



Board of Parole Hearings

FINAL TEXT OF REGULATIONS

Rulemaking Action BPH RN 25-01:

Consultations; 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

Additions are indicated by single underline and deletions are indicated by single ~~striketrough~~.

California Code of Regulations

Title 15. Crime Prevention and Corrections

Division 2. Board of Parole Hearings

Chapter 3. Parole Release

Article 4. Parole Consideration Procedures for Life Prisoners and Nonlife 1168 Prisoners

Section 2267. Consultations is *added* to read as follows:

§ 2267. Consultations.

(a) General. All eligible incarcerated persons, as defined in subsection (b), shall receive a consultation in accordance with Penal Code section 3041 prior to their initial parole suitability hearing.

(1) Consultation Defined. A consultation under this section is a meeting between an incarcerated person and a board commissioner or deputy commissioner to review and document conduct and factors pertinent to parole suitability as identified during this review. During a consultation, the commissioner or deputy commissioner shall provide the incarcerated person with information about the parole suitability hearing process, factors that must be considered by law relevant to their suitability or unsuitability for parole, and individualized recommendations for the individual regarding their programming, institutional behavior, and release plans.

(2) Consultations are not board decisions and do not involve the consideration of parole suitability or the setting, postponing, or rescinding of a parole release date for any incarcerated person. Notice and appearance rights under Penal Code sections 3041.7, 3042, and 3043 do not apply.

(b) Eligibility. An incarcerated person is eligible for a consultation under this section if the board has jurisdiction to consider their suitability for parole at a parole suitability hearing scheduled to occur in accordance with their minimum eligible parole date (MEPD), youth parole eligible date (YPED), elderly parole eligible date (EPED), nonviolent parole eligible date (NPED), or other legal authority.

(c) Scheduling. The board shall schedule the incarcerated person's consultation during the sixth year prior to the projected date for their initial parole suitability hearing, but not later than five years prior to the projected date for their initial parole suitability hearing.

(d) Notwithstanding subsections (a), (b), and (c), if an incarcerated person's earliest eligibility date is calculated or modified so that the incarcerated person is eligible for a parole hearing in less than six years, the incarcerated person shall be scheduled for a consultation so long as the consultation is scheduled to occur more than two years prior to the initial parole suitability hearing.

(e) The following rights apply at consultations:

(1) An incarcerated person, if they choose to participate in the consultation, shall participate by videoconference or in person, in accordance with section 2059. If the incarcerated person declines to participate in the consultation, the commissioner or deputy commissioner shall review the incarcerated person's central file and provide to the incarcerated person the board's findings and recommendations in accordance with this section.

(2) Incarcerated persons with disabilities under the Americans with Disabilities Act shall receive reasonable accommodations for consultations as enumerated under this division.

(3) Incarcerated persons requiring a foreign language interpreter shall be provided an interpreter if necessary to achieve effective communication between the hearing officer and the incarcerated person.

(f) Incarcerated persons shall not have legal representation at a consultation.

(g) Information Considered. The commissioner or deputy commissioner shall consider the incarcerated person's central file to identify their conduct and activities as contained in documents including, recent or relevant classification chronos, disciplinary records, and programming relevant to parole suitability. If the incarcerated person participates in the consultation, the commissioner or deputy commissioner shall also consider information provided by the incarcerated person during the consultation.

(h) During the consultation, the commissioner or deputy commissioner shall identify:

(1) Any missing documents from the central file that would be of assistance at a parole hearing, such as an appellate court decision or abstract of judgment. The board shall refer the matter to the department's case records staff;

(2) Any potential need for investigation and refer the matter to the chief of the Investigations and Reentry Screening Division or their designee for further investigation; and

(3) Any potential need for a review of legal issues and refer the matter to the chief counsel.

(i) Findings and Recommendations. Regardless of whether the incarcerated person attends the consultation, the board shall issue to the incarcerated person no later than 30 days following the consultation, the commissioner or deputy commissioner's findings in writing, which includes, the commissioner or deputy commissioner's individual recommendations concerning the incarcerated person's programming, institutional behavior, and parole plans.

(j) Referral for a Commutation and Recall of Sentence Hearing. Upon completion of a consultation, the commissioner or deputy commissioner may refer an incarcerated person to the commutation and recall of sentence recommendation assessment process as authorized in section 2845 of this division. The commissioner or deputy commissioner shall make the referral in writing within 30 days from the date of the consultation. Referral to the commutation and recall of sentence

recommendation assessment process shall not impact the incarcerated person's right to a parole suitability hearing.

(k) Consultations shall not be audio-recorded or transcribed.

(l) An incarcerated person shall only receive one consultation during a continuous term of incarceration.

Note: Authority cited: Section 12838.4, Government Code; Sections 1172.1(a), 3041(a)(1), 3051(c), 3052, 3055(e), 4801(a), and 5076.2, Penal Code. Reference: Sections 1172.1(a), 3041(a)(1), 3051(c), 3055(e), and 4801(a), Penal Code.

California Code of Regulations
Title 15. Crime Prevention and Corrections
Division 2. Board of Parole Hearings

Chapter 7.1 is *added* to read as follows:

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

§ 2840. Definitions.

The following definitions apply to the regulations contained in this chapter.

(a) "Commutation and recall of sentence recommendation assessment" (C&R recommendation assessment) is the Board of Parole Hearings' (board) process of determining whether it should recommend a person for commutation of sentence under Penal Code section 4801 and for recall of sentence and resentencing under Penal Code section 1172.1. The process includes C&R reviews and C&R hearings.

(b) "Commutation and recall of sentence eligibility date" (CRED) is the date upon which an incarcerated person will have served 25 years of continuous incarceration, based on actual days served since the date the person was received by the California Department of Corrections and Rehabilitation (department), plus any actual days the person served prior to sentencing, as ordered by the court under Penal Code section 2900.5, and any actual days served in custody between sentencing and the date the person is received by the department. Continuous incarceration ends upon a break in custody. For purposes of calculating a CRED, a break in custody occurs when an incarcerated person escapes from custody or is released on parole.

(c) "Commutation and recall of sentence hearing" (C&R hearing) is a meeting between an incarcerated person and a C&R hearing panel to determine if the person meets the standard for a C&R recommendation. A C&R hearing will only take place if an incarcerated person is referred

by a hearing officer for a C&R hearing following a C&R review or a consultation, as described in section 2845.

(d) “Commutation and recall of sentence hearing determination” (C&R hearing determination) is the determination hearing officers make at the conclusion of a C&R hearing about whