commutation directly to the Governor, independent of this process.

**ISSUE 18: Implementation Deadline - Shorten the Board's deadline to hold C&R reviews from a 10-year implementation to a 3-year implementation timeline.**

Comment ID Number: 219-04

COMMENT: This comment requests the Board modify the implementation timeline to three years from the proposed 10 years. The commenter believes 10 years is unnecessary.

RESPONSE: DECLINED TO AMEND

As explained in the Board's ISOR, the Board requires a ten-year implementation deadline because of the need to build technology for the process, to allow case records to determine eligibility of

individuals and set eligibility dates, and then for the Board to schedule C&R reviews within our existing workload. The Board estimates 2,456 incarcerated persons to be immediately eligible for an initial C&R review upon enactment of these regulations. Further, the Board estimates 3,959 incarcerated persons will be eligible for an initial C&R review by December 31, 2035. By spreading the initial C&R reviews for these cases over a roughly 10-year period, the Board can better absorb the additional workload with the Board's current staff. The Board determined that a shorter timeline would require increases to staffing and the Board's budget. Specifically, a shorter timeframe would require the Board hire additional hearing officers, psychologists, attorneys, and support staff in order to carry out the C&R reviews and C&R hearings. The Board also needs time to build out technology for the process, allocate appropriate staff, and complete all of the required initial C&R reviews, which cannot be done in one year; therefore, the Board requires additional time to complete the necessary initial reviews.

Moreover, nothing in these regulations prevents an incarcerated person from seeking relief before the C&R recommendation assessment process is fully implemented. Individuals who would like to be considered for commutation of sentence earlier may submit an application for commutation directly to the Governor, independent of this process.

**ISSUE 19: Implementation Deadline – A ten-year implementation timeline would unnecessarily delay relief for individuals.**

Comment ID Numbers: 258-04; 306-02

COMMENT: This comment recognizes the logistical challenges of implementing this process; however, the commenter believes a ten-year implementation timeline would unnecessarily delay relief for individuals who have already spent decades incarcerated. Another commenter did not specify a timeline but would like the regulations to be implemented sooner than 10 years.

**RESPONSE: DECLINED TO AMEND**

As explained in the Board's ISOR, the Board requires a ten-year implementation deadline because of the need to build technology for the process, to allow case records to determine eligibility of individuals and set eligibility dates, and then for the Board to schedule C&R reviews within our existing workload. The Board estimates 2,456 incarcerated persons to be immediately eligible for an initial C&R review upon enactment of these regulations. Further, the Board estimates 3,959 incarcerated persons will be eligible for an initial C&R review by December 31, 2035. By spreading the initial C&R reviews for these cases over a roughly 10-year period, the Board can better absorb the additional workload with the Board's current staff. The Board determined that a shorter timeline would require increases to staffing and the Board's budget. Specifically, a shorter timeframe would require the Board hire additional hearing officers, psychologists, attorneys, and support staff in order to carry out the C&R reviews and C&R hearings. The Board also needs time to build out technology for the process, allocate appropriate staff, and complete all of the required initial C&R reviews; therefore, the Board requires additional time to complete the necessary initial reviews.

Moreover, nothing in these regulations prevents an incarcerated person from seeking relief before the C&R recommendation assessment process is fully implemented. Individuals who would like

to be considered for commutation of sentence earlier may submit an application for commutation directly to the Governor, independent of this process.

**ISSUE 20: Implementation Order – Establish an implementation order.**

Comment ID Numbers: 82-02; 219-05; 222-07; 222-08; 238-02; 253-02; 254-03; 255-02; 258-05; 258-06; 258-07; 259-02

COMMENT: This comment requests the Board establish an implementation order for how to process the thousands of individuals who will be immediately eligible for a C&R review. The commenter states that since the Board has 10 years to implement this process, without an implementation order, those who are eligible will be unaware if they will come before the Board in one year or 10 years. Additionally, without an implementation order established with objective criteria, individuals who have served shorter sentences or who become eligible after enactment may have their cases reviewed ahead of those who have served longer sentences and have earlier CRED dates, which would be unfair to some individuals. Commenter requests the Board establish clear criteria for the order in which individuals will be scheduled for a C&R review.

Some commenters request the Board review cases based on the amount of time the person has been incarcerated. Specifically, starting with the people who have served the longest amount of time and ending with the people who have spent the least amount of time in custody.

Another commenter requests the Board review cases based on the length the person has served and their age. This commenter also requests priority be given to those with excessive sentences.

Another commenter requests the Board review cases based on the length the person has served and their age.

Other commenters request the Board prioritize individuals who are elderly, medically vulnerable, or survivors of gender-based violence.

Another comment requests the Board prioritize individuals who were under 25 years old when they committed their offense. The commenter points to the youth offender laws that apply to parole hearings and the science that recognizes a person's brain development and ability to rehabilitate.

This comment requests the Board prioritize individuals who were sentenced under the felony murder rule. The commenter opines these sentences result in some of the most disproportionate punishments in the system. Therefore, prioritizing their review would align with the state's commitment to fairness and proportionality and would help correct decades of inequity by ensuring that those most unjustly sentenced are among the first to access relief.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulations to establish a fixed implementation order for conducting C&R reviews during the 10-year implementation period. A predetermined sequence would significantly limit the Board's ability to manage its workload and allocate resources effectively across institutions. Flexibility is essential to ensure that C&R reviews and hearings can

be scheduled in a manner that accommodates institutional operations, which vary across facilities and over time.

When determining the order in which individuals will be scheduled, the Board will consider multiple factors — including, but not limited to, age, time served, and institutional availability — to ensure that scheduling is both reasonable and operationally feasible. Because the volume and timing of scheduling eligible cases will be dependent on available funding, staffing levels, and workload projections, establishing a rigid, critical implementation order is not practical nor feasible.

Importantly, maintaining flexibility allows the Board to schedule reviews in a manner that maximizes efficiency and ensures steady progress toward full implementation. Imposing a fixed order could hinder the Board’s ability to adapt to operational demands and may delay reviews if facilities are unable to accommodate them at prescribed times.

Additionally, individuals who would like to be considered for commutation of sentence earlier than when they might be scheduled for an initial C&R review under this proposed process may submit an application for commutation directly to the Governor anytime, independent of this process. Also, persons convicted of felony murder may also petition a sentencing court to have their conviction vacated and to be resentenced under Penal Code section 1172.6.

Finally, under proposed section 2844, subsection (d), an eligible incarcerated person will receive notice of the date on which they will receive an initial C&R review at least 30 days prior to the date of the review, providing the person with sufficient time to prepare for the review.

For these reasons, and to ensure the Board can meet the implementation deadline of December 31, 2035, the Board declines to amend the regulations to require a predetermined implementation order for C&R reviews.

**ISSUE 21: Unjust Results Category – The regulations do not identify a method for identifying people who were wrongfully convicted and other unjust results.**

Comment ID Numbers: 106-02; 234-02; 252-01; 294-01; 366-01

**COMMENT:** These comments object to the regulations because they do not identify a method for identifying people who were wrongfully convicted. The commenters state that the purpose of the regulations is to bring relief to those suffering from unjust results in the legal system and that is not accomplished without identifying people who were wrongfully convicted. The commenter also requests the Board create an “unjust results” category to consider the following groups of people under these regulations: (1) any case where the incarcerated person can point to a state or federal criminal offense having been committed by police, prosecutor, or judge in the case’s process; (2) any case where the prosecutor was found to violate another defendant’s rights prior to the incarcerated person’s case; (3) any case where the trial judge was found to violate another defendant’s rights prior to the incarcerated person’s case; (4) any case where a state reviewing court judge opined relief should have been granted; (5) any case where the incarcerated person was able to make the required “substantial showing of the denial of a constitutional right” and was awarded

a certificate of appealability; and (6) any case where the incarcerated person can point to circumstances in mitigation or legal questions that have never been fully considered.

Commenters object to this process not addressing wrongful convictions and argue that those people still do not have a pathway to clemency.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulations to create an “unjust results” category. Courts are empowered to review judicial process, investigatory actions leading to convictions, and to ultimately determine if a conviction should be further reviewed. Separation of powers concerns could arise by the Board stepping into this judicial process, and review of the entire judicial record would demand significant resources beyond the Board’s current capacity. Individuals eligible for the C&R recommendation assessment process may nonetheless submit documentation to the C&R review hearing officer or the C&R hearing panel explaining why they believe an unjust result occurred, and the panel will consider such information to the extent it is relevant to its determination of current risk. In addition, individuals who are not eligible for the C&R recommendation assessment process retain the ability to apply directly to the Governor for a commutation of sentence or seek relief in court, independent of this proposed process.

**ISSUE 22: 290 Registrants - Exclusion of persons required to register under Penal Code section 290 for a prior conviction unrelated to their current commitment offense.**

Comment ID Numbers: 79-01, 203-01; 375-01

COMMENT: Commenters request that the Board include in the C&R recommendation assessment process individuals who are required to register under Penal Code section 290 for a conviction unrelated to the sentence they are currently serving. They argue that excluding people who have already completed the sentence associated with the registration requirement amounts to continued punishment and is unfair.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulation. As described in the ISOR, the Board adopted specific exclusionary criteria to ensure that the referral and recommendation process operates in a fair, consistent, and administratively feasible manner.

The Board carefully considered which categories of cases should be included in, or excluded from, the C&R recommendation assessment process. Individuals required to register under Penal Code section 290 for an offense unrelated to the sentence they are currently serving were excluded for reasons grounded in public safety, administrative feasibility, and focusing the Board’s limited resources on persons more likely to meet the standard for a C&R recommendation and more likely to be commuted or resentenced by the Governor or sentencing court following a C&R recommendation.

The C&R recommendation assessment process requires significant staff time and case analysis. Establishing clear exclusionary criteria allows the Board to focus those limited resources on

incarcerated persons who are more likely to meet the standard for receiving a C&R recommendation and are more likely to be commuted or resentenced by the Governor or sentencing court following a C&R recommendation. These exclusionary criteria, including the exclusion of persons required to register under Penal Code section 290, do not constitute continued punishment for a previously served sentence; rather, they reflect the need for a structured, resource conscious decision-making framework consistent with the purpose of this regulatory scheme.

Incarcerated persons convicted of a sexual offense that requires or will require they register pursuant to Penal Code section 290 are excluded from the C&R recommendation assessment process because the crimes listed in that section of the Penal Code reflect the determination of the people of the State of California (through initiatives and the legislature) that, “Sex offenders pose a potentially high risk of committing further sex offenses after release from incarceration or commitment, and the protection of the public from reoffending by these offenders is a paramount public interest.” (Penal Code section 290.03.) Also, when the people of the State of California approved Proposition 35 on November 6, 2012, they declared that “Protecting every person in our state, particularly our children, from all forms of sexual exploitation is of paramount importance.” (See Proposition – Californians Against Sexual Exploitation Act, 2012 Cal. Legis. Serv. Prop. 35 (Proposition 35) (WEST), section 2, paragraph 1.)

Finally, exclusion from this assessment process does not preclude an individual who is required to register under Penal Code section 290 from seeking relief. Individuals may still petition the Governor directly for commutation of sentence or pursue resentencing under other statutory mechanisms independent of this proposed regulatory process.

For these reasons, the Board maintains that the exclusion is reasonable, necessary, and supported by the rationale set forth in the ISOR, and therefore declines to amend the regulation.

### **ISSUE 23: 290 Registrants - Exclusion of persons required to register under Penal Code section 290.**

Comment ID Numbers: 105-01; 181-01; 208-02; 209-03; 211-03; 219-02; 222-04; 224-02; 225-01; 230-02; 236-04; 238-05; 239-02; 251-03; 253-01; 254-02; 255-05; 257-02; 258-03; 259-05; 263-03; 267-01; 268-03; 271-01; 298-02; 302-02; 303-01; 304-01; 306-03; 325-02; 342-02

**COMMENT:** Commenters request that the Board remove the exclusion for individuals required to register under Penal Code section 290 or, at minimum, modify it to allow individualized eligibility determinations based on actual risk and evidence of rehabilitation rather than imposing a categorical bar. They argue that the exclusion is discriminatory, overbroad, and unsupported by data. Commenters further note that the exclusion fails to consider registry tiers or the petition process that allows individuals to terminate registration after the minimum period, and would bar people whose prior offenses—if committed today—would not require registration. They also assert that sex offender registration laws have racially disparate impacts and that retaining this exclusion would perpetuate those disparities, particularly affecting elderly individuals, people of color, and LGBTQ+ individuals. Commenters claim there is no risk based or public safety rationale for a blanket exclusion and cite low recidivism rates among registrants, as well as Board hearing outcomes showing that registrants are regularly found suitable for parole.

Some commenters recommend narrowing the exclusion to only those whose *current* offense requires registration and who have recently been assessed as high risk using an individualized, empirically validated risk tool. Others request limiting the exclusion solely to individuals whose present offense requires registration. Another commenter argues that the Board lacks authority to reassess culpability for past conduct and that excluding these individuals exceeds the scope of the Board's role.

RESPONSE: DECLINED TO AMEND

The Board considered, but ultimately rejected, commenters' proposals for individualized eligibility determinations, including suggestions to rely on registry tiers, termination of registration mechanisms, or individualized risk assessments. As detailed in the ISOR, categorical exclusions are necessary to focus the Board's limited resources on incarcerated persons who are more likely to meet the standard for receiving a C&R recommendation and are more likely to be commuted or resentenced by the Governor or sentencing court following a C&R recommendation. The exclusion is a threshold screening criterion to ensure the process remains administratively workable and directed toward cases with the greatest likelihood of resulting in relief.

The Board acknowledges commenters' assertions regarding recidivism rates and parole suitability hearing outcomes; however, parole suitability determinations operate under statutory frameworks distinct from the C&R recommendation assessment process. The C&R recommendation assessment process operates within two statutory frameworks (Penal Code sections 1172.1 and 4801) that both rely on decision-makers distinct from the Board to ultimately grant relief for the incarcerated person, whether that relief be commutation of sentence or recall of sentence and resentencing. In establishing this proposed regulatory process, the Board must focus limited resources on those persons not only most likely to warrant a C&R recommendation from the Board, but on those persons who would then be most likely to receive relief ultimately from those distinct decision makers.

Incarcerated persons convicted of a sexual offense that requires or will require they register pursuant to Penal Code section 290 are excluded from the C&R recommendation assessment process because the crimes listed in that section of the Penal Code reflect the determination of the people of the State of California (through initiatives and the legislature) that, "Sex offenders pose a potentially high risk of committing further sex offenses after release from incarceration or commitment, and the protection of the public from reoffending by these offenders is a paramount public interest." (Penal Code section 290.03.) Also, when the people of the State of California approved Proposition 35 on November 6, 2012, they declared that "Protecting every person in our state, particularly our children, from all forms of sexual exploitation is of paramount importance." (See Proposition – Californians Against Sexual Exploitation Act, 2012 Cal. Legis. Serv. Prop. 35 (Proposition 35) (WEST), section 2, paragraph 1.)

These expressions of the public's sentiment suggest there is a lesser likelihood that the Governor or sentencing courts will take action to significantly alter the sentences imposed on persons required to register under Penal Code section 290 based on a C&R recommendation from the Board. Thus, the Board finds it reasonable and prudent to focus the limited resources it has for this

discretionary process on incarcerated persons not required to register under Penal Code section 290.

Importantly, the exclusion from this assessment process does not preclude an individual who is required to register under Penal Code section 290 from seeking relief. Individuals may still petition the Governor directly for commutation of sentence or pursue resentencing under other statutory mechanisms that do not involve this regulatory process.

For these reasons, and as supported by the rationale set forth in the ISOR, the Board concludes that the exclusion is reasonable, necessary, and within its authority. The Board therefore declines to amend the regulation.

**ISSUE 24: Condemned - Exclusion of condemned incarcerated persons from the C&R recommendation assessment process.**

Comment ID Numbers: 124-01; 176-02; 181-02; 208-03; 222-03; 229-01; 230-03; 251-04; 254-01; 257-03; 258-02; 260-01; 264-02; 268-02; 306-04

COMMENT: Commenters request that the Board include individuals who are sentenced to death in this process and remove the exclusionary criteria that prevent the condemned population from being considered. Some commenters believe that excluding individuals sentenced to death violates the equal protection clause and note that there is no meaningful distinction between the crimes committed by people serving LWOP or long sentences and those on death row. Commenters also emphasize that resentencing and clemency can serve as a critical safeguard for the innocent or wrongfully sentenced, citing the higher rate of exonerations among death sentenced individuals nationwide. They further point to racial disparities in California's use of the death penalty, noting research showing that Black and Latino individuals are overrepresented on death row and that the death penalty operates in a discriminatory manner.

Other commenters argue that this exclusion is inconsistent with Penal Code section 1172.1, which permits resentencing of death sentenced individuals, and with Penal Code section 4801, which allows people under a sentence of death to seek a gubernatorial commutation. One commenter notes that 57 death sentenced individuals have already been resentenced, asserting that the Board's statement in the ISOR regarding the limited resentencing discretion for this population is inaccurate. This commenter also estimates that including the condemned population would increase the total number of reviews by less than 15% over ten years. Another commenter argues that excluding the condemned population denies them the individualized assessment envisioned by Penal Code section 1172.1.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulation to include individuals sentenced to death. As set forth in the ISOR, the Board established exclusionary criteria to ensure that the C&R recommendation process remains administratively feasible, appropriately focused, and consistent with the Board's role in the overall resentencing and clemency framework.

Although Penal Code sections 1172.1 and 4801 authorize resentencing and commutation requests by individuals under a sentence of death, they do not require the Board to include the condemned population within this specific regulatory assessment process. The fact that other mechanisms exist for death-sentenced individuals to seek relief underscores that this exclusion does not foreclose access to clemency or resentencing; rather, it reflects the Board’s authority to define, by regulation, the subset of cases it will prioritize for review under this discretionary program.

The Board acknowledges commenters’ concerns. However, the C&R recommendation process is a resource-dependent process intended to identify cases that present the highest likelihood of ultimately receiving relief from a court or the Governor. Condemned individuals present unique procedural and legal complexities — including extensive appellate, habeas, and postconviction litigation — that make their cases resource intensive. Including this population would diminish the Board’s ability to review persons serving life or long-term sentences, who are more likely to ultimately receive a commutation from the Governor or be resentenced by a sentencing court.

Commenters contend that the exclusion is inconsistent with the fact that some death sentenced individuals have obtained resentencing. The Board recognizes that courts have, resentenced some individuals previously under a sentence of death. However, these outcomes are rare, arise through case specific judicial determinations, and do not alter the Board’s intention to design a discretionary process that can be implemented efficiently and within existing resource constraints. The commenters’ estimate of the potential caseload increase does not capture the complexity of the required case reviews, the heightened factual and legal analysis involved, or the procedural posture of capital cases, many of which remain in active litigation for decades.

For these reasons, and as explained in the ISOR, the Board concludes that maintaining this exclusion is reasonable, necessary, and within the scope of its regulatory authority. The Board therefore declines to amend the regulation.

**ISSUE 25: Formerly Condemned - Exclusion of formerly condemned incarcerated persons from the C&R recommendation assessment process.**

Comment ID Number: 287-01

COMMENT: This comment requests that the Board include formerly condemned incarcerated individuals who are now housed in the general population and not exclude them from this process.

RESPONSE: DECLINED TO AMEND

The requested change is unnecessary. These regulations do not exclude individuals who were formerly sentenced to death unless they fall under another exclusionary criterion. The regulations specify that an exclusion applies only to a person who “*is sentenced to death.*” Accordingly, an individual who was previously condemned, but whose death sentence has been vacated or modified by a court, would not be excluded on that basis and remains eligible for consideration under this process so long as no exclusionary criteria in the proposed regulatory process apply.

**ISSUE 26: Prior Commutations - Exclusion of persons who received a prior commutation from the C&R recommendation assessment process.**

Comment ID Numbers: 208-04; 211-04; 222-05; 229-02; 230-04; 236-06; 251-05; 257-04; 260-02; 264-03; 268-05

COMMENT: Commenters request that the Board include individuals who have previously received a commutation of sentence and remove the exclusionary criteria relating to prior commutations. Some commenters propose narrowing the exclusion to apply only to individuals who received a commutation during their current term of incarceration, arguing that persons whose death sentences were commuted to LWOP should be treated like any other eligible LWOP individual. Other commenters state that people who received a commutation years ago may have experienced significant rehabilitation and should be eligible for consideration again. They also object that this exclusion limits the Board's ability to refer such individuals for resentencing, noting that resentencing and commutation are distinct processes with different legal standards. Commenters further argue that the exclusion lacks time limitations, meaning individuals who received a commutation long ago would still be barred.

Some commenters suggest narrowing the exclusion to only those who received a commutation from the current Governor or who are already parole eligible. They argue that individuals who are not yet parole eligible, or who were commuted by prior governors, should remain eligible for this process.

Several commenters believe the exclusion conflicts with the purpose of the regulations and the principles of rehabilitation. They argue that requiring individuals who have already received a commutation to seek a second one creates a parallel, unregulated pathway that undermines the regulation's goals of consistency and transparency, and deprives the Governor of a streamlined mechanism for reviewing lengthy sentences. Commenters also assert that including this population would not significantly affect resource allocation due to the relatively small number of individuals who have previously received a commutation and are not currently eligible for parole.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulation to include individuals who have previously received a commutation of sentence. As explained in the ISOR, the exclusionary criteria are designed to ensure that the C&R recommendation assessment process remains administratively feasible and focused on cases most likely to receive relief upon referral to the Governor or the courts.

A commutation by the Governor is an extraordinary act of executive clemency. When an individual has already received a commutation, the Governor has necessarily undertaken a comprehensive review of that individual's case, circumstances, and rehabilitation and determined what specific change to the sentence or incarceration was appropriate. Because the C&R recommendation assessment process is designed, in part, to identify individuals whose cases warrant presentation to the Governor for potential commutation, the Board reasonably determined that allocating resources to review cases already considered and acted upon by the Governor would not further the purpose of this regulatory scheme. It is unlikely that an individual who already received a

Governor's commutation would receive a second one during the same term of incarceration, or have their commuted sentence recalled and resentenced by a sentencing court.

Commenters assert that individuals who received a commutation long ago, or whose death sentences were commuted to LWOP, should be eligible because they may have since demonstrated additional rehabilitation. However, individuals who have previously received a commutation retain the ability to seek further relief directly from the Governor, consistent with longstanding clemency procedures. This exclusion therefore does not bar access to clemency; rather, it ensures that the limited resources of the C&R process are devoted to individuals whose cases have not yet undergone gubernatorial review that resulted in gubernatorial clemency, thereby increasing the likelihood that a C&R recommendation may result in relief by an ultimate decision maker (the Governor or sentencing court).

The Board considered but ultimately rejected commenters' suggestions to narrow the exclusion by limiting it to recent commutations, commutations issued by the current Governor, or individuals who are already parole eligible. These proposed distinctions do not meaningfully reduce resource demands or align with the core purpose of this process. The C&R recommendation assessment process requires extensive review of institutional records, risk assessments, and individual circumstances. Reevaluating previously commuted cases would require repeating much of the work already completed by the executive branch and would divert limited Board resources from individuals who may have never received clemency consideration and who have never received an act of clemency.

Commenters also contend that excluding individuals with prior commutations undermines rehabilitation principles or the goals of consistency and transparency. The Board disagrees. The exclusion maintains clarity and uniformity by ensuring that all cases entering this referral process are ones the Governor has not previously reviewed for clemency and determined an act of clemency appropriate. Individuals with prior commutations continue to have access to the Governor's established clemency procedures if they think further commutation of sentence is warranted; these procedures remain available regardless of parole eligibility status or the timing of a previous grant.

For these reasons, and as supported by the rationale set forth in the ISOR, the Board concludes that retaining the exclusion for individuals who have previously received a commutation is reasonable, necessary, and within the scope of its discretion. The Board therefore declines to amend the regulation.

**ISSUE 27: Exclusion of incarcerated persons eligible for parole consideration or will be eligible for parole consideration within three years.**

Comment ID Numbers: 236-05; 311-04

**COMMENT:** Commenters request that the Board remove the exclusion for individuals who are currently in the parole hearing cycle or will become eligible for a parole hearing within three years. They argue that the authority to refer individuals for commutation or resentencing is distinct from the authority governing parole, and therefore these individuals should not be categorically excluded from this process.

RESPONSE: DECLINED TO AMEND

As explained in the ISOR, the exclusion of individuals who are currently in the parole hearing cycle or who will become eligible for a parole hearing within three years is necessary to ensure that the C&R recommendation assessment process remains focused, efficient, and consistent with its intended purpose.

The authority to conduct parole suitability hearings and the authority to review cases for potential commutation or resentencing recommendations, while distinct, draw upon the same limited staff resources. Individuals who are approaching parole eligibility already have a statutorily-mandated pathway for release, including access to counsel, CRAs, and a full hearing. The Board reasonably determined that duplicating those efforts for individuals who will shortly receive a parole hearing would not be an effective or appropriate use of the Board's resources.

The purpose of the C&R recommendation assessment is to identify incarcerated persons who otherwise would not have an opportunity for release consideration for a significant period of time, if ever. Directing resources toward individuals who already have a scheduled or imminent parole hearing would diminish the Board's ability to review cases involving people serving sentences that provide no near-term opportunity for parole-release consideration. Prioritizing those cases ensures that the C&R recommendation assessment process advances its core objective: incentivizing rehabilitation and providing access to potential relief for persons who have served or are serving long sentences and who lack any other meaningful Board review or anticipated release under another legal process in the near term.

Additionally, exclusion from this process does not prevent any incarcerated person from seeking clemency or resentencing. Individuals who are in or nearing the parole hearing cycle may still submit a commutation application directly to the Governor, consistent with longstanding executive procedures. The Board's exclusion ensures that the specialized C&R recommendation assessment process remains focused on those for whom this review is most necessary and potentially most beneficial.

For these reasons, and as set forth in the ISOR, the Board concludes that retaining this exclusion is reasonable, necessary, and within the scope of the Board's discretion. The Board therefore declines to amend the regulation.

**ISSUE 28: Exclusionary criteria should be removed and all persons should be eligible for the C&R recommendation assessment process.**

Comment ID Numbers: 181-03; 220-03; 221-02; 222-02; 308-01; 315-02; 324-02

COMMENT: Commenters argue that because all incarcerated persons are eligible to apply for executive clemency, they should likewise be eligible for consideration under this process. Some commenters state that anyone serving an extreme sentence who has completed 25 years of continuous incarceration should be included. Others assert that the exclusions are inconsistent with Penal Code sections 4801 and 1172.1 and contend that the ISOR does not adequately justify why these exclusions are necessary or how they relate to the stated public safety focus. Another

commenter expresses concern about broad categorical exclusions and believes the Board should instead conduct individualized assessments.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the exclusionary criteria in the regulations. As explained in the ISOR, the exclusionary criteria are necessary to ensure that the C&R recommendation assessment process remains focused, efficient, and aligned with the purpose of this regulatory framework. While it is correct that all incarcerated persons may apply directly to the Governor for executive clemency, that process is distinct from, and considerably broader than, the focused, resource-dependent assessment process the Board is establishing through these regulations.

The C&R recommendation assessment process requires significant staff time, analytical review, and coordination with the courts and the Governor's Office. The Board does not possess the resources to conduct individualized assessments for every incarcerated person eligible to seek clemency or serving a lengthy sentence. Accordingly, the Board adopted categorical criteria to prioritize individuals who are more likely to meet the stringent standards for a C&R recommendation, who are more likely to receive a commutation of sentence from the Governor or be resentenced by the sentencing court, or who otherwise would not have any opportunity for parole consideration by the Board or release from prison for a substantial period of time.

These exclusions are fully consistent with Penal Code sections 4801 and 1172.1. Neither statute requires the Board to evaluate every person eligible for clemency or resentencing, nor do they restrict the Board from establishing reasonable, objective eligibility criteria for its own internal assessment process.

Conducting individualized reviews for all persons serving sentences of 25 years or more would vastly exceed the Board's current workload capacity and would divert resources away from those for whom this process is intended—incarcerated persons who are unlikely to receive any other Board review or release from incarceration in the near term after serving 25 years of incarceration and who are likely to meet the legal standard to receive a C&R recommendation. The exclusionary criteria ensure consistency, predictability, and administrative feasibility for the proposed regulations, enabling the Board to carry out its statutory and regulatory responsibilities effectively.

For these reasons, and as supported by the rationale in the ISOR, the Board declines to amend the regulation.

**ISSUE 29: All people sentenced to LWOP or sentenced to a determinate term that is longer than their life expectancy should be included in this process.**

Comment ID Number: 271-02

**COMMENT:** A commenter requests that all individuals serving LWOP sentences, as well as those serving determinate sentences that exceed their life expectancy, be eligible for consideration under this process. The commenter believes that every incarcerated person should have their case reviewed to assess rehabilitation and be afforded a second chance.

RESPONSE: DECLINED TO AMEND

As explained in the ISOR, the C&R recommendation assessment process is designed to identify and review a limited subset of cases—specifically, incarcerated persons who are more likely to meet the standard for receiving a C&R recommendation, who are more likely to receive a commutation of sentence from the Governor or be resentenced by the sentencing court, or who otherwise would not have any opportunity for parole consideration by the Board or release from prison for a substantial period of time. The population identified by this commenter will largely be included once they serve 25 years of continuous incarceration. While the Board is not able to determine each person’s life expectancy and conduct an individualized assessment of their sentence, many people with long determinate sentences will be included in the process.

While the commenter expresses the view that every incarcerated person should receive an individualized review, the C&R recommendation assessment process is not intended to serve as a universal reevaluation mechanism for all extremely long sentences. Instead, it provides a focused and administratively workable pathway for identifying individuals whose circumstances, rehabilitation, and statutory posture make them the most appropriate candidates for potential commutation or resentencing because they are more likely to meet the standard for a C&R recommendation and have their sentence commuted by the Governor or recalled and be resentenced by the sentencing court. Establishing eligibility criteria is therefore necessary to ensure that the process remains effective, consistent, and aligned with the resources available.

Importantly, this exclusion does not prevent any incarcerated person — whether serving LWOP or a lengthy determinate sentence — from pursuing relief. All individuals retain the ability to apply directly to the Governor for a commutation and may also seek resentencing under other statutory mechanisms where available. The regulatory exclusions simply define the population that the Board can feasibly evaluate within this specific process.

For these reasons, and as detailed in the ISOR, the Board concludes that maintaining the proposed exclusionary criteria is reasonable, necessary, and within the scope of its authority. The Board therefore declines to amend the regulation.

**ISSUE 30: Youth Offenders - All persons convicted for crimes committed under 26 should be eligible for the C&R recommendation assessment process.**

Comment ID Number: 207-03; 268-04

COMMENT: This comment requests the Board include all persons who were under 26 at the time of their commitment offense in this process and explicitly align eligibility with the youth offender factors outlined in Penal Code section 4801, subdivision (c).

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulations as requested. The commenters’ proposal would require the Board to include all individuals who were under 26 years old at the time of their commitment offense and align eligibility with youth offender factors, regardless of whether they fall within the proposed exclusionary criteria. The Board adopted exclusionary criteria to focus its

limited resources on individuals who are more likely to receive a C&R recommendation under this process and, ultimately, a commutation of sentence from the Governor or be resentenced by a court. While age at the time of the commitment offense may be considered when relevant in determining whether a person should receive a C&R recommendation, it does not negate the Board's need to retain the exclusionary criteria in the proposed regulations to ensure limited resources are directed at those more likely to receive a C&R recommendation and more likely to have their sentence commuted or resentenced.

The Board's proposed regulatory approach is consistent with its responsibility to manage workload effectively and to direct resources toward cases for which a C&R review is most appropriate and beneficial. Expanding eligibility to all individuals under age 26 at the time of the offense — regardless of additional disqualifying factors — would conflict with that goal and significantly dilute the efficiency and purpose of the process.

Moreover, individuals who are excluded from the C&R recommendation assessment process may still seek relief by applying directly to the Governor for a commutation or by petitioning the court for resentencing, both of which remain fully available avenues outside this regulatory framework.

**ISSUE 31: Elderly Consideration – The Board should give special consideration to elderly incarcerated persons with a diminished physical or cognitive condition.**

Comment ID Number: 210-02

COMMENT: This comment requests the Board give special consideration to individuals who are older with a diminished physical or cognitive condition when issuing decisions. Commenter cites to the lower recidivism rates of elderly offenders to support their request this population be given special consideration. Additionally, commenter explains that this population is significantly more expensive to incarcerate and house in prison.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulations as requested. Under section 2850, subsection (a), the hearing panel is required to consider all relevant and reliable information when determining whether an individual poses a current, unreasonable risk to public safety. This includes, when relevant, the incarcerated person's current age and any diminished physical or cognitive condition. Information regarding cognitive limitations or age-related decline is fully within the scope of what the panel may evaluate under the proposed regulations and will be considered to the extent the panel determines it is relevant and reliable. Under the proposed regulations, C&R hearing panels retain discretion in determining how much weight should be given to relevant factors when making a C&R hearing determination, meaning they may give more weight to a person's advanced age or diminished physical or cognitive condition, when they deem appropriate. The Board declines to mandate that more weight be given to these factors in all cases, instead leaving it to the discretion of its hearing panels to determine the appropriate weight to be given to relevant factors present in each case.

The regulatory framework already ensures that age related factors and physical or cognitive impairments are taken into account in the Board's exercise of discretion when relevant. The Board

declines to amend the regulations to require special consideration be given, in all cases, to an incarcerated person's age or physical or cognitive condition.

**ISSUE 32: Legal Standard – Clearly define a current and unreasonable risk to society.**

Comment ID Number: 312-02

COMMENT: Commenter requests the Board provide a clear definition of a current unreasonable risk to society.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulations. The legal standard for determining whether a person currently poses an unreasonable risk to public safety is already clearly defined in proposed section 2856, subsection (b). That provision specifies that the determination “includes consideration of whether the person, if released on parole, is likely to commit antisocial acts, including, but not limited to, crimes of violence and financial harm or noncompliance with the reasonable restrictions imposed by a parole agent.” This language reflects the well-established standard applied by the Board in parole suitability proceedings and is directly derived from case law precedent, including *In re Lawrence* (2008) 44 Cal.4th 1181 and *In re Rosenkrantz* (2002) 29 Cal.4th 616, 655. Case law articulates the governing framework for assessing current dangerousness in parole suitability proceedings and provides clear, judicially interpreted guidance for applying the standard. It is the intent of the Board to make C&R recommendations for persons who would meet the legal standard applied by the Board at parole suitability proceedings; defining the legal standard to be applied at a C&R hearing differently than currently worded in the proposed regulations risks inadvertently creating a wholly different and unique standard to be applied at C&R hearings.

Because the proposed regulation already clearly defines a legal standard that applies to other Board proceedings and is derived from case law interpreting that legal standard, no further clarification is necessary.

**ISSUE 33: Legal Standard - Remove “financial harm or noncompliance with reasonable restrictions imposed by a parole agent” from section 2856.**

Comment ID Numbers: 238-03; 255-03; 259-03

COMMENT: These comments request the Board amend the legal standard used at a C&R hearing to remove “financial harm or noncompliance with reasonable restrictions imposed by a parole agent” from the standard outlined in section 2856. Commenters opine that a person's risk for committing financial harm or noncompliance with reasonable restrictions imposed by a parole agent could be outside the nexus of the individual's original conviction.

RESPONSE: DECLINED TO AMEND

As explained in the ISOR, the legal standard in section 2856 is directly derived from longstanding case law precedent governing determinations of current dangerousness in parole suitability hearings, including *In re Lawrence* (2008) 44 Cal.4th 1181 and *In re Rosenkrantz* (2002) 29 Cal.4th 616, 655. Removing potential financial harm or noncompliance with reasonable parole conditions

would alter the standard in a way that is inconsistent with governing law and would limit the panel's ability to fully evaluate whether an individual poses an unreasonable risk if released. Because it is the Board's intent to enact regulations to apply the same legal standard to C&R hearing determinations as applies to Board parole-suitability determinations, the Board declines to amend the regulations.

**ISSUE 34: Legal Standard - Amend the definition of “unreasonable risk of danger to the public” to match the standard used by the Board at parole suitability hearings.**

Comment ID Numbers: 208-05; 209-02; 211-02; 219-03; 230-05; 236-08; 251-02; 253-03; 254-04; 257-05; 258-08; 263-02; 350-02

COMMENT: Commenters request the Board remove the definition of an “unreasonable risk of danger to the public” and instead cross reference to the standard described in title 15, sections 2281, subsection (a), and 2402, subsection (a). Commenters opine the legal standard outlined in section 2856 is different from the established standard used at parole suitability hearings, and the Board should use the same standard that is used at parole hearings. Commenters claim there are no published California cases describing the parole standard as written in section 2856. Commenters request the removal of the sentence “likely to commit antisocial acts, including but not limited to, crimes of violence and financial harm or noncompliance with the reasonable restrictions imposed by a parole agent.” Commenters argue this sentence introduces a different, ambiguous articulation of the standard.

RESPONSE: DECLINED TO AMEND

The standard set forth in section 2856 is not new or distinct from the standard applied in parole suitability hearings. As explained in the ISOR, the language in section 2856 is drawn directly from established case law precedent governing the determination of whether an individual poses a current, unreasonable risk to public safety. This includes *In re Lawrence* (2008) 44 Cal.4th 1181, 1205 – 1206, quoting *In re Rosenkrantz* (2002) 29 Cal.4th 616, 655, which articulate the same principles underlying the regulatory definitions in title 15, sections 2281, subsection (a) and 2402, subsection (a).

The sentence identifying antisocial acts — “including, but not limited to, crimes of violence, financial harm, or noncompliance with reasonable restrictions imposed by a parole agent” — does not introduce a different or ambiguous standard. Instead, it reflects the types of conduct courts have recognized as relevant in assessing current dangerousness and is consistent with the Board's longstanding interpretation of the parole standard. The commenters' assertion that no published cases support this articulation is incorrect; the language mirrors the judicial descriptions of current dangerousness in the cited court decisions, as well as other published cases, such as *In re Reed* (2009) 171 Cal.App.4th 1071, 1081.

Because it is the Board's intent to enact regulations to apply the same legal standard to C&R hearing determinations that applies to Board parole-suitability determinations, and because the proposed regulation already codifies that established legal standard, cross referencing other sections of the regulations is unnecessary. Further, removing the illustrative examples in the

proposed regulations would make the standard less clear, not more. For these reasons, the Board declines to amend the regulations.

**ISSUE 35: Legal Standard - Amend the definition of “unreasonable risk of danger to the public” to match the definition outlined in Penal Code section 1170.18, subdivision (c).**

Comment ID Numbers: 47-02; 269-02

**COMMENT:** These comments opine the legal standard requiring the Board to determine whether a person poses an unreasonable risk of danger to the public is inconsistent with Penal Code section 1170.18, subdivision (c). Commenters request the Board adopt the penal code definition and amend the standard to: “This determination includes consideration of whether the incarcerated person will commit any of the eight violent felonies listed in Penal Code section 667(e)(2)(C)(iv)(I-VIII), commonly known as ‘super strikes.’”

**RESPONSE: DECLINED TO AMEND**

As explained in the ISOR, the standard in the proposed regulation is derived from longstanding and well-established case law governing the Board’s determination of whether a person poses an unreasonable risk of danger to the public in parole suitability proceedings. It is the Board’s intention to apply the same legal standard to C&R hearing determinations as applies to parole suitability hearings. The definition of “unreasonable risk of danger to public safety” found in Penal Code section 1170.18 does not apply to existing Board proceedings and processes, and it is reasonable that a more stringent standard would be used.

The commenter proposes replacing the statutory standard that applies to parole suitability hearings, including applicable judicial interpretation, with a completely different statutory definition of “unreasonable risk of danger to public safety,” found in Penal Code section 1170.18, subdivision (c), which has never applied to Board decision making. That definition — limited to whether a person is likely to commit one of eight specified violent felonies — was enacted for a distinct statutory scheme and does not govern parole suitability determinations. Penal Code section 1170.18, allows a person who was serving a sentence in 2014, when certain crimes were reclassified as misdemeanors, to request recall of their felony sentence in order to be resentenced as a misdemeanor.

Applying the requested statutory definition to this regulatory process would create inconsistency between decision making at parole suitability hearings and C&R hearings, thereby undermining the Board’s intent to retain uniformity and consistency across Board decision making processes, and introduce confusion regarding applicable legal frameworks. Because the commenter’s proposed language is inconsistent with established precedent in the parole suitability hearing process and is not applicable to the Board’s decision making processes, the Board declines to amend the regulation.

**ISSUE 36: Legal Standard - Clarify the Board’s “reasonable likelihood” standard in section 2844.**

Comment ID Number: 194-03

COMMENT: Commenter finds the “reasonable likelihood” standard to be vague and believes this section is unclear. Specifically, the commenter asks whether this means “more likely than not” and questions whether all reasonable inferences will be drawn in favor of the incarcerated person.

RESPONSE: DECLINED TO AMEND

The Board finds that the term “reasonable likelihood” is a well-established legal standard and is not vague. This term is used throughout the Penal Code, is applied routinely by courts, and has an understood and commonly accepted meaning within California law. Because it is a long-recognized standard, the Board finds it unnecessary to define or alter the term further by equating it with “more likely than not” or by adopting an evidentiary presumption in favor of any party.

Accordingly, because “reasonable likelihood” is a clear, widely used, and well understood standard that requires no additional regulatory clarification, the Board declines to amend the regulation.

**ISSUE 37: The Board is not qualified to determine rehabilitation and only validated assessment tools by a clinician can determine rehabilitation.**

Comment ID Number: 355-02

COMMENT: Commenter opines the Board is unqualified to make a determination about a person’s rehabilitation. The commenter states that only a clinician using a validated assessment tool is qualified to make a determination about whether a person is rehabilitated.

RESPONSE: DECLINED TO AMEND

The Board’s hearing officers are trained in determining a person’s risk, which includes assessing a person’s rehabilitation. Further, hearing officers have the comprehensive risk assessment, which includes analysis, recommendations, and assessment by forensic psychologists who use validated risk assessment tools to assess a person’s risk of violence. Thus, the Board does not agree that it is unqualified to make determinations about a person’s rehabilitation.

The Board routinely makes determinations about a person’s rehabilitation in parole suitability hearings, a responsibility delegated to it by the Legislature. In making determinations, Board hearing officers evaluate whether a person has been rehabilitated and no longer poses an unreasonable risk to public safety. Hearing officers are specifically trained to consider a broad range of evidence that includes behavioral, institutional, social, programmatic, and clinical information, and to apply the governing legal standards to that evidence. This holistic evaluation is fundamentally different from a clinical diagnosis or risk score and cannot be delegated to a clinician or reduced to a single validated tool.

Validated clinical assessments are an important component of the evidence the Board considers when making a parole suitability decision, and under these regulations, will be an important component of the evidence considered by C&R hearing panels when making a C&R determination. However, these assessments do not replace the discretionary expertise exercised by Board hearing officers when making risk-based decisions. Therefore, the Board declines to amend the regulation.

**ISSUE 38: Decisions should be based on empirical data.**

Comment ID Numbers: 207-10; 301-04

COMMENT: Commenters request the panel align their decisions with empirical data focused on recidivism and rehabilitation. This means the hearing panel should include the data they relied on to make a determination in the written decision.

RESPONSE: DECLINED TO AMEND

The commenter's requested amendment is unnecessary. Under the proposed regulations, C&R hearing panels already base their determinations on all relevant and reliable information available.

When issuing a decision, the hearing officer must articulate the reasons for the determination and identify the information relied upon. Each C&R review or hearing decision is individualized and reflects the specific evidence and factors relevant to assessing whether the person poses an unreasonable risk to public safety.

Because the existing regulatory framework already requires panels to identify the evidence supporting their decisions, and because the commenter's proposal would impose additional requirements that are neither necessary nor practical, the Board declines to amend the regulations.

**ISSUE 39: Decisions based on an incarcerated person's remorse.**

Comment ID Number: 207-11

COMMENT: The commenter requests that the Board refrain from basing decisions on an incarcerated person's expression of remorse. The commenter asserts that demonstrating insight, rehabilitation, and a strong reentry plan should be sufficient, and that evaluations should focus on indicators of future behavior rather than revisiting the underlying conviction.

RESPONSE: DECLINED TO AMEND

Under proposed section 2850, the regulation identifies the categories of information that a hearing panel considers when determining whether a person poses a current and unreasonable risk to public safety. Remorse is not explicitly listed in the regulation as a factor for this determination. Consistent with the Board's practice in other contexts, such as parole suitability hearings, the C&R hearing panel evaluates all relevant and reliable evidence available, including the individual's insight, rehabilitative efforts, institutional behavior, risk assessments, and reentry planning.

The commenter's suggestion that the Board exclude any consideration related to an individual's understanding of their past conduct would improperly narrow the evidence available to the panel. A holistic assessment of rehabilitation necessarily includes, where relevant, an individual's insight into the causes and circumstances of their offense. This assessment is forward looking and is used to help evaluate whether the individual currently poses a risk to public safety — not to relitigate the underlying conviction.

Because the proposed regulations already ensure that decisions are based on comprehensive, individualized, and future-oriented evidence, and because the commenter's proposal would unduly limit the panel's ability to consider relevant information, the Board declines to amend the regulation.

**ISSUE 40: Requirements for the C&R Process to ensure consistency and fairness.**

Comment ID Numbers: 207-08; 301-02

COMMENT: Commenter is concerned that the C&R process gives panels broad discretion without clear criteria for rehabilitation or public-safety risk. The commenter requests the C&R process 1) include objective criteria and scoring guidelines, (2) require written reasoning for all denials and non-referrals, and (3) guarantee re-review eligibility within three years for those denied recommendation.

RESPONSE: DECLINED TO AMEND

Proposed section 2856 sets forth the legal standard that governs C&R hearing panel determinations and section 2850 identifies the information that will be considered to make these determinations. Further, proposed section 2856 requires the issuance of a written decision explaining the reasons for each C&R determination. Therefore, the Board's proposed regulations already provide clear criteria for how it will make C&R hearing determinations and issue written decisions.

The commenter's request to impose an objective scoring system is inconsistent with the Board's intent to adopt a similar decision-making process to that applied at parole suitability hearings. At parole suitability hearings, hearing officers make parole-release decisions based on individualized assessments of each incarcerated person's risk to public safety.

Regarding the request to guarantee re-review eligibility within three years for those denied a recommendation, the proposed regulations already provide for regular C&R reviews three years after a C&R hearing or review that did not result in a recommendation or referral, unless the incarcerated person would meet one of the exclusionary criteria by the time of any subsequent C&R review. The Board believes this is a sufficient process to guarantee re-review of eligible incarcerated persons for the C&R recommendation assessment process.

Because the proposed regulations already address the commenter's concerns regarding decision transparency, and because the remaining requests would conflict with the intended discretionary, individualized nature of the review process, the Board declines to amend the regulation.

**ISSUE 41: C&R Reviews and initial assessments should be documented and reviewable.**

Comment ID Number: 300-03

COMMENT: Commenter requests the C&R review and any initial assessment be documented and reviewable.

RESPONSE: DECLINED TO AMEND

Following a C&R review or consultation, the hearing officer documents the panel's determination and recommendations on a written form. (*See* proposed sections 2844, subsection (m), and 2267, subsection (i).) This written documentation is provided to the incarcerated person and maintained in the individual's central file, ensuring it is preserved and reviewable. Because the proposed processes already require written documentation of the hearing officer's assessment at a C&R review or consultation, the commenter's requested amendment is unnecessary.

**ISSUE 42: C&R Questioning “regarding matters relevant to making a C&R review outcome” is overly broad and unclear.**

Comment ID Number: 222-10

COMMENT: Commenter opines the language permitting a hearing officer to question the incarcerated person “regarding matters relevant to making a C&R review outcome” is overly broad and unclear because it fails to include a description of what is relevant information for purposes of the C&R review. Commenter requests a provision be added that describes matters relevant to review and that such matters be limited to those articulated in Penal Code section 1172.1 and factors relevant to the Governor's commutation review process. Commenter requests the hearing officer be limited to asking an incarcerated person about postconviction factors, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the defendant's risk for future violence, the age and circumstances of the offense and the sentence imposed, the age of the person at the time of the offense, self-development and conduct since the offense, the person's need for commutation, and the person's plan upon release.

The commenter requests the regulations prohibit hearing officers from asking about sensitive matters, such as if the person has experienced trauma, and instead that those inquiries be left to a qualified mental health professional.

**RESPONSE: DECLINED TO AMEND**

Proposed section 2844 appropriately authorizes the hearing officer to ask the incarcerated person questions relevant to making a C&R review outcome. Identifying “relevant information” through an exhaustive list in regulation is neither practical nor consistent with the statutory framework governing these proceedings. Penal Code section 1172.1 and the factors relevant to the Governor's clemency process provide important guidance, but they do not limit or restrict the scope of information the Board may consider in evaluating rehabilitation and current public safety risk.

The Board's intent is for decision making in the C&R recommendation assessment process to mirror decision making in the parole suitability hearing process. In the parole suitability process, the Board's determinations must be individualized and based on the totality of reliable information, which requires panels to exercise discretion in what they ask and consider. Restricting questioning only to a fixed set of topics, such as postconviction factors, age related considerations, self-development, or reentry plans, would improperly narrow the panel's ability to gather information relevant to assessing whether a person currently poses an unreasonable risk to public safety.

The commenter also requests prohibiting hearing officers from asking about potentially sensitive subjects, such as past trauma, and suggests that such inquiry be reserved solely for mental health

professionals. Any questions asked by a hearing officer serve solely to understand the individual's rehabilitative progress and current risk as part of a discretionary assessment. Panels already receive clinical information from forensic psychologists through CRAs, and they do not replicate or replace that clinical process.

Because the proposed regulation already provides adequate guidance regarding the scope of questioning, and because further narrowing or prescribing specific topics would unduly restrict the Board's ability to make a legally sound and individualized determination, the Board declines to amend the regulation.

**ISSUE 43: Good Cause Standard – Do not limit the good cause standard to request a postponement to “an incarcerated person’s excused inability to obtain essential documents or other material evidence or information despite their diligent efforts.”**

Comment ID Number: 224-06

COMMENT: Commenter requests the Board not limit the good cause standard to request a postponement to “an incarcerated person’s excused inability to obtain essential documents or other material evidence or information despite their diligent efforts.” The commenter requests good cause be determined on an individualized basis as good cause may include serious health issues that would interfere with the incarcerated person’s ability to participate in the hearing or conflicting court proceedings that would preclude the incarcerated person from speaking on certain topics.

**RESPONSE: DECLINED TO AMEND**

Proposed section 2855 already provides sufficient flexibility for the Board to postpone a hearing. Under subsection (a), a hearing may be postponed for several reasons, including exigent circumstances, such as the incarcerated person’s illness or other conditions that reasonably prevent meaningful participation. A conflicting court appearance that renders the person unavailable for the hearing likewise constitutes an exigent circumstance warranting postponement.

The regulation provides multiple bases for postponement, and panels retain discretion to consider the individual circumstances presented in each case. Additionally, an incarcerated person is not required to speak at the hearing and may decline to address specific topics, which further mitigates the commenter’s concern regarding participation.

Because subsection (a) provides the Board with discretion to postpone a hearing under a wide range of circumstances — including those described by the commenter — expanding the definition of good cause for postponement requests initiated by the incarcerated person is unnecessary. Therefore, the Board declines to amend the regulation.

**ISSUE 44: Following a resentencing order or commutation resulting in a new hearing, do not hold a new hearing and instead complete a review and release onto parole.**

Comment ID Number: 224-07

COMMENT: Commenter requests the Board create a process, similar to a court-ordered hearing following a parole habeas remand, where the Board examines the record since the last C&R

hearing for evidence of current dangerousness. In the absence of such evidence, the Board should convert the prior C&R recommendation into a suitability finding and grant parole. Commenter requests this process be established instead of the Board conducting a full parole hearing.

**RESPONSE: DECLINED TO AMEND**

The commenter's proposal would require the Board to substitute a record review process for a full parole suitability hearing and to convert a prior C&R recommendation into a parole grant. The Board has no legal authority to adopt such a process.

If a person becomes eligible for a parole suitability hearing as a result of resentencing or a commutation, the Board is statutorily required to conduct a parole hearing in accordance with all procedures and standards established by the Legislature. These statutory requirements mandate a full hearing, the opportunity for the incarcerated person to appear and be heard, victim participation when applicable, and the issuance of a written decision based on the full record before the panel.

The Board cannot bypass or replace these statutory procedures by converting a prior C&R recommendation into a suitability finding or granting parole without holding a full hearing. Doing so would conflict with legislative mandates and exceed the Board's regulatory authority.

Accordingly, because existing law requires the Board to conduct a complete parole suitability hearing before determining whether to grant parole, the Board declines to amend the regulation.

**ISSUE 45: Public Safety – These regulations undermine public safety by allowing the consideration of people sentenced to life without the possibility of parole.**

Comment ID Numbers: 104-01; 197-03; 199-03; 201-03; 206-03; 241-03; 305-03; 320-02; 327-05; 329-03

**COMMENT:** Commenters believe these regulations undermine public safety by considering people who were never intended to be released back into society.

**RESPONSE: DECLINED TO AMEND**

Public safety remains the Board's paramount concern. Penal Code sections 1172.1 and 4801 do not exclude individuals sentenced to life without the possibility of parole from consideration by the Board for recommendation of commutation or resentencing. Rather, these statutes grant the Board discretion to evaluate these cases and determine whether referral to the sentencing court or the Governor is appropriate. Had the Legislature intended to bar this population from consideration under either statute, it would have done so.

In every C&R determination, the Board evaluates whether the incarcerated person currently poses an unreasonable risk to public safety. If the Board determines that such a risk exists, no C&R recommendation will be issued. The regulations therefore do not undermine public safety; rather, they ensure public safety is at the forefront of all decisions made under these regulations.

Because the commenter’s concern is inconsistent with the governing statutory framework and the Board’s risk-focused decision-making process, the Board declines to amend the regulations.

**ISSUE 46: Sentencing Decisions – Objection to any process that revisits the original court’s sentencing decisions.**

Comment ID Numbers: 197-04; 199-04; 201-04; 206-04; 241-04

COMMENT: Commenters object to any process that revisits or reopens the sentencing decisions originally imposed by the court. While they acknowledge the Board’s authority to consider individuals for parole, they contend that the Board should not engage in any review that could affect or reconsider a person’s sentence.

RESPONSE: DECLINED TO AMEND

Penal Code sections 1172.1 and 4801 expressly authorize the Board to review cases and make recommendations to the sentencing court regarding resentencing, as well as to the Governor regarding commutation. These statutes reflect the Legislature’s deliberate decision to permit the Board to evaluate whether certain cases should be reconsidered, notwithstanding the original sentence imposed by the court.

The proposed regulations do not revisit or alter the original judicial sentencing decision. Rather, they establish procedures that govern how the Board exercises the authority granted by statute to make recommendations to the court or the Governor. Under the proposed regulations, the Board’s decision to recommend someone for commutation of sentence or recall and resentencing is based on an assessment of the person’s current risk, not on the validity of the person’s sentence as originally imposed by the court. Any ultimate resentencing or commutation decision remains solely within the authority of the sentencing court or the Governor.

Because the regulations simply implement the Board’s statutory authority and do not disturb or replace the original sentence imposed by the court, nor challenge the validity of the original sentence, the Board declines to amend the regulation.

**ISSUE 47: Women’s Prisons - Ensure that people serving long sentences in women’s prisons are not left out of the process.**

Comment ID Numbers: 238-04; 255-04; 259-04

COMMENT: Commenters express concern that the process may not be applied equitably in women’s prisons. They note that individuals in women’s facilities—including women, transgender people, and gender expansive people—are fewer in number and therefore at risk of being overlooked, despite many serving LWOP or lengthy sentences and being disproportionately survivors of abuse both inside and outside of prison.

RESPONSE: DECLINED TO AMEND

Any person who meets the eligibility requirements for the C&R recommendation assessment process will be considered by the Board. The Board applies the same legal standards, procedures,

and review criteria across all institutions, including women's facilities. Accordingly, the Board declines to amend the regulations.

**ISSUE 48: Denial Lengths - Frequency of the C&R hearings and reviews should be modified.**

Comment ID Numbers: 76-03; 104-03; 191-04; 192-04; 193-04; 195-03; 196-02; 200-02; 204-04; 213-02; 214-03; 215-04; 223-02; 228-04; 231-08; 232-02; 233-02; 235-02; 237-02; 240-02; 242-04; 245-02; 265-03; 318-04; 339-04; 345-04; 370-05

**COMMENT:** Commenters express concerns regarding the proposed three-year cycle for C&R reviews and hearings. Some request that the Board extend denial lengths to mirror the parole suitability process, which allows for 3, 5, 7, 10, or 15 year denials. Others object that holding C&R hearings every three years is too frequent and risks retraumatizing victims and their families. Commenters also argue that a uniform three-year interval does not account for individuals who may be several years away from demonstrating rehabilitation.

**RESPONSE: DECLINED TO AMEND**

The Board carefully considered the suggestion to adopt the 3, 5, 7, 10, and 15 year denial lengths used in parole suitability hearings, but declined to do so. While the parole process provides incarcerated people with the right to a hearing at specified intervals, and victims and victim family members have a right to participate in the hearing, the C&R process is different. Under the C&R process a person will initially receive a review, where it will be determined whether a C&R hearing is warranted. Unlike the parole hearing process, there is not a set timeframe for a person to have a C&R hearing. Marsy's Law amended the parole suitability process in 2008 in part to reduce the frequency of full parole hearings due to the impact those hearings have on victims and their families. Parole suitability hearings involve participation by victims, prosecutors, and appointed counsel, and are governed by extensive statutory procedures and rights.

The C&R recommendation assessment process is fundamentally different. It is a review first to determine whether a person should have a hearing, and then at the hearing it is determined whether the case should be referred to the sentencing court or the Governor—it is not a decision to grant or deny parole. The process does not involve the same statutory hearing rights, participatory requirements, or procedural steps as parole suitability hearings. For these reasons, the denial length structure used in parole suitability hearings is not appropriate or applicable to C&R reviews.

The Board selected a three-year interval before subsequent C&R reviews because it provides a reasonable and consistent period for reassessing whether an individual's circumstances have changed sufficiently to warrant a C&R hearing. This interval balances the need for regular review with the streamlined, administrative nature of the process. It ensures that cases are reconsidered often enough to capture meaningful rehabilitative progress, while minimizing the procedural and emotional burdens associated with parole hearings.

In addition, the C&R framework does not include a mechanism to administratively advance a subsequent review or allow an incarcerated person to petition for an earlier review date. A uniform three-year schedule therefore serves as the most equitable and practical way to ensure periodic review.

Because the C&R recommendation assessment process serves a distinct purpose and operates differently from the parole suitability hearing process, the Board declines to amend the regulations to incorporate Marsy's Law denial lengths.

**ISSUE 49: Remove “within” from the language setting a new review in three years.**

Comment ID Numbers: 214-04; 231-07; 265-04

COMMENT: Commenters object to the language “within three years” when referring to the setting of the next C&R review. Commenters believe this language is ambiguous and could mean that a review is scheduled to occur before the three-year mark. Commenters request the language be modified and “within” be removed from this statement.

**RESPONSE: ACCEPTED AFTER SUBSTANTIVE CONSIDERATION**

After careful consideration of these comments, the Board amended the proposed regulations to replace the phrase “within three years” with “three years after” with regard to the timing of subsequent C&R reviews. Doing so eliminated ambiguity regarding the minimum amount of time that must pass before scheduling a subsequent C&R review. This revision clarified that at least three years will elapse following a C&R hearing or C&R review before any subsequent review is scheduled, consistent with the Board's intent and the structure of the C&R recommendation assessment process.

The revised language aligns the regulations with established case management practices and ensures that reviews can be scheduled in a way that supports operational efficiency and the Board's overarching public safety responsibilities.

Additionally, the amended language aligns the regulations with the wording used in Penal Code section 3041.5 pertaining to Marsy's Law denial lengths in the parole suitability hearing process, which requires the scheduling of subsequent parole hearings “after” a specified period of time. Maintaining consistency with this statutory terminology promotes clarity, uniformity, and harmonization for stakeholders and across the Board's regulatory framework.

**ISSUE 50: Static 99 - Remove the inclusion of the Static-99R from the list of structured risk assessment instruments to be used when preparing the CRA.**

Comment ID Numbers: 47-01; 269-01

COMMENT: Commenters request that the Board remove the Static-99R from the list of structured risk assessment instruments used in preparing the CRA. They argue that the Static-99R is designed specifically to assess risk in individuals convicted of sex offenses, yet registered sex offenders are excluded from eligibility for this process. Commenters contend that including the Static-99R for a population that, by definition, will not be evaluated as sex offenders is inconsistent with the stated purpose of the assessment framework.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulations in response to this comment. The Static-99R is an actuarial tool used to evaluate empirically validated risk factors associated with sexual recidivism. Although the instrument was developed using individuals with prior sexual offending behavior, its use is not limited to persons with a sex offense conviction. Additionally, not all sex offenders are required to register under Penal Code section 290. The tool evaluates ten items related to age at release, offending typology, victim characteristics, and general criminality — factors that remain relevant regardless of whether an individual is currently subject to registration requirements.

In the context of the CRA, the Static-99R provides a standardized baseline estimate of an individual's risk profile and assists in identifying those who may require a higher degree of supervision or management. Incorporating an actuarial tool that measures static risk factors supports the Board's mission to determine whether an individual poses a current unreasonable risk to public safety. For these reasons, the Board finds the continued inclusion of the Static-99R appropriate and declines to amend the regulations.

**ISSUE 51: HCR-20-v3 Tool: The HCR-20-v3 should not be used during the C&R review and hearings.**

Comment ID Number: 269-04

COMMENT: Commenter requests that references to, or reliance on, the risk management component of the HCR-20-V3 be removed or restricted to ensure that C&R evaluations focus solely on institutional behavior and rehabilitation. The commenter asserts that the risk management portion of the tool is designed to assess risk in a community release context and therefore introduces parole specific considerations into a process that is expressly non-parole in nature. They argue this creates an internal inconsistency that violates the consistency standard. The commenter also believes the use of community-based risk factors may artificially elevate risk assessments for individuals who are not being evaluated for community release, resulting in misleading or adverse outcomes.

**RESPONSE: DECLINED TO AMEND**

The purpose of a C&R review and C&R hearing is not only to evaluate an incarcerated person's institutional behavior and rehabilitation, but also to determine whether an incarcerated person would pose an unreasonable risk of danger if they were to be released from prison. If the Board finds the person does not pose an unreasonable risk to public safety, the Board will make a recommendation to the sentencing court for resentencing and the Governor for a commutation of sentence, which may result in the person being released from custody. Since the hearing panel is making a recommendation that, when relied upon by the sentencing court or Governor, may eventually result in a person being released into the community, it is not inconsistent to consider community-based risk factors in the C&R recommendation assessment process. Instead, the Board is using the same legal standard and tools that are used in the parole suitability process, which is the Board's intent with these regulations; doing so also includes the reliance on the HCR-20-V3.

**ISSUE 52: Confidential Information - The use of confidential information conflicts with state and federal constitutional due process protections.**

Comment ID Numbers: 47-03; 269-03

COMMENT: Commenters express concern that the use of confidential information in the C&R recommendation assessment process may conflict with state and federal constitutional due process protections. They request that the Board incorporate by reference the due process safeguards in section 2235 to ensure that psychologists and hearing officers do not rely on confidential information that has not been tested for reliability, and that all disclosure obligations are satisfied before any assessment or review occurs.

RESPONSE: DECLINED TO AMEND

The use of confidential information in the C&R recommendation assessment process does not conflict with state or federal due process protections. Confidential information is necessary to promote candor and ensure that all relevant and reliable information is available for the Board's assessment of public safety risk. The Board intends to consider all relevant and reliable information when making a C&R determination, which may include confidential material when appropriate.

The regulations also include procedural safeguards. Under proposed section 2847, subsection (k), an incarcerated person must receive notice of any confidential information at least 10 days before the C&R hearing in order for the hearing panel to rely on that information. This ensures that the individual is aware of the information's existence and has adequate opportunity to raise any concerns regarding its reliability.

With respect to the commenter's suggestion that section 2235 be incorporated to limit the use of confidential information by psychologists, that regulation does not apply to clinical evaluators. Section 2235 governs the hearing panel's reliance on confidential information and requires the panel to make a reliability determination when basing its decision on such information. A similar requirement is reiterated in proposed section 2856, subsection (h), as it relates to the use of confidential information at C&R hearings. Psychologists do not issue legal decisions and therefore are not subject to section 2235; however, they remain bound by professional standards governing the appropriate use of information in clinical assessments.

Because the proposed regulations already include due process safeguards, the Board declines to amend the regulation.

**ISSUE 53: Confidential Information – Add a definition and explain the process for designation of confidential documents.**

Comment ID Number: 222-06

COMMENT: Commenter requests the Board add a definition to section 2840 defining "confidential documents" and explain the process for designated documents as confidential.

RESPONSE: DECLINED TO AMEND

The California Department of Corrections and Rehabilitation (CDCR) is responsible for determining what documents are maintained in an incarcerated person's central file and whether any such documents are designated as confidential. Title 15, section 3321 governs the classification of confidential information, sets forth the criteria for determining reliability, and outlines the process for placing documents in the confidential section of the central file.

Because CDCR — not the Board — makes confidentiality determinations and controls the process for designating documents as confidential, it would be inappropriate and unnecessary for the Board to define “confidential documents” or to regulate CDCR's procedures in this area. The proposed regulations do not alter CDCR's confidentiality framework, nor do they affect how CDCR identifies, evaluates, or maintains confidential information.

Accordingly, the commenter's request to define “confidential documents” or modify the confidentiality designation process is outside the scope of these regulations, and the Board declines to amend the regulation.

**ISSUE 54: Confidential Information – The notice requirements regarding confidential information is vague and requires clarification.**

Comment ID Number: 222-12

COMMENT: Commenter requests clarification of the confidential information notice requirements. Specifically, the commenter asks the Board to state that the incarcerated person and their counsel, if any, must receive notice identifying each confidential document by title, the number of pages in each document, and a summary or description of the type of information contained in each confidential document that may be used at the C&R hearing.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulations as requested. Proposed section 2847, subsection (k), already requires that an incarcerated person receive advance notice of any confidential documents in their central file at least 10 days prior to the C&R hearing. In addition, section 2856, subsection (h), requires the hearing panel to notify the incarcerated person of any confidential reports the panel relies upon in reaching its decision. These provisions provide sufficient procedural notice.

The level of detail the commenter seeks, such as specifying the title, page count, and a substantive description of each confidential document, is governed by CDCR's existing regulations regarding the handling and disclosure of confidential information. (See Cal. Code Regs., tit. 15, § 3321.) The Board follows CDCR's notice procedures and has no authority to impose additional requirements that conflict with or duplicate CDCR's regulatory framework. Accordingly, further specifying the contents or format of the notice in these regulations is unnecessary and outside the scope of this rulemaking action.

**ISSUE 55: Confidential Information – The Board should not be permitted to deny a C&R recommendation based solely on confidential information.**

Comment ID Numbers: 222-16; 311-03

COMMENT: One commenter requests that section 2856 be amended to expressly prohibit the Board from declining to make a C&R recommendation based solely on confidential information that the incarcerated person or their attorney could not review. The commenter asserts that fundamental fairness requires access to, or at least the ability to challenge, any information that may be relied upon at the hearing. A second commenter raises broader concerns about the use of confidential information in the C&R process, emphasizing that incarcerated persons are not provided an opportunity to examine or challenge the confidential material.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulations as requested. Confidential information plays an important role in ensuring candor and encouraging complete disclosure from individuals who may otherwise be unwilling to provide information relevant to assessing public safety risk. The Board is required to consider all relevant and reliable information when making a decision, which may include confidential material.

The use of confidential information in the C&R recommendation assessment process is consistent with due process requirements. Proposed section 2847, subsection (k), requires that an incarcerated person receive notice of any confidential information in their central file at least 10 days before the C&R hearing. This safeguard ensures that the incarcerated person is made aware of the existence of confidential material that may be considered at the hearing.

Further, section 2856, subsection (h), requires the hearing panel to identify for the incarcerated person the confidential information the panel relied upon and to make a documented finding that the confidential information was reliable. These procedural protections ensure that confidential information is not used arbitrarily or unfairly.

A panel may decline to make a C&R recommendation only if it finds that the incarcerated person poses an unreasonable risk to public safety. The regulations already provide adequate safeguards to ensure fairness in the use of confidential information, and therefore the requested amendments are unnecessary.

**ISSUE 56: Legislative Intent - This process conflicts with the legislature's intent to exclude those sentenced to life without the possibility of parole from parole consideration.**

Comment ID Numbers: 48-02; 104-05; 231-03; 305-02; 330-02; 331-02; 335-03; 354-02

COMMENT: Commenters assert that the proposed regulations exceed the Board's authority and conflict with legislative intent. They note that the Legislature declined to enact Senate Bill 672, which would have extended parole consideration to individuals under age 26 sentenced to LWOP, and contend that this legislative action reflects a deliberate choice to exclude this population from parole related opportunities. Commenters also reference the California Supreme Court's conclusion that excluding individuals sentenced to LWOP for offenses committed under age 26

from the parole process does not violate the equal protection clause, arguing that the proposed regulations improperly create a release pathway that the courts and Legislature have expressly declined to provide.

Commenters further maintain that individuals sentenced to LWOP were never intended to be considered for release and assert that including this population in the C&R recommendation assessment process circumvents established legislative, judicial, and prosecutorial decisions. They also argue there is no statutory authority permitting resentencing recommendations for persons serving LWOP sentences, and therefore any regulation authorizing such recommendations is unlawful.

In addition, several commenters state that broad changes to sentencing, parole eligibility, and clemency authority must occur through legislation, not through administrative regulations. One commenter contends that the proposed regulations improperly create new rights rather than implementing existing law, and another asserts that the regulations constitute an abuse of the Board's authority.

#### RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulations because the authority to establish these processes is expressly provided by statute. The Legislature enacted Penal Code section 1172.1, which authorizes the Board to make recommendations to the sentencing court, and Penal Code section 4801, which authorizes the Board to make recommendations to the Governor regarding possible commutations. Neither statute excludes individuals serving LWOP sentences from the Board's consideration. Had the Legislature intended to restrict the Board's authority in this manner, it would have expressly done so.

The commenters' reliance on the Legislature's decision not to enact Senate Bill 672 is misplaced. A decision not to pass a particular bill does not establish affirmative legislative intent to prohibit the Board from exercising authority granted under existing statutes. Similarly, the California Supreme Court's recognition that the exclusion of LWOP sentenced individuals from the parole process does not violate equal protection does not limit the Legislature's separate authority to provide other mechanisms — including resentencing recommendations and commutation-related processes — through which those individuals may be considered.

The proposed regulations do not create new sentencing or parole rights. Instead, they provide procedures for the Board to exercise the discretionary authority that the Legislature has already granted. The regulations neither alter judicial sentences nor mandate release; rather, they establish a process through which the Board may evaluate cases and make recommendations consistent with Penal Code sections 1172.1 and 4801. These functions fall squarely within the Board's statutory authority and do not circumvent legislative, judicial, or prosecutorial authority.

Because the regulations implement, rather than expand, the Board's existing statutory authority, and because no statutory provision prohibits the consideration of individuals sentenced to LWOP, amendments in response to these comments are unnecessary.

**ISSUE 57: Regulatory Process – Victim’s and stakeholders were not included in the discussion of these regulations prior to the regulations being filed, therefore, these regulations should be withdrawn or public comment extended.**

Comment ID Numbers: 215-02; 231-02; 293-01; 348-02; 356-02; 371-03

COMMENT: Commenters argue the Board did not meet and confer with victims groups or other stakeholders when drafting these regulations. Commenters request the public comment period be extended to allow additional time to provide input on these regulations.

RESPONSE: DECLINED TO AMEND

This comment is not seeking an amendment to the regulation, but instead provides comment on the process of drafting the regulations. The Board complied with all statutory and regulatory notice obligations under the Administrative Procedures Act, including by filing the regulations with Office of Administrative Law (OAL) so they could be published in OAL’s notice registry, publishing the proposed regulatory package on the Board’s public website, and providing notice to all individuals and organizations on the Board’s regulatory mailing list.

The public was provided the full 45-day comment period to submit written comments. No showing has been made that stakeholders lacked a meaningful opportunity to participate in the regulatory process. In addition to the written comment period, the Board conducted a public hearing on October 30, 2025, nine days after the close of the initial comment period, providing an additional opportunity for stakeholders to offer verbal and written input.

Because the Board fully complied with all procedural requirements, and because ample opportunities for public participation were provided, an extension of the public comment period is not warranted.

**ISSUE 58: Do not expand early release of violent offenders.**

Comment ID Number: 202-01

COMMENT: Commenter states, “BPH must guard against taking any action that constitutes an expansion of early release, especially of violent offenders. Existing statute has gotten progressively lenient over the last several years as it relates to custodial accountability. The regulatory process must not be used to alter policy beyond the scope of what statute provides, especially if it is in a way that weakens existing law when it comes to terms of confinement appropriately imposed by a court of law.”

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulations in response to this comment. These regulations establish procedures for the Board to make recommendations to the sentencing court under Penal Code section 1172.1 and to the Governor under Penal Code section 4801. These are recommendations only; the authority to recall and resentence or commute a sentence rests exclusively with the court or the Governor, respectively.

The regulations do not alter existing sentencing laws, expand eligibility for release, or reduce the terms imposed by a court of law. Rather, they provide a framework for the Board to exercise the limited, discretionary duties the Legislature has already assigned to it. The ultimate decision whether to resentence or commute a sentence remains solely within the jurisdiction of the court and the Governor. As such, the regulations do not weaken existing law or expand early release authority.

**ISSUE 59: Fiscal Cost - The fiscal cost of implementing these regulations are significant but will have little or no effect on sentences being served.**

Comment ID Numbers: 48-03; 104-06; 231-04; 246-01; 293-02; 320-05; 329-02; 331-04; 335-04; 371-02

COMMENT: Commenters assert that implementing these regulations will be costly, noting that the state will have already expended significant resources on consultations, assessments, and victim notifications with little or no effect if the Governor chooses not to grant commutations broadly. They also argue that the regulations overlook the fiscal impact on other state and local agencies, emphasizing that resentencing is expensive and that the costs to courts and local agencies are not acknowledged. One commenter opines the Board's stated fiscal impact does not account for the additional psychologist position, the additional hearing officers required, or the cost for interpreters when needed. Another commenter believes the cost of this proposed process negates any arguments of saving money. One commenter additionally states that the regulations lack proper scrutiny from the appropriations committee.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulations in response to this comment. The Legislature expressly authorized the Board to implement these regulations knowing that their operation may result in referrals to the courts. In granting this authority, the Legislature necessarily considered that the statutory scheme could carry associated fiscal impacts, including those related to court involvement.

Further, the Board's recommendation process does not require participation by district attorney offices or other agencies. These entities are invited to participate in the C&R hearing but retain full discretion regarding whether and to what extent they engage in the process. Any fiscal effects associated with voluntary participation fall outside the scope of the Board's regulatory authority.

Concerns regarding appropriations review or broader state and local fiscal effects pertain to legislative action, not to the Board's implementation of existing law. The Board's responsibility is to carry out statutory directives and ensure that the regulatory framework is consistent with the Legislature's intent.

Furthermore, in preparing the fiscal estimate for costs associated with these regulations, the Board considered all costs to local agencies required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, but none were identified. Any costs to local prosecutors, public defenders, and courts associated with resentencing proceedings under Penal Code section 1172.1 are not subject to reimbursement as a state-mandated cost because

they fall within the meaning of Government Code section 17556, subdivision (g). This provision states the Commission on State Mandates shall not find costs mandated by the state in any claim concerning a law that creates “a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction. (*See* decision of Commission on State Mandates, case number 22-TC-03, adopted January 26, 2024, name of program “Criminal Procedure: Resentencing.”)

Finally, one commenter raised concern that the Board’s fiscal impact statement in the Notice of Proposed Rulemaking Action (NOPA) for these regulations did not account for the Board’s stated need of an additional 1.05 psychologist positions. However, the Board accounted for those costs within the first bullet of the “Fiscal Impact Statement” in the NOPA by noting approximately \$175,605.32 of additional funding will be needed starting in fiscal year 2027-2028. When preparing the Board’s fiscal impact statement, the Board factored in the anticipated workload increase associated with implementing the C&R recommendation assessment process.

**ISSUE 60: Prosecutor Access - Regulations do not provide pathway for the prosecutor to access and review an incarcerated person’s central file.**

Comment ID Numbers: 104-07; 214-02; 228-05; 231-06; 265-02; 318-02; 322-06; 339-03; 345-03; 370-02

COMMENT: The regulations do not authorize the prosecutor to view the incarcerated person’s central file. Commenters request the prosecutor be given access like they are in the parole suitability process.

RESPONSE: ACCEPTED AFTER SUBSTANTIVE CONSIDERATION

The Board elected to amend the regulations in response to this comment. The Board added section 2847, subsection (l), which expressly permits the prosecuting agency to review non-confidential documents in the incarcerated person’s central file prior to the hearing date. This amendment aligns the C&R hearing process with the access permitted in parole suitability proceedings and ensures that prosecutors have access to the same categories of information appropriate for their participation.

**ISSUE 61: Start Time Exclusions - Exclusion of prosecutors from attending hearing when they are unavailable at the “scheduled start time” of the hearing.**

Comment ID Numbers: 214-05; 231-09; 265-05; 322-05; 327-04; 339-06; 345-06; 370-03

COMMENT: Commenters oppose the provision allowing the hearing panel to exclude a prosecutor who is not present at the scheduled start time of the hearing. They assert that the exception language grants commissioners too much discretion to decide whether admitting the prosecutor late would disrupt the hearing and may lead to inconsistent application. Commenters also note that hearings often do not begin at the scheduled time due to earlier hearings running long, and they request that the Board either remove this provision or revise it to state that the panel *may* exclude the prosecutor. They further argue that prosecutors routinely wait for hearings to begin.

RESPONSE: ACCEPTED AFTER SUBSTANTIVE CONSIDERATION

The Board elected to amend this subsection in response to the concerns raised by commenters. Section 2851, subsection (j), was revised to cross reference the standard used at parole suitability hearings for admitting a prosecutor who is unavailable at the scheduled start time of a hearing. This amendment ensures consistency across processes, provides clearer guidance to hearing panels, and addresses concerns regarding discretion and uniform application while maintaining the orderly conduct of hearings.

**ISSUE 62: Start Time Exclusions - Exclusion of victims and their family from attending hearing when they are unavailable at the “scheduled start time” of the hearing.**

Comment ID Numbers: 104-04; 214-06; 215-05; 228-03; 231-10; 265-06; 318-03; 320-04; 322-04; 327-03; 339-05; 345-05; 370-04

COMMENT: Commenters oppose the provision allowing a hearing panel to exclude victims or their family members who are not present at the hearing at the scheduled start time. They contend that the exception grants commissioners overly broad discretion to determine whether admitting a late arriving victim would be disruptive, which could result in inconsistent application across panels. Commenters also note that the regulation does not account for hearings that begin late. They request that the section be removed or revised to use less restrictive language. Additionally, commenters argue that excluding victims when the Board itself may delay the start of a hearing violates Marsy’s Law.

RESPONSE: ACCEPTED AFTER SUBSTANTIVE CONSIDERATION

The Board elected to amend this subsection in response to the concerns raised by commenters. Section 2852, subsection (g), has been revised to cross reference the standard used at parole suitability hearings for admitting a victim, their family, or representative who are unavailable at the scheduled start time of a hearing. This amendment ensures consistency across processes, provides clearer guidance to hearing panels, and addresses concerns regarding discretion and uniform application while maintaining the orderly conduct of hearings.

**ISSUE 63: 10 Day Rule – Victim’s and their families’ impact statements should not be bound by the 10-day rule.**

Comment ID Numbers: 214-07; 215-07; 228-02; 231-12; 265-07; 322-02; 339-07; 345-07

COMMENT: Commenters oppose the requirement that victim impact statements submitted by victims or their family members must be received by the Board at least 10 days before the hearing in order to be considered by the panel. They note that this requirement differs from the parole suitability process, where victim impact statements are not subject to a 10-day submission rule. Commenters argue that there is no rational basis for imposing this deadline, particularly because victims may submit confidential letters that are not disclosed to the incarcerated person before the hearing. They further contend that the requirement violates Marsy’s Law. Commenters request that victim impact statements be exempt from the 10-day document submission rule and that victims be permitted to submit such statements up until the hearing panel issues its C&R decision.

RESPONSE: ACCEPTED AFTER SUBSTANTIVE CONSIDERATION

The Board has amended section 2850, subsection (b), to allow the hearing panel to consider any written statement submitted by a victim, the victim's next of kin, a member of the victim's family, or a victim representative at any time prior to the panel issuing its decision. This revision removes the 10-day submission requirement for victim impact statements and ensures that victims, their families, and representatives may provide written input up to the point where the panel issues their decision. The amendment responds to commenters' concerns by aligning the regulation more closely with existing parole suitability practices, ensuring that victims are not disadvantaged by a deadline that could limit their ability to participate, and promoting consistency with established victims' rights in other contexts.

**ISSUE 64: Victim Representatives - Victims or their next of kin should be permitted to appoint two victim representatives that may participate in the C&R hearing.**

Comment ID Numbers: 196-04; 200-04; 213-04; 214-08; 215-06; 223-04; 231-11; 232-04; 233-04; 235-04; 237-04; 240-04; 245-04; 265-08; 305-04; 322-03; 339-08

COMMENT: Commenters assert that, under Marsy's Law, victims or their next of kin have the right to have two representatives attend and speak at parole hearings. They request that victims or their next of kin similarly be permitted to have two representatives participate in the C&R hearing process. Commenters emphasize that hearings can be traumatizing for victims, and that representatives play an important supportive role. They also express the view that excluding representatives appears to be motivated by efficiency concerns and argue that any additional time required for their participation is outweighed by the benefit to victims.

Another commenter notes that some victims may not wish to speak or may not speak English and therefore may rely on a representative to speak on their behalf.

RESPONSE: ACCEPTED AFTER SUBSTANTIVE CONSIDERATION

The Board amended section 2852, subsection (c), to allow a victim or the victim's next of kin to designate up to two representatives to participate in the C&R hearing. This revision aligns the C&R hearing process with the parole suitability process and responds directly to commenters' concerns. Victims, their next of kin, and their family members may also submit written statements for the hearing panel to consider.

**ISSUE 65: Victim's Rights - Violation of victim's right to finality in sentencing.**

Comment ID Numbers: 104-02; 191-02; 192-02; 193-02; 195-02; 204-02; 242-02; 319-03; 320-03; 333-02; 345-02

COMMENT: Commenters object to the regulations on the grounds that they violate victims' rights. Specifically, commenters assert that victims have a constitutional right to finality in sentencing and argue that individuals sentenced to LWOP should not be eligible for resentencing or review. Commenters maintain that allowing an incarcerated person serving an LWOP sentence to be considered for resentencing undermines the finality of the original sentence.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulations in response to this comment. Penal Code sections 4801 and 1172.1 expressly authorize the Board to make referrals to the sentencing court and the Governor for potential resentencing or commutation consideration. The Legislature did not exclude individuals serving LWOP sentences from eligibility for such referrals.

Additionally, a referral by the Board does not alter a sentence. The sentencing court retains exclusive authority to determine whether resentencing is appropriate in any individual case, as does the Governor with regard to commutations of sentence. As such, the Board's referral process does not undermine the finality of a sentence; it merely initiates judicial or gubernatorial review, as provided by statute.

**ISSUE 66: Notice to Victims. Victims should be provided 90 days notice of the C&R hearing.**

Comment ID Number: 231-14

COMMENT: Commenters claim there is no provision in the regulations to provide notice to the victims. Commenter requests victims and their families be provided with a minimum of 90 days notices of C&R hearings.

RESPONSE: DECLINED TO AMEND

Section 2847, subsection (b), already requires the Board provide 90 days' notice to all registered victims and qualifying family members. Because this notice requirement is expressly included in the proposed regulations, the commenters' requested amendment is unnecessary.

**ISSUE 67: Keep victims updated – Victims should be kept updated on the C&R process.**

Comment ID Numbers: 214-09; 339-09

COMMENT: Commenters request victims be kept updated on the C&R process as they are with the parole suitability process. Specifically, commenter expects the Board to have details about upcoming hearings on the CDCR California Incarcerated Records and Information Search ("CIRIS") and that the Board or the Office of Victim Survivor Rights and Services (OVSRS) will reach out to victims and their families with updates on how the C&R process is proceeding.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulations in response to this comment. The regulations already require victim notification under section 2847, subsection (b), which mandates that all registered victims and qualifying family members receive 90 days' notice of a scheduled C&R hearing. This notice requirement ensures that victims are informed of upcoming C&R hearings and have the opportunity to participate if they choose.

Outside of the C&R hearing, there is no requirement for the Board to provide ongoing updates regarding the status of an incarcerated person in the C&R recommendation assessment process or to post C&R recommendation assessment information on CIRIS. The C&R recommendation

assessment process is distinct from the parole suitability process, and the statutory notice provisions governing parole hearings do not apply to this proposed process. In the future, the Board may elect to include updates on the C&R recommendation assessment process on CIRIS; however, it is unnecessary to regulate this process.

OVSRS continues to maintain responsibility for victim registration and notification, and under these proposed regulations, OVSRS will be expected to assist with making reasonable efforts to notify victims, victims' next of kin, or members of a victim's family who are not yet registered OVSRS of the C&R hearing process after a case is referred for a C&R hearing. The Board will comply with all applicable notice obligations, but additional, ongoing communications or public facing updates are not required. Accordingly, amendments in response to this comment are not necessary.

**ISSUE 68: Victims should be notified of the C&R review and allowed to provide input on the case.**

Comment ID Numbers: 215-08; 330-03

COMMENT: Commenters request that victims receive notice of a C&R review and be permitted to provide input, similar to their rights in the parole suitability process. One commenter states that victims should be notified when a C&R review is initiated and afforded an opportunity to submit statements or otherwise participate. Another comment asserts that victims have a right to notice and to confer and believes those rights should extend to the C&R process.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulations in response to this comment. The C&R review is an administrative meeting between the incarcerated person and a Board hearing officer. By design, victims, family members, prosecutors, and attorneys do not participate in the review stage. If a case is referred to a C&R hearing, section 2847, subsection (b), requires that all registered victims and qualifying family members receive 90 days' notice and be provided an opportunity to participate at the hearing.

Although victims and their families do not participate in the C&R review itself, nothing in these regulations prevents victims and their family members from submitting written statements to the Board at any time. These materials are placed in the incarcerated person's file and are available for consideration by the hearing officer during the C&R review and by the panel at any C&R hearing.

The C&R review is similar to a consultation in the parole suitability hearing process, in which victims are not notified of the consultation, but are notified and permitted to participate at the parole suitability hearing. The C&R regulations follow this same structure. Because notice is required at the hearing stage and the review stage does not involve participation by any parties outside the incarcerated person, amendments to require additional victim notification are unnecessary.

**ISSUE 69: Victim’s Rights – Ensure this process doesn’t negatively impact a victim’s rights.**

Comment ID Number: 202-02

COMMENT: Commenter requests the Board ensure that victims retain the right to be present throughout the process and that the consultation process does not negatively impact any other rights held by victims, their families, and support persons.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulations in response to this comment. Nothing in the proposed regulations diminishes or restricts rights afforded to victims, their families, or support persons. The C&R recommendation assessment process incorporates all victim-related rights applicable to the parole suitability hearing process.

Victims are not participants in the consultation or C&R review portion of the process, which are both meetings that are conducted exclusively between the incarcerated person and a Board hearing officer. However, if a case is referred to a C&R hearing, sections 2844, subsection (n), and 2845, subsection (a), of the proposed regulations require the Board to notify OVSRS so OVSRS can make reasonable efforts to notify victims, victims’ next of kin, or members of a victim’s family not yet registered with OVSRS.

Moreover, section 2847, subsection (b), requires that all registered victims and qualifying family members receive 90 days’ notice before a C&R hearing occurs and be provided an opportunity to attend, participate, and submit statements consistent with statutory rights applicable to the parole suitability hearing process. Additionally, victims and their family may submit written statements or materials to the Board at any time, and those materials will be included in the incarcerated person’s file for consideration during both the C&R review and hearing stages.

Because the proposed regulations incorporate all victim rights that apply to the parole suitability hearing process and already provide a mechanism for participation at the C&R hearing stage, no amendments are necessary in response to this comment.

**ISSUE 70: Victim’s Impact Statement – Section 2852 unconstitutionally limits a victim’s right to allocution at a parole hearing.**

Comment ID Numbers: 224-05, 231-13

COMMENT: A commenter asserts that section 2852, subsection (c), unconstitutionally restricts a victim’s right to allocution at a parole hearing by limiting the scope of victim statements. The commenter argues that victims should not be prevented from discussing the impact of the crime. Another commenter contends that the proposed regulations violate Marsy’s Law by improperly narrowing victims’ rights to speak last, to speak without interruption, and to address a broad range of issues.

RESPONSE: DECLINED TO AMEND

Proposed section 2852, subsection (d), allows victims to address the C&R hearing panel regarding whether the incarcerated person meets the standard for a C&R recommendation. Nothing in this provision restricts a victim's ability to discuss the impact of the crime or any other information relevant to the panel's assessment. Victim impact information may be relevant to determining whether a C&R recommendation is appropriate, and the regulation does not limit the scope of a victim's statement in that regard.

Additionally, while Marsy's Law governs victim rights in the parole release process, it does not apply to the C&R recommendation assessment process because this process does not involve a parole release decision or parole release proceedings. Nevertheless, within the proposed regulations, the Board has extended to the C&R recommendation assessment process the same core participatory rights afforded to victims in the parole context, ensuring that victims and their families may speak, be heard, and provide relevant input consistent with rights.

Because the regulations do not narrow victims' constitutional rights, and because the regulations provide victims with the ability to give crime impact information as part of the C&R recommendation assessment process, amendments in response to these comments are unnecessary.

**ISSUE 71: Unfair to victims and violates their rights.**

Comment ID Numbers: 197-02; 199-02; 201-02; 206-02; 241-02; 339-02; 354-03; 356-03; 364-02

COMMENT: Commenters assert that the proposed regulations are unfair to victims and undermine the rights and safety of victims and their families. They emphasize that victims already endure a burdensome process to secure a conviction, and they believe allowing individuals to receive C&R reviews and hearings 25 years after the crime will retraumatize and revictimize those affected. Commenters also state that many victims were led to believe the incarcerated person would never be released and that reopening these cases is harmful. Additional commenters similarly contend that the regulations will negatively impact and further injure victims.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulations in response to these comments. The Board recognizes the impact that violent crime has on victims and their families. In setting up the C&R process, the Board seeks to have a transparent and uniform process where victims and victim family members can be informed of, and participate in the process. The C&R recommendation assessment process establishes a procedure for the Board to make recommendations to the sentencing court or the Governor, both of whom retain ultimate authority over any decision regarding resentencing or commutation.

Victims and their families will continue to receive all notice and participation rights applicable to this process. Under section 2847, subsection (b), registered victims and qualifying family members receive 90 days' notice of a scheduled C&R hearing and have the opportunity to attend, provide input, and submit victim impact statements. Members of the public, including victims, may also submit written materials at any time for consideration during both the review and hearing stages, in accordance with these regulations.

While commenters express concern that the process may be burdensome or retraumatizing, the regulations implement the statutory direction from the Penal Code, while granting victims the ability to remain informed about the process and to participate, if they so desire. Accordingly, amendments in response to these comments are not necessary.

**ISSUE 72: Increases the number of hearings prosecutors and victims must attend.**

Comment ID Number: 327-02

COMMENT: Commenter objects to the regulations because it will increase the number of hearings that victims and prosecutors have to attend.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulations in response to this comment. While the C&R recommendation assessment process provides victims and their families with an opportunity to participate in the process, there is not mandate that requires victims or prosecutors to attend any proceeding. Participation by victims, their families, and prosecutors is voluntary, and the regulations do not impose any new mandatory obligations on these parties.

Because the regulations do not create new mandatory hearings for victims or prosecutors and maintain voluntary participation at all stages where their involvement is permitted, amendments in response to this comment are not necessary.

**ISSUE 73: Notice to Prosecutors. Prosecutors should be provided at least 30 days' notice of the C&R hearing.**

Comment ID Number: 231-15

COMMENT: Commenter states there is no provision for notice to the prosecutor in the regulations. Commenter requests prosecutors be provided with a minimum of 30 days notices of C&R hearings. Commenter also request the Board consider providing prosecutors with notice of the hearing prior to the CRA being scheduled so the record can be augmented.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulations in response to this comment. Section 2847, subsection (b), already requires the Board to provide 90 days' notice of a scheduled C&R hearing to the prosecuting agency or agencies. This requirement exceeds the 30-day notice period requested by the commenter and ensures prosecutors have sufficient time to determine whether they wish to participate in the hearing and to prepare any input they choose to provide.

The Board also declines to provide notice to prosecutors before the CRA is completed. A C&R hearing may be cancelled if the CRA results in a high-risk rating. Providing early notices for hearings that may ultimately be cancelled would result in unnecessary and potentially confusing notifications.

Prosecutors may, however, submit documents, statements, or other relevant materials prior to the C&R hearing for inclusion in the incarcerated person's file. These materials will be available to the hearing panel and will be considered along with all other relevant and reliable information in making a determination at the C&R hearing.

Because the regulations already provide the requested notice to prosecutors and because additional notice is neither required nor operationally beneficial, amendments in response to this comment are not necessary.

**ISSUE 74: Unregistered Victims - Victims may be unaware of the C&R hearing process because they never registered as a victim.**

Comment ID Numbers: 104-01; 191-05; 192-05; 193-05; 195-04; 196-03; 200-03; 204-05; 213-03; 215-03; 223-03; 231-05; 232-03; 233-03; 235-03; 237-03; 240-03; 242-05; 245-03;

COMMENT: Commenters express concern that victims may be unaware of the C&R hearing process because, due to the length of the sentence or an LWOP sentence, they never anticipated future involvement with the Board. Commenters worry that victims who did not register with OVSRS at the time of sentencing may be difficult to locate decades later, which could limit their ability to participate. One commenter requests that the Board establish a process to identify and contact victims who are not currently registered so that they can receive notice of C&R hearings.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulations in response to these comments. The Board recognizes that some victims may not have anticipated future involvement in Board proceedings due to the length or nature of the sentence originally imposed on an incarcerated person. However, the notice process for C&R hearings is already addressed in section 2847, subsection (b), which requires the Board to provide 90 days' notice to all registered victims and qualifying family members. This framework ensures that individuals who have elected to register with OVSRS receive timely notice and have the opportunity to participate.

Additionally, section 2844, subsection (n), requires the Board to notify OVSRS when a person is referred to a C&R hearing after a C&R review. Upon receiving this notification, OVSRS is expected to make reasonable efforts to identify and notify victims, victims' next of kin, and members of a victim's family who are not yet registered. This requirement ensures that outreach extends beyond the registered population and that efforts are made to contact unregistered victims so they may participate in the hearing if they choose.

Because the regulations already include an additional mechanism directing OVSRS to reach out to unregistered victims once a hearing is set, further amendments are not necessary.

**ISSUE 75: Waivers - Incarcerated persons should have the right to waive their C&R hearing.**

Comment ID Number: 221-03

COMMENT: A commenter requests that the Board amend the regulations to allow an incarcerated person to waive their C&R hearing. The commenter believes individuals should have the right to

decline a hearing if they choose, particularly in circumstances where they may not feel prepared or in the proper mental state to proceed.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulations in response to this comment. Section 2851, subsection (e), already permits an incarcerated person to waive their appearance at a C&R hearing. In such cases, the hearing proceeds in absentia, ensuring the process continues without requiring the individual to participate if they prefer not to do so.

If the incarcerated person does not receive a C&R recommendation following the hearing, the regulations provide that they will be scheduled for a new C&R review in three years. The existing framework thus ensures that individuals who do not wish to engage in the hearing process are not compelled to appear.

Because the current regulations already accommodate an incarcerated person's decision not to participate by allowing the hearing to proceed in their absence, creating a separate mechanism to waive the hearing entirely is unnecessary.

**ISSUE 76: Grievance Process – There is no method for an incarcerated person to file a grievance concerning the Board's policies, procedures, and decisions concerning this process.**

Comment ID Numbers: 207-15; 288-03

**COMMENT:** Commenters assert that the regulations violate incarcerated persons' due process rights because they lack corrective mechanisms to challenge what commenters describe as arbitrary policies, procedures, or decisions made under BPH RN 25-01. Commenters further argue that the absence of a recording, an appeal process, or written reasoning for certain determinations undermines the procedural fairness required by the Fourteenth Amendment.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulations in response to this comment. The regulatory framework already incorporates procedural safeguards that ensure incarcerated persons receive written decisions of Board actions following a C&R review and hearing.

Section 2844, subsection (m), requires the Board to issue a written decision to the incarcerated person specifying the outcome of the C&R review, including supporting findings and individualized recommendations. Similarly, section 2856, subsections (i) and (j), mandate that the Board provide a written decision following a C&R hearing that identifies the determination made and any individualized recommendations.

Additionally, section 2859, subsection (g), authorizes the chief counsel of the Board to review any determination that a person does not meet the standard for a C&R recommendation under section 2856 any time after the determination is made for errors of law or fact, relevant new information, or concerns regarding consistency in decision-making and potentially vacate the determination and order a new C&R hearing.

The C&R process is discretionary, and the due process protections afforded in the parole suitability hearing process do not apply to the C&R recommendation assessment process. The commenters' concerns regarding recordings or appeal mechanisms pertain to procedural features that are not required for the proper functioning of these discretionary reviews.

The Board's decisions are not arbitrary. The regulations clearly set forth the applicable legal standard and criteria that must be considered at each stage of the process, ensuring that decisions are guided by defined regulatory requirements rather than by unfettered discretion.

**ISSUE 77: Canceled Hearings – Create a process to reinstate hearings if they are erroneously canceled due to a rules violation report or a “High” risk rating.**

Comment ID Numbers: 251-08; 311-02

COMMENT: Commenter requests that the Board establish a formal process to reinstate a canceled hearing when the underlying basis for the cancellation is later determined to be erroneous. Specifically, the commenter proposes allowing an incarcerated person or their attorney to submit a written request for reinstatement when: (1) the hearing was canceled due to a guilty RVR that is subsequently reversed, or (2) the hearing was canceled based on a high CRA risk rating that is later modified due to an identified error.

Another commenter similarly requests that the Board develop a mechanism to track cases in which a hearing was canceled due to a rule violation that is ultimately overturned on appeal.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulations in response to these comments. Under the existing framework, individuals may raise concerns regarding alleged errors in a CRA or an overturned RVR at their next C&R review. At that time, the Board reevaluates all relevant information and may refer the individual for a subsequent C&R hearing if warranted.

Establishing a separate reinstatement process or a tracking mechanism for hearings canceled due to later reversed RVRs or CRA errors would require substantial additional administrative resources. Given the limited number of cases in which a cancellation would later be determined erroneous, the Board has concluded that creating a parallel review or tracking system would not be an efficient or necessary use of resources.

Incarcerated persons also retain the ability to apply directly to the Governor for a commutation, which provides an additional avenue for raising concerns about past errors. The Board further finds that the existing three-year review interval is sufficient to ensure that any corrected or updated information can be considered and addressed without the need for an additional reinstatement procedure.

**ISSUE 78: Canceled Hearings – Concerns with the non-discretionary language that a hearing shall be canceled due to a high CRA.**

Comment ID Number: 224-03

COMMENT: Commenters state that the non-discretionary language in section 2849 (“The board shall cancel a C&R hearing and not conduct the hearing . . . if: (1) an incarcerated person’s overall risk rating is a high on the comprehensive risk assessment”) vests all discretion in whether a person is scheduled for a hearing in the CRA evaluators. It precludes any opportunity for the person to raise factual objections to errors in the report, consult with an attorney about the report, challenge the effectiveness of an interpreter, and quite possibly to raise the need for reasonable accommodations under the Americans with Disabilities Act (ADA). For example, (1) if a FAD psychologist attributes incorrect information (such as criminal or disciplinary history) to the individual, they are automatically denied a hearing with no opportunity to correct the record; (2) if a FAD psychologist does not recognize that the interpreter was not effectively communicating with the individual, there is no opportunity to raise the issue; and (3) if an individual’s disabilities are not well-documented by CDCR and the individual is not able to communicate appropriate requests for accommodation, a hearing is denied without effective communication.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulation. Please note, while the commenter stated “if a FAD psychologist attributes incorrect information (such as criminal or disciplinary history) to the individual, they are automatically denied a hearing with any opportunity to correct the record” (underline added), given the surrounding context of the statement, the Board interpreted the commenter to have meant “without” in place of “with.”

CRA’s are conducted by licensed forensic psychologists who are specifically trained to evaluate risk, assess communication effectiveness, and identify factors that may affect the accuracy of the interview process. These forensic psychologists are qualified to determine whether effective communication has been established and to assess the appropriate weight to give each piece of information when forming their professional opinion regarding an incarcerated person’s risk of violence. As part of every assessment, the forensic psychologist reviews the incarcerated person’s file, is aware of any disabilities documented by CDCR, and applies their professional expertise to identify any additional issues that may impact the individual’s ability to communicate during the interview, including concerns related to interpretation or the need for accommodations. Moreover, every CRA is reviewed by the Board’s chief psychologist or a senior psychologist before it is finalized. The Board finds these factors sufficiently mitigate commenters’ concerns and the need for any amendment to the regulations.

Further, the non-discretionary language in section 2849 does not eliminate the incarcerated person’s ability to raise concerns. Rather, it ensures that individuals assessed as presenting a high overall risk do not proceed to a hearing as a person who represents a high risk of violence is unlikely to receive a C&R recommendation. This ensures the Board’s limited resources remain focused on persons most likely to receive a C&R recommendation and ultimately be commuted by the Governor or resentenced by a sentencing court. If a hearing is cancelled due to a high risk rating, the incarcerated person retains the opportunity to raise any alleged errors in the CRA, issues

related to interpretation or communication, or concerns regarding accommodations at their subsequent C&R review, which occurs every three years. This provides individuals with a meaningful opportunity to bring forward information or objections while maintaining the Board's responsibility to prioritize public safety and allocate hearing resources appropriately.

**ISSUE 79: Canceled Hearings – The provision to cancel a C&R hearing due to a high risk rating is vague.**

Comment ID Numbers: 222-14; 303-02

COMMENT: The commenter asserts that the requirement in section 2849 to cancel a C&R hearing when an incarcerated person receives a high risk rating on the CRA is vague. They request that the regulation be clarified to specify what constitutes a “high risk rating,” including whether it refers to a particular number or grade on a CRA rating system or cutoff scores on a structured risk assessment. A commenter requests that this provision be revised to require an individualized review since the incarcerated person does not have the opportunity to address the risk assessment before the hearing is canceled due to the high risk rating

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulation. Section 2849 is not vague. A “high risk rating” is identified within the CRA by the preparing forensic psychologist, and represents the psychologist's structured professional judgment as to the incarcerated person's risk of future violence. When a forensic psychologist assigns a high risk rating in the CRA, that designation triggers the cancellation of the scheduled C&R hearing, as stated in the regulation.

As explained in other responses regarding potential errors in CRAs, it is extraordinarily rare for any identified error to result in a material change to the overall risk rating. The CRA process already incorporates professional safeguards, including a standardized assessment protocol and review by licensed forensic psychologists trained to evaluate risk and apply structured professional judgment.

Incarcerated persons also retain multiple avenues to raise any alleged inaccuracies or concerns. At their subsequent C&R review, which occurs every three years, they may inform the hearing officer of any claimed errors in the CRA. Additionally, an incarcerated person may submit an application for commutation to the Governor at any time. These existing mechanisms ensure that individuals have meaningful opportunities to present new information or assert objections, without altering the Board's obligation to prioritize public safety and conserve hearing resources.

**ISSUE 80: Clarify what constitutes a “serious” rules violation report.**

Comment ID Numbers: 207-09; 301-03; 313-05

COMMENT: Commenters requests clarification regarding what constitutes a “serious” rules violation report, noting that many incidents are classified as serious even when the underlying behavior is neither serious nor violent.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulation. The classification of rules violation reports is determined by CDCR, which designates each violation as either “serious,” “administrative,” or “counseling only” pursuant to its own regulations and disciplinary framework. The Board’s proposed regulations specifically cross reference to the relevant CDCR regulation which identifies which violations constitute a “serious” rules violation. Thus, by cross-referencing to regulations that explicitly identify which violations are “serious,” the Board’s regulations are not vague or ambiguous for the incarcerated person or the decisionmaker and no further clarification is needed.

**ISSUE 81: Postponed and Continued Hearings – Timelines should be established for rescheduling a postponed or continued hearing.**

Comment ID Number: 222-15

COMMENT: The commenter asserts that section 2855, subsection (a), permits the Board to postpone or continue hearings for issues that are within the control of the Board or CDCR, effectively allowing delays without accountability. The commenter requests that the regulations establish a reasonable timeframe—such as a 90-day maximum—for correcting issues caused by the Board or CDCR and rescheduling the hearing. They further request a limitation on the number of postponements or continuances attributable to the Board, proposing that no hearing be rescheduled more than twice for Board-caused reasons. The commenter contends that adding clear timelines and limits would provide greater clarity and predictability for eligible incarcerated persons regarding when their hearings will occur.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulation. Section 2855 already provides that a hearing will be rescheduled once the issue has been resolved. This framework is necessary to allow the Board sufficient flexibility to address operational and logistical matters that may arise. Prescribing fixed timelines or numerical limits on postponements would undermine this flexibility and could result in hearings being rescheduled before the underlying issue is adequately addressed, to the detriment of the incarcerated person or public safety.

This approach is consistent with the Board’s longstanding parole hearing regulations, which similarly permit continuances and postponements until the relevant matter is resolved. The Board has a demonstrated history of rescheduling hearings within reasonable timeframes and managing its caseload responsibly. For these reasons, the Board does not find additional regulatory timeframes or limits necessary.

**ISSUE 82: Closing Statements – Closing statements should not be limited to 10 minutes.**

Comment ID Number: 224-04

COMMENT: The commenter requests removal of the provision that limits the length of an incarcerated person’s closing statement. They propose instead that the hearing panel be given discretion to limit a closing statement to 10 minutes only when necessary, depending on the complexity of the case.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulation. Establishing a uniform time limit for closing statements provides clarity and predictability for all participants, including the prosecuting agency, the incarcerated person, and counsel, allowing them to prepare their remarks accordingly. A ten-minute time limit is reasonable, aligns with the limitation used in the parole hearing process, and ensures hearings proceed efficiently while still affording each party an opportunity to summarize their position.

Additionally, the regulation already provides a mechanism for individuals who wish to present more extensive information: they may submit a written statement to supplement their oral closing statement, provided it is submitted at least ten days prior to the hearing. This option ensures that all relevant information can be communicated to the hearing officers while ensuring efficient hearings.

**ISSUE 83: Petition to Advance – Create a Petition to Advance process that allows a person to advance their next C&R review.**

Comment ID Numbers: 251-09; 253-05; 254-06

COMMENT: Commenters request that the Board establish a Petition to Advance process allowing an incarcerated person or their attorney to submit a written request to advance the date of the next C&R review when the individual did not receive a positive recommendation in part due to a guilty rules violation report that was later vacated, modified, or reheard. The commenter asserts that, if the reversal or modification of the RVR—or the absence of the RVR altogether—would likely have materially affected the panel’s determination, the Board should schedule an advanced C&R review as soon as practicable, and no later than six months after the petition is approved.

RESPONSE: DECLINED TO AMEND

The C&R review process is designed to occur at predictable, regularly-scheduled intervals, ensuring consistency, fairness, and efficient allocation of resources. Creating a Petition to Advance procedure would introduce a new, separate review mechanism that is not necessary for the effective functioning of the C&R recommendation assessment process and would add significant administrative complexity without improving outcomes.

The commenter’s proposed process would require individualized assessments outside the established review schedule and could result in prioritizing certain cases over others based solely on the timing of disciplinary actions being vacated or modified. The Board’s existing scheduling framework treats all eligible individuals uniformly and ensures that any changes in an incarcerated person’s disciplinary history are reflected in their next regularly scheduled C&R review. This approach provides a clear and consistent timeline for all participants and avoids creating parallel tracks that could disrupt existing caseload management.

For these reasons, the Board finds that adding a Petition to Advance procedure is unnecessary and declines to amend the regulations.

**ISSUE 84: Written responses to documents in the central file – Incarcerated persons should be able to enter in a written response to any material in the central file.**

Comment ID Number: 251-10

COMMENT: The commenter requests that the Board incorporate into section 2847, subsection (j) a right similar to the one provided in Penal Code section 3041.5, subdivision (a)(1), which allows a person appearing at a parole suitability hearing to submit a written response to any material in the file. Specifically, the commenter proposes amending section 2847, subsection (j), to provide that an incarcerated person have the opportunity to enter a written response to material contained in the file.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulation. Nothing in these regulations prevents an incarcerated person from preparing or submitting a written response to information contained in their file. However, the Board is not the custodian of the central file and does not control the contents of that file. Because the Board does not manage the central file, incorporating a regulatory provision granting a right to “enter” written responses into that file would not be meaningful or enforceable within the Board’s authority.

Incarcerated persons already have established avenues, through CDCR’s procedures, to submit written statements or responses for placement in their central file. Additionally, section 2850, subsection (b), expressly permits an incarcerated person to provide information for consideration by the hearing panel at least ten days prior to the C&R hearing. This affords individuals the opportunity to bring forward any concerns regarding inaccuracies or omissions in their central file. For these reasons, the Board finds that further regulatory amendment is unnecessary.

**ISSUE 85: Deadline to Submit Documents – The incarcerated person should be permitted to submit relevant and reliable documents at the hearing.**

Comment ID Number: 251-11

COMMENT: The commenter requests that the Board remove the requirement that incarcerated persons submit relevant documentation—such as letters of support or program acceptance letters—at least ten days before the hearing. They propose instead that the Board allow documents to be submitted up to and including the day of the hearing, consistent with the parole suitability process.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulation. Requiring that all relevant documentation be submitted at least ten days in advance of the hearing ensures that the hearing panel has sufficient time to review and consider the materials without causing delays to the scheduled hearing or to subsequent hearings on the calendar. In the parole suitability context, day of hearing submissions have frequently resulted in postponements because panels cannot thoroughly evaluate voluminous materials without disrupting the hearing schedule. The 10-day requirement avoids these operational challenges and promotes an efficient and orderly process.

In addition, under section 2847, subsection (a), an incarcerated person receives notice of their scheduled C&R hearing 120 days in advance. This provides ample opportunity to gather and submit letters of support, program documentation, and other relevant materials well within the required timeframe. Given these existing safeguards, the Board finds that the current submission deadline strikes an appropriate balance between allowing incarcerated persons to present relevant information and ensuring that hearings proceed without unnecessary delay.

**ISSUE 86: Intimate Partner Violence – Add subsection to require panels consider evidence of intimate partner violence.**

Comment ID Number: 251-12

COMMENT: Commenter requests that the regulations be amended to include a provision requiring hearing panels to consider evidence of intimate partner battering and its effects, consistent with Penal Code section 4801, subdivisions (a), (b)(1), and (b)(3). They assert that evidence of intimate partner violence should be considered in C&R hearings in the same manner it is considered in parole suitability hearings.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulations. The hearing panel is already required to consider all relevant and reliable information presented at the C&R hearing, which would include any evidence related to intimate partner violence or its effects when such information is applicable to the individual's history or circumstances. Because the regulations require consideration of all pertinent information, adding a separate, issue-specific provision would be duplicative and unnecessary.

Moreover, the statutory provisions cited by the commenter apply specifically to parole suitability determinations and do not govern the C&R recommendation assessment process. The existing regulatory framework for the C&R recommendation assessment process adequately ensures that any relevant evidence, including evidence of intimate partner violence, may be presented and considered without the need for additional, topic specific requirements. For these reasons, the Board finds no amendment warranted.

**ISSUE 87: Americans with Disabilities Act (ADA) Accommodations at all stages of process.**

Comment ID Numbers: 253-08; 300-05

COMMENT: Commenters request that the Board ensure ADA accommodations are available at all stages of the C&R recommendation assessment process, including during the CRA interview. An additional commenter requests that the Board provide accommodations for individuals with language barriers and for those with mental health-related needs.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulation. Section 2844, subsections (e) and (f), and section 2851, subsections (b) and (c), already require that incarcerated persons be provided reasonable accommodations under the ADA and be provided a foreign language interpreter when necessary to ensure effective communication with the hearing officer. These provisions fully address the

commenters' concerns regarding language access and disability related accommodations during the C&R recommendation assessment process.

The Board will also provide reasonable accommodations during the CRA interview. The CRA is an integral part of the C&R hearing process and therefore falls within the accommodations framework established in section 2851.

Additionally, Board forensic psychologists are trained professionals who are experienced in assessing and establishing effective communication with individuals who have mental health needs. The Board will use our current process, which requires that forensic psychologists review relevant documents, including medical and mental health documents before the interview, and document if accommodations were needed to establish effective communication. Finally, forensic psychologists' professional training and ethical obligations ensure that appropriate communication supports are identified and utilized when needed.

Because the existing regulatory framework already ensures the provision of reasonable accommodations throughout the C&R recommendation assessment process, including the CRA interview, no further amendments are necessary.

**ISSUE 88: Foreign Language Interpreters and access for non-English speakers.**

Comment ID Numbers: 219-06; 222-11, 251-07, 251-15, 253-07

COMMENT: Commenters state these regulations make no mention of language access for people whose primary language is not English. Specifically, commenters request forms and notices for C&R hearings be offered in at least the five most common languages and interpreters be provided for C&R reviews and hearings. Other requests include making foreign language interpreters available during a CRA interview.

Commenters request the Board add a section to the regulations specifying that standard forms, notices, and critical documents provided to incarcerated persons as part of their participation in the C&R process be translated into the top five non-English languages spoken by incarcerated persons. Commenter states this is necessary to ensure consistent standards of language access for all participants appearing before the Board.

Another comment requests the C&R review outcome and programming recommendations be served on the incarcerated person in English, and their primary language if effective communication cannot be achieved in English or an interpreter was used in the C&R review. The requester also asks that, if an online or artificial intelligence translator is used, then a disclaimer should be included in the translated version describing the translation process.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulation. The regulations already provide language access protections. Under section 2844, subsection (c), and 2851, subsection (c), the Board must provide a foreign language interpreter whenever necessary to ensure effective communication during the C&R review and hearing. This requirement applies throughout the C&R process, including

attorney meetings, and the Board will also provide interpreters during the CRA interview. Because the CRA is an integral component of the C&R hearing process, it falls within the language access and accommodation framework established in section 2851. Further, the Board already has a contractual process for utilizing foreign language interpreters for CRAs, when needed, to interview persons as part of preparing CRAs in the parole hearing process. The Board intends to utilize the same contractual process when preparing CRAs in advance of C&R hearings.

With respect to the request that forms, notices, and other documents be translated into the top five non-English languages, the Board will continue to comply with translation requirements. Nevertheless, qualified interpreters are available during the C&R review and hearing to ensure that the incarcerated person fully understands the process, regardless of the language in which written materials are issued.

Additionally, hearing officers and interpreters ensure that the incarcerated person comprehends the outcome of the proceeding, including any recommendations, at the time of the review. Given the availability of qualified interpreters and existing requirements to ensure effective communication, mandating translated written documents or adding disclaimers regarding the use of automated translation tools is unnecessary.

For these reasons, the Board concludes that additional regulatory requirements concerning document translation or expanded language access provisions are not warranted.

**ISSUE 89: Provide equal access and notice to incarcerated persons in restricted housing, with disabilities, or with limited English access.**

Comment ID Number: 207-14

COMMENT: Commenter claims that people in restricted housing, with disabilities, or with limited English access often never receive notice of postings or forms. To be responsive to accessibility needs, commenter requests (1) mandating direct notices to all eligible incarcerated persons, (2) requiring materials in accessible formats (languages, large print, Braille), and (3) assigning an ombudsperson or liaison to ensure understanding and equal participation.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulation. The regulations already contain multiple provisions designed to ensure effective communication and accessibility for all incarcerated persons, including those with disabilities, language needs, or restricted housing placements. Under sections 2844 and 2851, the Board must provide reasonable accommodations under the ADA and must provide a foreign language interpreter whenever necessary to ensure effective communication during the C&R recommendation assessment process. These requirements apply regardless of housing status and ensure that participants can meaningfully engage in the proceedings.

The Board provides direct notice to eligible incarcerated persons of their scheduled C&R review and hearing. CDCR maintains responsibility for document distribution, posting, and general access to forms within institutions, including for individuals in restricted housing. Therefore, it is outside of the Board's authority to regulate the method of distributing notices to incarcerated persons.

With respect to the request for translated or alternative format materials (such as large print or Braille), the Board will comply with all applicable legal requirements concerning translation or accessible formats.

Finally, establishing an ombudsperson or liaison role is outside the scope of these regulations and beyond the Board's statutory responsibilities. For these reasons, the Board concludes that additional regulatory requirements concerning notice, translation, or staffing mandates are not warranted.

**ISSUE 90: Drafting error – Correct reference to section 2267.**

Comment ID Number: 251-16

COMMENT: Commenter states that section 2845 erroneously cross references to section 2267 in the regulations, which currently does not exist in the Board's regulations. Commenter requests the Board remove the reference to section 2267.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulation. The cross reference to section 2267 in section 2845 is intentional. Section 2267 is included as part of this proposed rulemaking package and will be added to the Board's regulations upon adoption of the full regulatory package. Because section 2267 will exist in the final regulatory framework, the reference in section 2845 is accurate and not in error.

**ISSUE 91: Attorneys – Create a clear timeline for appointment of counsel.**

Comment ID Numbers: 253-06; 254-07

COMMENT: Commenters request the Board establish a clear timeline for appointing counsel to represent an incarcerated person at a C&R hearing.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulation. Although the Board traditionally appoints counsel approximately 120 days before a scheduled hearing, establishing a fixed timeline in regulation would unnecessarily restrict the Board's flexibility to ensure appropriate representation. Circumstances may arise in which an appointed attorney must be replaced or additional time is needed to assign counsel with the appropriate availability. Maintaining flexibility in the timing of appointments allows the Board to make adjustments that best support the incarcerated person's representation.

Attorneys appointed to represent incarcerated persons are bound by the professional responsibilities and ethical standards established by the State Bar of California, including the duty to provide competent and diligent representation. Regardless of the exact timing of the appointment, counsel must be adequately prepared to represent their client's interests. Given these existing professional requirements and the Board's longstanding practice of appointing counsel

well in advance of hearings, the Board finds it unnecessary to impose a rigid appointment timeline in regulation.

**ISSUE 92: Attorneys should be appointed prior to the CRA interview.**

Comment ID Number: 236-02

COMMENT: The commenter requests that attorneys be appointed earlier in the C&R process—specifically, immediately after a referral to a C&R hearing and prior to the CRA interview. They suggest requiring appointment of counsel within 30 days of the C&R review decision to refer.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulation. The existing regulatory framework already ensures that appointed counsel has sufficient time to prepare for the C&R hearing while preserving the Board’s flexibility to manage attorney assignments effectively. Although the Board generally appoints counsel 120 days in advance of the hearing, establishing a fixed deadline, such as within 30 days of a referral, would unnecessarily restrict the Board’s ability to adjust attorney assignments in response to changes in availability, workload, or other operational considerations.

In addition, appointing counsel prior to the CRA interview is unnecessary. At the C&R review, the incarcerated person is provided information about the C&R hearing process, including the role and purpose of the CRA. The CRA is an evaluative interview conducted by a trained clinician, not an adversarial proceeding.

Further, the Board has elected not to appoint counsel at the CRA stage because the CRA may ultimately result in the cancellation of the C&R hearing under section 2849. Appointing counsel prior to the CRA could lead to unnecessary expenditures for cases that do not proceed to hearing. For these reasons, the Board concludes that requiring earlier appointment of counsel is neither necessary nor operationally prudent.

**ISSUE 93: Attorneys or advocates at C&R reviews and consultations**

Comment ID Numbers: 207-07; 222-09; 300-04; 301-01; 313-04

COMMENT: Commenters request that attorneys be permitted to participate in the C&R review, emphasizing that this review is the critical first step toward securing a C&R hearing and recommendation. They assert that, while there may be no right to appointed counsel at this stage, incarcerated individuals who already have legal representation should be allowed to have their attorney present. Commenters further note that attorney involvement is especially important for individuals with cognitive or mental impairments that may hinder their understanding of the review or their ability to self-advocate. Additional commenters request that the Board provide an advocate to ensure transparency during the C&R review and that an attorney or advocate also be present at consultations to ensure fairness.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulations. The C&R review is a proceeding used solely to determine whether a case should be referred for a C&R hearing. It is not a hearing. Because this stage is purely administrative and not one at which representation is required, the Board does not permit attorney participation.

Incarcerated persons may submit written statements or materials in advance of the review, including materials prepared in programs or with the assistance of supporters, including counsel. Additionally, the Board provides reasonable accommodations for individuals with cognitive or mental impairments to ensure meaningful participation. Hearing officers are trained to communicate effectively with incarcerated persons, including those who may require additional support.

The Board also declines to authorize attorney or advocate presence for individuals who happen to have counsel, as doing so would create an inequitable process in which only some individuals could access representation at this stage. Because the C&R review and consultation are designed to function uniformly for all participants, the Board maintains its current approach and declines to allow attorney or advocate participation.

**ISSUE 94: Attorneys – Ensure adequate assistance of counsel by transferring the responsibility for appointing and hiring C&R counsel to an independent third-party entity.**

Comment ID Number: 251-14

**COMMENT:** The commenter requests that responsibility for appointing and hiring C&R attorneys be transferred to an independent third-party entity, separate from the Board and equipped with adequate funding and oversight. The commenter asserts that the Board’s current panel attorney system presents concerns regarding conflicts of interest, lacks sufficient independence, and provides inadequate compensation.

**RESPONSE:** OUTSIDE OF SCOPE OF THESE REGULATIONS

This comment is outside the scope of the proposed regulations. The rulemaking concerns the procedures governing the C&R recommendation assessment process and does not address the framework governing the appointment, administration, or oversight of panel attorneys. The structure of the attorney panel system and existing Board policies is not subject to modification through this regulatory package. Accordingly, the Board declines to amend the regulations.

**ISSUE 95: Chief Counsel authority to vacate decisions without sending a case en banc.**

Comment ID Number: 104-08

**COMMENT:** The commenter objects to the chief counsel’s authority to vacate a reviewing panel’s decision not to recommend an incarcerated person for commutation or recall of sentence. The commenter asserts that this authority would improperly vest an unelected, non-appointed official with unchecked power to overturn a Superior Court’s ruling without due process or legislative authorization.

**RESPONSE:** DECLINED TO AMEND

The Board declines to amend the regulations. The commenter’s characterization of the chief counsel’s authority is incorrect. These regulations do not authorize the chief counsel to reverse or modify a Superior Court ruling, nor to substitute their judgment for that of the reviewing panel. The authority provided in the regulations is limited: the chief counsel may vacate a reviewing panel’s decision and direct that the matter be set for a new hearing under limited circumstances outline in section 2859, subsection (g). This procedural authority ensures the integrity and consistency of the C&R hearing process and does not confer any power to grant, deny, or overturn a judicial decision.

**ISSUE 96: Chief Counsel should be required to vacate decisions upon a finding of an error of fact or new evidence.**

Comment ID Number: 253-09

COMMENT: The commenter requests that incarcerated persons or their counsel be allowed to request en banc review and that the regulations require the chief counsel to vacate determinations when errors of fact or new evidence are identified.

RESPONSE: DECLINED TO AMEND

Under these regulations, the chief counsel may vacate a decision when there is a substantial likelihood that a future C&R hearing panel would make a different determination. This standard ensures consistency, fairness, and efficient use of Board resources.

Requiring the chief counsel to vacate determinations based solely on the presence of an error or the existence of new information, regardless of materiality, would mandate new hearings even when the information would not affect the outcome. This would significantly burden Board resources without improving accuracy or fairness in the process. Accordingly, the Board declines to amend the regulations.

**ISSUE 97: En Banc – Remove ability to refer a case en banc to ensure consistency in decision making.**

Comment ID Number: 251-13

COMMENT: The commenter requests that the Board remove the phrase “or if the determination raises concerns regarding consistency in decision-making” from section 2859, subsection (a). The commenter asserts that this language introduces a subjective and open-ended standard that could lead to arbitrary application and exceeds the Board’s statutory authority.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulations. The commenter’s assertion that the consistency standard is overly subjective or exceeds the Board’s authority is incorrect. The Board is not statutorily prohibited from referring cases en banc to ensure consistency in decision making. In fact, promoting consistent and uniform outcomes is a core purpose of establishing this process, as

well as the Board's decision review authority in the parole suitability process, and the same principle appropriately applies here.

The phrase "raises concerns regarding consistency in decision-making" provides a necessary and reasonable basis for internal review to ensure that similarly situated individuals are treated similarly. This safeguard prevents arbitrary results, rather than enabling them, and is fully within the Board's authority to administer the C&R recommendation assessment process in a fair and uniform manner. Accordingly, the Board declines to amend the regulations.

**ISSUE 98: En Banc – Require tie votes to be referred en banc.**

Comment ID Numbers: 194-04; 251-17; 253-10

COMMENT: Commenters request that the Board amend the regulations to require that any tie vote be referred for en banc review, consistent with the parole suitability process. They assert that mandatory en banc referral in tie cases would promote fairness and consistency while imposing only a minimal administrative burden.

**RESPONSE: ACCEPTED AFTER SUBSTANTIVE CONSIDERATION**

After careful consideration, the Board elected to revise the regulations to allow a hearing panel to reach a split decision and require that a tie vote be referred for en banc review. The Board added an en banc process for tie votes in section 2856. Under the amended provision, if a C&R hearing panel reaches a tie vote on whether to make a C&R recommendation, the matter will be referred en banc and decided by a majority of the commissioners appointed to the Board. This change promotes consistency and aligns the C&R process more closely with the existing parole suitability process.

**ISSUE 99: The Board has no legal authority to enact these regulations.**

Comment ID Numbers: 104-09; 319-02; 335-02; 340-02

COMMENT: Commenters opine that Penal Code section 4801 is narrow and does not permit the Board to enact these regulations. Other commenters state there is no legal authority permitting these regulations and the process should be enacted by the legislature. Another commenter states there is no precipitating crisis or data-driven justification for these proposed regulations; therefore, there is no justification for enacting these regulations.

**RESPONSE: DECLINED TO AMEND**

Penal Code sections 4801 and 1172.1 expressly authorize the Board to make recommendations regarding commutation and recall of sentence. Penal Code section 5076.2 further authorizes the Board to adopt regulations necessary to carry out its duties. These provisions collectively provide ample statutory authority for the regulations at issue.

The commenters' assertion that legislative action is required is incorrect. The Board's authority to establish procedures governing its recommendation process is well established and does not depend on a separate act of the Legislature.

Additionally, a showing of crisis or empirical justification is not required for the Board to exercise its statutory authority. The Board may adopt regulations to improve clarity, transparency, and consistency in its processes, even absent an emergent problem. These regulations fall squarely within that authority. Accordingly, the Board declines to amend the regulations.

**ISSUE 100: Process should be transparent and rehabilitation should be given meaningful weight during the C&R recommendation assessment process.**

Comment ID Number: 46-01

COMMENT: The commenter requests that the C&R process be made clear and transparent so that incarcerated persons and their families understand the expectations and how decisions are made. The commenter also urges the Board to ensure that rehabilitation and reentry efforts—such as education, vocational training, and participation in self-help programs—are given meaningful weight during the review.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulations. Section 2850 already specifies the information a hearing panel must consider, which includes all relevant and reliable information available in the incarcerated person’s record. This would include information regarding an individual’s programming, rehabilitation, and reentry efforts.

While these rehabilitative factors are considered, the governing standard requires the panel to determine whether the individual currently poses an unreasonable risk to public safety. The regulations do not diminish the importance of rehabilitation; rather, they ensure that all relevant information is evaluated in the context of public safety, which remains the ultimate consideration.

Additionally, the regulations provide clear guidance on the C&R review and hearing processes, and this information is publicly available to ensure transparency for incarcerated persons and their families. Accordingly, no further amendment is necessary.

**ISSUE 101: Supports the Board recommending reducing an incarcerated person’s sentence from life without the possibility of parole to life with the possibility of parole after the person has served 25 years in custody.**

Comment ID Numbers: 281-01, 185-01

COMMENT: Commenters express support for allowing the Board to recommend that an incarcerated person serving a sentence of life without the possibility of parole, and who has served at least 25 years in custody, have their sentence reduced to life with the possibility of parole.

**RESPONSE: DECLINED TO AMEND**

The Board interprets this comment as an expression of support for a particular category of individuals who may benefit from the C&R recommendation assessment process. The comment

does not request a change to the proposed regulations, nor does it identify a provision requiring revision.

**ISSUE 102: Resentencing – Regulations should be clarified that the process for specific persons sentenced to life without the possibility of parole does not apply to the trial courts.**

Comment ID Numbers: 191-03; 192-03; 193-03; 204-03; 228-01; 242-03; 319-01; 331-03; 371-01

COMMENT: Commenters request that the Board clarify that the C&R recommendation assessment process for individuals sentenced to life without the possibility of parole does not apply to the trial courts and that only the Governor has authority to act on such cases. Commenters assert that the Board lacks legal authority to refer recommendations for individuals serving life without the possibility of parole sentences to the sentencing court, except where expressly authorized by statute, such as when the person was under 18 at the time of sentencing. They request that the regulations be amended to state that, for individuals sentenced to life without the possibility of parole, any recommendation must be directed solely to the Governor. Another commenter further asserts that Penal Code section 1172.1(a)(2) does not permit resentencing absent a change in law, and that no such change authorizes referral to the resentencing court.

**RESPONSE: DECLINED TO AMEND**

The Board declines to amend the regulations. Penal Code sections 4801 and 1172.1 expressly authorize the Board to make recommendations concerning commutation and recall of sentence, and Penal Code section 5076.2 authorizes the Board to adopt regulations necessary for the execution of its duties. Nothing in these statutes restricts the Board's authority to establish an assessment process for individuals sentenced to life without the possibility of parole or to provide recommendations consistent with its statutory responsibilities.

Nothing in the regulations expands the authority of the courts or alters the statutory limitations on judicial resentencing. Because the regulations already align with existing law, no amendment is necessary.

**ISSUE 103: Resentencing – The Board should reinstate “Base Terms” and establish a base term prior to referring a case to the sentencing court for resentencing.**

Comment ID Numbers: 266-01; 286-01

COMMENT: Commenters request that the Board establish a process that first assesses an individual's culpability to evaluate their risk to public safety and then uses that determination to set a proportionate term against which any new sentence can be measured. Commenters further ask the Board to reinstate the base term framework that previously applied in parole hearings but was later repealed.

**RESPONSE: DECLINED TO AMEND**

The Board is not authorized to calculate base terms. The commenters' request would effectively reinstate the base term and adjusted base term framework previously used in the parole suitability

process. That framework required the Board to calculate a term based on the gravity of the offense before determining the amount of time a person must serve. However, the Legislature subsequently amended the governing statutes to eliminate the Board's authority to calculate base terms and established that parole eligibility is determined by a statutorily prescribed eligibility date.

Because the Legislature removed the base term system, the Board no longer has statutory authority, or any operational need, to calculate base terms. There is also no need to recreate this outdated process in the C&R recommendation assessment process. Determining the appropriate sentence for resentencing remains the responsibility of the sentencing court. The C&R recommendation assessment process does not change a person's sentence; rather, it evaluates whether a recommendation to the sentencing court and the Governor is warranted.

Accordingly, reinstating base terms is neither necessary nor consistent with the statutory framework, and the Board declines to amend the regulations.

**ISSUE 104: Information considered and reevaluations.**

Comment ID Numbers: 205-02; 373-01

COMMENT: Commenters urge the Board to incorporate opportunities for evaluations to be revisited and updated as new research emerges regarding human behavior, trauma, and recovery. They also request that the Board require deeper assessments that include a deeper understanding of an individual's childhood experiences, family background, and positive contributions to others.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulations. The existing process already provides for periodic reevaluation and consideration of updated information. Under the regulations, individuals receive a C&R review every three years. If an individual is referred to a C&R hearing, they will receive a new CRA prior to the C&R hearing.

The CRA and hearing process allow for the consideration of a wide range of relevant background information, including childhood experiences, family history, and positive contributions, to the extent such information bears on an individual's current risk and rehabilitation. Because the existing framework already provides for updated evaluations and the consideration of individualized information, no amendment is necessary.

**ISSUE 105: Require posting of upcoming C&R hearings in public areas.**

Comment ID Number: 207-16

COMMENT: The commenter requests the Board post upcoming C&R hearings in public areas accessible to incarcerated persons and their families.

RESPONSE: DECLINED TO AMEND

Requiring the Board to provide individualized notice to third parties or to publicly post upcoming C&R hearings would impose unnecessary administrative and fiscal burdens on the Board and is

not required by law. For these reasons, the Board declines to adopt the commenter's recommendations to publicly post C&R hearings in places accessible to incarcerated persons and their families.

**ISSUE 106: Request for the Board to remove language from parole suitability regulations.**

Comment ID Numbers: 266-02; 286-02

COMMENT: The commenters request that the Board delete the phrase “regardless of the length of time served” from sections 2281, subsection (a), and 2402, subsection (a).

RESPONSE: OUTSIDE THE SCOPE

These comments are outside the scope of the proposed action. The commenter seeks to modify language in the Board's existing parole suitability regulations; however, those provisions are not included in or affected by this rulemaking.

**ISSUE 107: Request for the Board to consider incarcerated person for resentencing**

Comment ID Number: 272-01

COMMENT: The commenter stated they were upset that they have not been considered by the Board for resentencing and expressed general dissatisfaction with the Board.

RESPONSE: OUTSIDE THE SCOPE

This comment is outside the scope of the proposed action. The commenter is seeking individual resentencing consideration, which is not encompassed by this rulemaking. Additionally, the process through which persons will be considered has not yet taken effect.

**ISSUE 108: Remove the Supreme Court from the commutation process**

Comment ID Number: 277-02

COMMENT: The commenter requests that the Supreme Court be removed from the commutation process. The commenter explained that their commutation recommendation was forwarded to the Supreme Court, which did not approve it, and they expressed a desire for others not to undergo that process.

RESPONSE: OUTSIDE THE SCOPE

This comment is outside the scope of the proposed action. The commenter raises concerns regarding the Supreme Court's involvement in the commutation process, but the Board does not regulate the statutory steps that occur after the Board transmits its recommendation to the Governor.

**ISSUE 109: Failure to comply with regulatory requirements**

Comment ID Numbers: 288-01; 288-02

COMMENT: The commenter states that the Board did not publish the regulations at the institutions at least 20 days before the start of the public comment period. The commenter also asserts that the regulations do not meet the necessity, authority, clarity, consistency, and reference standards of the Administrative Procedure Act.

RESPONSE: OUTSIDE THE SCOPE

This comment is outside the scope of the proposed action. The Board is not required to publish regulations at institutions 20 days before the public comment period, and the Board complied with all rulemaking requirements, including those governing public notice and comment.

**ISSUE 110: Regulations allow non-enforcement of other programs.**

Comment ID Number: 288-04

COMMENT: The commenter claims the regulations are “fundamentally unfair and unconstitutional as it allows arbitrary non-enforcement of the mandate of Penal Code section 3041(b).”

RESPONSE: OUTSIDE THE SCOPE

This comment is outside the scope of the proposed action. The commenter’s concerns regarding fairness, constitutionality, and enforcement of Penal Code section 3041, subdivision (b), pertain to the parole suitability hearing process, which these regulations do not modify. The proposed regulations do not impact the parole hearing cycle or any rights associated with parole consideration.

**ISSUE 111: Unclear request and comment.**

Comment ID Number: 376-01

COMMENT: The commenter provides information regarding their understanding of the parole and resentencing processes, as well as personal details related to their own case.

RESPONSE: OUTSIDE THE SCOPE

This comment is outside the scope of the proposed action. The commenter does not identify changes to the proposed regulations and instead offers general statements regarding the parole and resentencing processes and personal details about their case. These matters are not addressed in this rulemaking.

**ISSUE 112: Requests for a change in the laws concerning LWOP.**

Comment ID Number: 41-01

COMMENT: The commenter requests that the laws related to LWOP sentences be amended.

RESPONSE: OUTSIDE THE SCOPE

This comment is outside the scope of the proposed action. The commenter seeks amendments to statutory provisions governing LWOP sentences; however, the proposed regulations do not pertain to sentencing schemes.

**ISSUE 113: Requests for a change to the youth offender laws.**

Comment ID Numbers: 77-02; 86-03; 87-03; 88-03

COMMENT: Commenters request changes to youth offender provisions to permit eligibility for a hearing after 15 years instead of the current 25-year requirement.

RESPONSE: OUTSIDE THE SCOPE

This comment is outside the scope of the proposed action. The commenter's request concerns statutory youth-offender eligibility timelines, which are not addressed or altered by the regulations in this rulemaking.

**ISSUE 114: Requests that the Board not deny parole due to restitution concerns.**

Comment ID Numbers: 86-01; 87-01; 88-01

COMMENT: The commenter requests that the Board not deny parole based on issues related to restitution.

RESPONSE: OUTSIDE THE SCOPE

This comment is outside the scope of the proposed action. This rulemaking does not address the criteria for granting or denying parole, including considerations related to restitution.

**ISSUE 115: Requests for specific incarcerated persons to be considered for clemency.**

Comment ID Numbers: 295-01; 296-01; 368-01

COMMENT: The commenters request that the Board consider specific incarcerated individuals for clemency.

RESPONSE: OUTSIDE THE SCOPE

This comment is outside the scope of the proposed action. The commenters seek consideration of specific incarcerated individuals for clemency; however, this rulemaking pertains only to the procedural processes for making recommendations and does not involve individual case review.

**ISSUE 116: Statements of General Support.**

Comment ID Numbers: 4-01; 5-01; 6-01; 7-01; 8-01; 9-01; 10-01; 12-01; 13-01; 14-01; 15-01; 16-01; 17-01; 18-01; 19-01; 20-01; 21-01, 22-01, 23-01, 24-01, 25-01; 26-01; 27-01; 28-01; 29-01; 30-01; 31-01; 32-01; 33-01; 34-01; 35-01; 36-01; 37-01; 38-01; 39-01; 40-01; 42-01; 43-01; 44-01; 45-01; 49-01; 50-01; 51-01; 52-01; 53-01; 54-01; 55-01; 56-01; 57-01; 58-01; 59-01; 60-01; 61-01; 62-01; 63-01; 64-01; 65-01; 66-01; 67-01; 68-01; 69-01; 70-01; 71-01; 72-01; 73-01; 74-01; 75-01; 76-01; 77-01; 78-01; 80-01, 81-01; 82-01; 83-01; 84-01; 85-01; 86-02; 87-02; 88-02; 89-01; 90-01; 91-01; 92-01; 93-01; 94-01; 95-01; 96-01; 97-01; 98-01; 99-01; 100-01; 101-01; 102-01; 103-01; 107-01; 108-01; 109-01; 110-01; 111-01; 112-01; 113-01; 114-01; 115-01; 116-01; 117-01; 118-01; 119-01; 120-01; 121-01; 122-01; 123-01; 125-01; 126-01; 127-01; 128-01; 129-01; 130-01; 131-01; 132-01; 133-01; 134-01; 135-01; 136-01; 137-01; 138-01; 139-01; 140-01; 141-01; 142-01; 143-01; 144-01; 145-01; 146-01; 147-01; 148-01; 149-01; 150-01; 151-01; 152-01; 153-01; 154-01; 155-01; 156-01; 157-01; 158-01; 159-01; 160-01; 161-01; 162-01; 163-01; 164-01; 165-01; 166-01; 167-01; 168-01; 169-01; 170-01; 171-01; 172-01; 173-01; 174-01; 175-01; 176-01; 177-01; 178-01; 179-01; 180-01; 182-01; 183-01; 184-01; 186-01; 187-01; 188-01; 189-01; 190-01; 194-01; 198-01; 205-01; 208-01; 209-01; 210-01; 211-01; 212-01; 216-01; 217-01; 218-01; 219-01; 220-01; 221-01; 222-01; 224-01; 226-01; 230-01; 236-01; 238-01; 239-01; 243-01; 244-01; 247-01; 248-01; 249-01; 250-01; 251-01; 255-01; 256-01; 257-01; 258-01; 259-01; 261-01; 262-01; 263-01 264-01; 268-01; 270-01; 273-01; 274-01; 275-01; 276-01; 277-01; 278-01; 279-01; 280-01; 282-01; 283-01; 284-01; 285-01; 289-01; 291-01; 292-01; 297-01; 298-01; 299-01; 300-02; 302-01; 306-01; 307-01; 308-02; 309-01; 310-01; 311-01; 312-01; 313-01; 314-01; 315-01; 316-01; 317-01; 321-01; 323-01; 324-01; 325-01; 326-01; 328-01; 332-01; 336-01; 337-01; 338-01; 342-01; 343-01; 344-01; 346-01; 347-01; 349-01; 350-01; 351-01; 352-01; 353-01; 357-01; 358-01; 359-01; 360-01; 361-01; 362-01; 365-01; 367-01; 369-01; 372-01; 374-01

COMMENT: These comments express general support for the proposed regulations or reinforce reasons already provided by the board in support of the rulemaking.

RESPONSE: DECLINED TO RESPOND

The Board acknowledges receipt of these comments for general support. The Board has determined that no further response is required.

**ISSUE 117: Statements of Opposition.**

Comment ID Numbers: 48-01; 104-10; 106-01; 191-01; 192-01; 193-01; 195-01; 196-01; 197-01; 199-01; 200-01; 201-01; 204-01; 206-01; 213-01; 214-01; 215-01; 223-01; 227-01; 231-01; 232-01; 233-01; 234-01; 235-01; 237-01; 240-01; 241-01; 242-01; 245-01; 246-02; 265-01; 288-07; 290-01; 305-01; 318-01; 319-04; 320-01; 322-01; 327-01; 329-01; 330-01; 331-01; 333-01; 334-01; 335-01; 339-01; 340-01; 341-01; 345-01; 348-01; 354-01; 355-01; 356-01; 363-01; 364-01; 366-02; 370-01

COMMENT: These comments express general opposition for the proposed regulations.

RESPONSE: DECLINED TO RESPOND

The Board acknowledges receipt of these comments for general opposition. The Board has determined that no further response is required.

**SUMMARY AND EXPLANATION OF AMENDMENTS TO ORIGINAL PROPOSED REGULATIONS SUBMITTED FOR RE-NOTICE ON FEBRUARY 20, 2026:**

On February 20, 2026, the Board re-noticed the regulations with multiple amendments to the proposed text. An explanation of the purpose and reasoning for each of the changes made in the re-noticed text is included below.

**Section 2840**

Section 2840, subsection (u), was amended to add and define the term “victim’s representative.” This amendment is necessary to clearly define a term used throughout the regulations and ensure consistent application in all provisions referencing a victim’s representative. Former subsection (u) and (v) were renumbered as subsections (v) and (w), respectively.

**Section 2844**

Section 2844, subsection (o), was amended to change the phrase “within three years from the date” to “three years after the date.” This revision clarifies that an individual’s subsequent C&R review will occur no earlier than three years after the date of the prior review. The previous phrasing could be interpreted to allow a review to occur at any point inside a three-year window, whereas the amended language makes clear that a full three-year period must elapse before another review may be conducted.

The use of “after” rather than “within” is consistent with the terminology used in Penal Code section 3041.5, which directs that subsequent parole hearings be scheduled “after” a specified period of time. Aligning the regulations with this statutory phrasing promotes consistency and avoids confusion for stakeholders. This amendment is necessary to ensure that scheduling of subsequent C&R reviews is clear, uniform, and consistent with the intended minimum review interval.

**Section 2847**

Section 2847 was amended to update internal cross references and to clarify procedures related to victim and prosecuting agency participation in C&R hearings. Subsection (b) was revised to update the cross references from section 2852, subsections (d) and (e), to subsections (e) and (f), reflecting the renumbering in section 2852.

New language was added to subsection (d) to establish the notice requirement for victims or their next of kin to inform OVSRS of their designated victim’s representatives and the manner in which those representatives will attend the hearing. Former subsections (d) through (j) were renumbered as subsections (e) through (k) to accommodate this addition.

The Board also created new subsection (l) to expressly authorize a representative from the prosecuting agency to review nonconfidential documents in the incarcerated person’s central file before the C&R hearing. This change regulates existing practice and ensures the prosecuting agency has adequate information to participate meaningfully in the hearing.

These amendments were necessary to ensure clarity regarding the deadline for notifying OVSRS of designated victim representatives and to make explicit the prosecuting agency's ability to review the central file. Together, these changes promote transparency and enable full participation by victims and the prosecuting agency.

#### **Section 2849**

Section 2849, subsection (b), was amended to change the phrase “within three years from the date” to “three years after the date.” This revision clarifies that an individual's subsequent C&R review will occur no earlier than three years after the date that their C&R hearing was cancelled. The previous phrasing could be interpreted to allow a review to occur at any point inside a three-year window, whereas the amended language makes clear that a full three-year period must elapse before another review may be conducted.

The use of “after” rather than “within” is consistent with the terminology used in Penal Code section 3041.5, which directs that subsequent parole hearings be scheduled “after” a specified period of time. Aligning the regulations with this statutory phrasing promotes consistency and avoids confusion for stakeholders. This amendment is necessary to ensure that scheduling of a subsequent C&R review is clear, uniform, and consistent with the intended minimum review interval.

#### **Section 2850**

Section 2850 was amended to clarify the treatment of written statements submitted by the victims and their family members. In subsection (b)(1), the Board removed victims, victims' next of kin, and members of a victim's family from the document submission deadline that applies to the prosecuting agency and the public. New language added to subsection (b)(2) specifies that any written statement submitted by a victim, their next of kin, a family member, or a victim's representative prior to the hearing panel's decision must be considered by the panel. Former subsections (b)(2) and (b)(3) have been renumbered as subsections (b)(3) and (b)(4), respectively.

These amendments are necessary to ensure that victims and their families are not constrained by the general document submission deadline and may provide information up to the point of decision. The revisions also clarify the Board's intent that all timely victim statements—regardless of when they are submitted before the panel's decision—must be reviewed and considered, thereby supporting full and meaningful victim participation in the C&R process.

#### **Section 2851**

Section 2851, subsection (j), was amended to reference the standard in section 2061 for determining whether a representative from the prosecuting agency may be admitted into a hearing after it has begun. This clarification is necessary to ensure consistent application of the criteria governing when such representatives may participate in a hearing, thereby promoting fairness and transparency in the process.

#### **Section 2852**

In section 2852, several amendments were made to clarify the role and rights of a victim's representative during a hearing. In subsection (a), the term “victim's representative” was added

and a minor grammatical correction was made to reflect this expanded terminology. In subsection (c), new language expressly authorizes a victim or their next of kin to designate up to two individuals to serve as victim's representatives for a hearing. Former subsection (c) was renumbered as subsection (d), and was updated to extend the right to make a statement at the hearing to a victim's representative, consistent with abilities afforded to victims and their family members. Former subsection (d) became subsection (e), and former subsection (e) became subsection (f); subsections (e) and (f) now clarify the methods by which a victim's representative may attend a hearing, whether held in person or by videoconference. Former subsection (f) was renumbered as subsection (g) and amended to cross reference section 2061, which sets forth the standard for admitting victims, victims' family members, and victim's representatives into a hearing if they arrive after the hearing has begun. Former subsection (g) is now subsection (h), and was amended to clarify that a victim, next of kin, family member, or victim's representative may submit a written statement at any time prior to the panel's decision. These amendments were necessary to clearly define the rights and participation options of a victim's representative at a C&R hearing, and to clarify the standard to be applied at C&R hearings when determining whether to admit an individual after the hearing has started.

### **Section 2853**

Section 2853, subsection (a), was amended to add the term "victim's representative" and to clarify that a victim's representative is subject to the same restrictions as victims and their family members, including the prohibition on allowing unauthorized individuals to hear, view, record, or transmit any portion of a hearing. This amendment was necessary to ensure that all participants who may attend on behalf of a victim are held to the same confidentiality and security standards, thereby protecting the integrity of the hearing process.

### **Section 2854**

Section 2854, subsection (a), was amended to add the term "victim's representative" and to clarify that a victim's representative, like a victim, may appear at the hearing through counsel. The amendment also clarifies that a victim's representative is responsible for ensuring they have the necessary equipment and a reliable internet connection to effectively attend and participate in the hearing. These changes are necessary to clearly define the participation options available to a victim's representative and to ensure they understand their responsibility for meeting the technical requirements of remote participation.

### **Section 2855**

Section 2855, subsections (d) and (g), were amended to add the term "victim's representative," ensuring that a victim's representative has the same right to make a statement as the victim and their family members when a hearing is postponed or continued. These amendments are necessary to clarify that a victim's representative is entitled to fully exercise the same participation rights as those they represent.

### **Section 2856**

Section 2856, subsection (a) was amended to add new language to state expressly that the subsection does not apply to tie votes. In subsection (b), the phrase "all members" was replaced with "a majority of the C&R panel determines," making clear that a unanimous vote is not required

and that a tie vote is a possible outcome. These amendments are necessary to clarify the decision-making standard and to ensure that the regulations accurately reflect potential voting results.

In subsection (d), the phrase “all members” was replaced with “a majority of the C&R panel determines,” clarifying that a unanimous vote is not required. In subsection (e), the language was amended from “subsection (b) applies” to “subsection (b) does not apply,” further confirming that a unanimous decision is not necessary to decline a C&R recommendation. These changes are necessary to clearly establish that only a majority vote is required to make a determination.

In subsection (e), language was added to explicitly allow for a tie vote on whether a person meets the standard for a C&R recommendation. The amendment further clarifies that, in the event of a tie, both panel members must separately state their reasons for determining whether the person does or does not meet the standard. These changes are necessary to explain how tie votes are handled and to ensure that the record clearly reflects each panel member’s independent rationale.

In subsection (g), the wording was corrected by changing “subsection” to “section” to fix a typographical error. This amendment is necessary to ensure accuracy and clarity in the regulation.

In subsection (i), new language was added to address the newly established en banc process for cases that result in a tie vote. The amendment explains that, when a tie occurs, the en banc decision becomes the proposed decision, and the incarcerated person will receive the determination after the en banc review is completed. These changes are necessary to ensure that incarcerated individuals and stakeholders understand how tie votes are resolved and when the final determination will be issued.

In subsection (k), new language was added to establish the process for considering a tie vote en banc. This amendment clarifies how the en banc panel reviews a tie vote determination, including that the panel may only consider the existing record and may not review new evidence or comments. It also clarifies that the commissioner who participated in the original tie vote is not permitted to participate in the en banc review. These changes are necessary to ensure transparency and to clearly define the limits and structure of the en banc process for resolving tie votes.

In subsection (l), a typographical error was corrected, and the language was amended to include determinations made by en banc panels. This change is necessary to clarify that an en banc panel’s determination following a tie vote constitutes the proposed decision.

In subsection (m), language was added to include determinations made by en banc panels. This amendment is necessary to make clear to the incarcerated person that all determinations—including those issued by an en banc panel—are not subject to the department’s grievance and appeals process. This clarification ensures that individuals understand the limits of available review mechanisms.

Lastly, original subsections (e) through (k) were renumbered as subsections (f) through (m). This change is necessary to maintain accurate and consistent numbering following the amendments made throughout the section.

### **Section 2857**

In section 2857, language was added to include en banc panels, making clear that the section applies to both standard C&R hearing panels and en banc panels. This change is necessary to ensure that the procedures described in the section are understood to govern all types of C&R review panels.

Additionally, the phrase “within three years from the date” was revised to “three years after the date” to clarify that a subsequent C&R review must occur at least three years after the date of the en banc review. The previous phrasing could be interpreted to allow a review to occur at any point inside a three-year window, whereas the amended language makes clear that a full three-year period must elapse before another review may be conducted.

The use of “after” rather than “within” is consistent with the terminology used in Penal Code section 3041.5, which directs that subsequent parole hearings be scheduled “after” a specified period of time. Aligning the regulations with this statutory phrasing promotes consistency and avoids confusion for stakeholders. This amendment is necessary to ensure that scheduling of a subsequent C&R review is clear, uniform, and consistent with the intended minimum review interval.

### **Section 2859**

In section 2859, subsection (a), language was added to include en banc panels, clarifying that the Board’s chief counsel or designee will also review decisions issued by an en banc panel regarding a C&R recommendation. This amendment is necessary to ensure that the review authority applies uniformly to both standard hearing panels and en banc panels.

In subsection (g), a typographical error was corrected to improve accuracy and clarity.

### **SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE RE-NOTICE PERIOD OF FEBRUARY 20, 2026, THROUGH MARCH 9, 2026:**

After issuing re-notice of the above changes on February 20, 2026, the Board explained that it would accept public comment on the regulations from that date through and including March 9, 2026, for a total of 18 days.

The Board received 62 letters or emails from a total of 62 members of the public during the re-notice public comment period of February 20, 2026, through March 9, 2026. As before, each comment was individually identified with a unique identification (“ID”) number as follows: 377-01 [the number of the commenter in order of receipt]-[the number of the comment in order of the comments received from that commenter]. The numbering of the commenters began with 377, since we had received comments from 376 commenters in the original comment period. The Board also received 14 letters outside of the original public comment period and 3 letters outside of the re-notice public comment period. The Board considered each letter received from the same person to be separate letters, with each receiving a unique commenter number. The Board received a total of 79 individual comments from the 62 letters or emails. The comment ID numbers for comments received during the public comment period ranged from 1-01 through 438-01. Tables containing the identification number for each comment along with the commenter’s name, date of the

comment, category of the comment, and the Board's determinations regarding the comment are included in the comments tab. Additionally, copies of each correspondence are included in the comments tab.

Many of the comments raised similar issues or proposed amendments. Thus, the Board addresses each category of comment below and identifies the specific comment ID numbers included in each category.

**ISSUE 1: Tie Votes - Statements of support for the change from requiring a unanimous decision to permitting an en banc referral.**

Comment ID Numbers: 380-02; 399-02; 433-01; 434-01; 435-01

COMMENT: These comments express support for eliminating the requirement of a unanimous decision to issue a C&R recommendation at a hearing. Commenters endorse the change permitting tie votes to be referred en banc and decided by a majority vote of the commissioners.

RESPONSE: DECLINED TO RESPOND

The Board acknowledges receipt of these comments in support of this amendment. The Board has determined that no further response is required.

**ISSUE 2: Tie Votes – Opposes changing the C&R recommendation standard from requiring a unanimous vote to allowing a tie vote.**

Comment ID Number: 382-03

COMMENT: This comment opposes the change from requiring a unanimous vote to issue a C&R recommendation to allowing a tie vote to be referred en banc for resolution by a majority of the commissioners. The commenter believes the revision weakens an important safeguard in the original proposal and raises concerns that the change poses a public safety risk.

RESPONSE: DECLINED TO AMEND

The Board declines to revert to the unanimous vote requirement. Allowing a tie vote to be referred en banc for resolution by a majority of commissioners maintains appropriate safeguards while promoting consistency, efficiency, and fairness in decision-making. This structure mirrors the process long used in the parole suitability context, where en banc review provides an additional level of scrutiny and ensures that complex or closely divided cases receive full consideration by a larger panel.

Requiring unanimity for a C&R recommendation would create an unnecessarily high procedural barrier that is not used elsewhere in the Board's decision-making framework and could result in outcomes driven by a single dissenting vote rather than the collective judgment of the Board. The revised process continues to protect public safety by ensuring that any recommendation is supported by a majority of commissioners following en banc review. For these reasons, the Board maintains the proposed regulations, as amended.

**ISSUE 3: Opposes the change permitting the prosecutor to have access to an incarcerated person’s central file.**

Comment ID Number: 427-02

COMMENT: The commenter expresses concern about allowing a prosecutor’s representative to review non-confidential documents prior to the hearing, noting that prosecutors already receive notice in commutation matters and may submit written recommendations to the Governor. The commenter is concerned that expanding prosecutorial access to case files at this stage may unbalance the process and diminish meaningful consideration of evidence related to rehabilitation, accountability, and readiness for release.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulations in response to this comment. The Board always intended to permit the prosecuting agency’s representative to review nonconfidential portions of an incarcerated person’s central file prior to the C&R hearing so that the representative may meaningfully participate in the proceeding. Providing this access ensures that all parties are adequately prepared and that the hearing record is fully developed. Allowing access to these records is also important to achieve the goal of these regulations in establishing a uniform and transparent process where prosecutors and victims are able to participate.

This approach is consistent with longstanding practice in the parole suitability process, where prosecutors are permitted to review the central file in advance of the hearing. Allowing similar access in the C&R hearing process promotes uniformity across Board proceedings and does not expand the scope of prosecutorial participation beyond what already exists in similar contexts.

Importantly, only non-confidential documents are made available, and it is important that evidence of rehabilitation, accountability, and readiness for release receives full and fair consideration by all hearing participants. For these reasons, the Board maintains the proposed regulatory language.

**ISSUE 4: Opposes the change from “within three years” to “after three years.”**

Comment ID Numbers: 391-01; 399-01; 400-01; 401-01; 402-01; 406-01; 407-01; 408-01; 409-01; 410-01; 411-01; 412-01; 415-01; 416-01; 418-01; 419-01; 420-01; 421-01; 422-01; 424-01; 427-01; 428-01; 430-01

COMMENT: Commenters object to the change throughout the regulations from requiring a subsequent C&R review to occur “within three years” to allowing it to occur “after three years.” They request that the Board establish a maximum four-year limit for conducting the next review for individuals who remain eligible. Commenters express concern that, without a defined outer deadline, incarcerated persons may experience uncertain or prolonged delays. They argue that clear timelines are necessary to allow individuals to adequately prepare and to ensure consistent treatment among similarly situated candidates.

RESPONSE: DECLINED TO AMEND

The Board declines to amend the regulations in response to these comments. The change from “within three years” to “after three years” is intended to provide essential flexibility in scheduling subsequent C&R reviews while still ensuring that eligible individuals receive periodic reconsideration. The prior “within” language created confusion and uncertainty about when a subsequent review would be scheduled. By using language that follows what is used in the Penal Code for parole suitability hearings, use of “after three years” helps to inform people of how scheduling will work, as it will be similar to what is currently being done for parole hearings.

While commenters express concern about the possibility of delay, the Board remains committed to conducting subsequent reviews in a timely and orderly manner. The revised language does not diminish oversight or allow for indefinite postponement. Rather, it aligns the regulations with established case management practices and ensures that reviews can be scheduled in a way that supports operational efficiency and the Board’s overarching public safety responsibilities.

Additionally, the revised phrasing aligns the regulations with the language used in Penal Code section 3041.5, which requires the scheduling of subsequent parole hearings “after” a specified period of time. Maintaining consistency with statutory terminology promotes clarity, uniformity, and harmonization across the Board’s regulatory framework. For these reasons, the Board maintains the proposed language.

**ISSUE 5: Implementation order – Requests the Board establish an implementation order and provide the public with additional information concerning the C&R recommendation assessment process.**

Comment ID Numbers: 380-03; 411-06

COMMENT: Commenter requests that the Board strengthen transparency and clarify timelines in the review process. They seek additional information on: (1) how cases are screened after 25 years, (2) the criteria used to determine “reasonable likelihood,” (3) the timelines between the consultation, review, and formal hearing, and (4) how families can meaningfully participate. Another commenter asks the Board to prioritize individuals who have served the longest consecutive terms and to give particular consideration to elderly incarcerated persons.

RESPONSE: OUTSIDE THE SCOPE OF THE RE-NOTICE

The Board acknowledges receipt of these comments; however, the topics identified are beyond the scope of the regulatory changes included in the re-notice and therefore require no further response.

**ISSUE 6: Requests the Board provide notice to the incarcerated person’s family.**

Comment ID Number: 380-04

COMMENT: The commenter requests that families of incarcerated individuals eligible for the C&R recommendation process be notified and provided guidance at each stage of the process.

RESPONSE: OUTSIDE THE SCOPE OF THE RE-NOTICE

The Board acknowledges receipt of this comment; however, the topic identified is beyond the scope of the regulatory changes included in the re-notice and therefore requires no further response.

**ISSUE 7: Opposes establishing a recurring review structure for people with long sentences.**

Comment ID Number: 382-02

COMMENT: The commenter opposes the regulations on the grounds that they create a recurring review structure for individuals serving long sentences.

RESPONSE: OUTSIDE THE SCOPE OF THE RE-NOTICE

The Board acknowledges receipt of this comment; however, the topic identified is beyond the scope of the regulatory changes included in the re-notice and therefore requires no further response.

**ISSUE 8: Support for the addition of the victim representative and clarification of notice procedures.**

Comment ID Number: 382-04

COMMENT: The commenter expresses support for the inclusion of victim representatives and for the clarified notice procedures.

RESPONSE: DECLINED TO AMEND

The Board acknowledges receipt of this comment. The Board has determined that no further response is required.

**ISSUE 9: Public safety decisions of this magnitude should be made by the Legislature, not the Board.**

Comment ID Number: 382-05

COMMENT: The commenter opposes the regulations, asserting that decisions regarding eligibility and sentence modification are matters left to the Legislature. The commenter further notes that the Legislature declined to advance SB 672 after considering similar policy issues, and contends that the Board is now attempting to implement those same policies through regulation.

RESPONSE: OUTSIDE THE SCOPE OF THE RE-NOTICE

The Board acknowledges receipt of this comment; however, the topic identified is beyond the scope of the regulatory changes included in the re-notice and therefore requires no further response.

**ISSUE 10: Remove the exclusionary criteria that prevents some incarcerated persons from being considered under these regulations.**

Comment ID Numbers: 397-02; 398-02; 403-01; 411-03; 425-01

COMMENT: Commenters assert that all individuals should have the opportunity to appear before the Board regardless of their sentence. Another commenter specifically requests that the Board not exclude individuals required to register under Penal Code section 290 from the C&R recommendation assessment process. Another comment requests that the Board amend section 2843, subsection (b)(2), to add to the end of sentence, “unless otherwise excepted pursuant to sections 1203.4(f) or 4852.01(d) of the Penal Code.”

RESPONSE: OUTSIDE THE SCOPE OF THE RE-NOTICE

The Board acknowledges receipt of these comments; however, the topics identified are beyond the scope of the regulatory changes included in the re-notice and therefore require no further response.

**ISSUE 11: Establish a base term system for resentencing.**

Comment ID Number: 398-01

COMMENT: The commenter requests that the Board establish a base term when issuing a C&R recommendation, asserting that a defined base term is necessary to guide any subsequent resentencing or commutation decision.

RESPONSE: OUTSIDE THE SCOPE OF THE RE-NOTICE

The Board acknowledges receipt of this comment; however, the topic identified is beyond the scope of the regulatory changes included in the re-notice and therefore requires no further response.

**ISSUE 12: Specify a timeline for the appointment of attorney counsel for incarcerated persons.**

Comment ID Number: 398-03

COMMENT: The commenter requests that the Board amend section 2847, subsection (a), to add language requiring that individuals be advised of their right to counsel as referenced in subsection (f). The commenter also asks the Board to specify that state-appointed counsel be provided at least 90 days before the hearing date.

RESPONSE: OUTSIDE THE SCOPE OF THE RE-NOTICE

The Board acknowledges receipt of this comment; however, the topics identified are beyond the scope of the regulatory changes included in the re-notice and therefore require no further response.

**ISSUE 13: Documents should be translated into the five most commonly spoken languages.**

Comment ID Number: 411-02

COMMENT: The commenter requests that the Board translate all forms and notices concerning the C&R recommendation assessment process into the five most commonly spoken languages.

RESPONSE: OUTSIDE THE SCOPE OF THE RE-NOTICE

The Board acknowledges receipt of this comment; however, the topic identified is beyond the scope of the regulatory changes included in the re-notice and therefore requires no further response.

**ISSUE 14: The Board's legal standard for issuing a C&R recommendation is vague.**

Comment ID Number: 411-04

COMMENT: The commenter asserts that the legal standard for issuing a C&R recommendation is vague and requests that the Board remove the reference to antisocial acts from that standard.

RESPONSE: OUTSIDE THE SCOPE OF THE RE-NOTICE

The Board acknowledges receipt of this comment; however, the topic identified is beyond the scope of the regulatory changes included in the re-notice and therefore requires no further response.

**ISSUE 15: The implementation timeline for holding C&R reviews should be reduced to three years.**

Comment ID Number: 411-05

COMMENT: The commenter requests that the Board shorten the implementation timeline, proposing that it be reduced from ten years to three.

RESPONSE: OUTSIDE THE SCOPE OF THE RE-NOTICE

The Board acknowledges receipt of this comment; however, the topic identified is beyond the scope of the regulatory changes included in the re-notice and therefore requires no further response.

**ISSUE 16: Incarcerated persons serving a life sentence should have an opportunity for a second chance.**

Comment ID Number: 387-01

COMMENT: The commenter expresses support for expanding opportunities for individuals serving life sentences to be considered for release.

RESPONSE: OUTSIDE THE SCOPE OF THE RE-NOTICE

The Board acknowledges receipt of this comment; however, the topic identified is beyond the scope of the regulatory changes included in the re-notice and therefore requires no further response.

**ISSUE 17: Statements of general support.**

Comment ID Numbers: 377-01; 378-01; 379-01; 380-01; 381-01; 383-01; 384-01; 385-01; 386-01; 388-01; 389-01; 390-01; 392-01; 393-01; 394-01; 395-01; 396-01; 397-01; 404-01; 405-01; 413-01; 414-01; 417-01; 423-01; 426-01; 429-01; 431-01; 432-01; 436-01; 437-01

COMMENT: These comments express general support for the regulations or reinforce reasons already provided by the board in support of the rulemaking.

RESPONSE: DECLINED TO AMEND

The Board acknowledges receipt of these comments for general support. The Board has determined that no further response is required.

**ISSUE 18: Statement of general opposition.**

Comment ID Number: 382-01

COMMENT: This comment expresses general opposition to the regulations.

RESPONSE: DECLINED TO AMEND

The Board acknowledges receipt of these comments for general opposition. The Board has determined that no further response is required.

**UPDATED FISCAL AND ECONOMIC IMPACT:**

The Board initially submitted its Form 399 Fiscal and Economic Impact Statement to OAL on August 26, 2025, along with its notice regarding the proposed regulatory action BPH RN 25-01. Following that submission, the Board amended the regulations and submitted the amended regulations for re-notice on February 20, 2026. None of the amendments have any further fiscal impact because they will not require any additional C&R hearings or reviews over the next several years that the Board has not already outlined in the Attachment to the Form 399 submitted by the Board on August 26, 2025.

None of these changes have any impact on the resources or staff the Board will need to carry out its functions. Therefore, the September 5, 2025 Fiscal and Economic Impact Statement remains current and accurate.

**LOCAL MANDATE DETERMINATION:**

The Board has determined this action does not impose a mandate on local agencies or school districts, nor does it impose a mandate that requires reimbursement pursuant to Part 7 (Section 17561) of Division 4 of the Government Code.

**ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES:**

No alternatives were proposed to the Board that would lessen any adverse economic impact on small businesses.

**ALTERNATIVES DETERMINATION:**

There have not been alternatives considered that would be more effective in carrying out the purpose of this action, as effective as and less burdensome to affected private persons than the action proposed, or more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The amendments adopted by the Board are the only regulatory provisions identified that accomplish the objective of determining which incarcerated persons are appropriate candidates for a recommendation to the sentencing court or the Governor for recall of sentence and resentencing or commutation, as described in the Initial Statement of Reasons. Apart from the alternatives discussed in the summary and responses to comments, no other alternatives have been proposed or brought to the Board's attention.

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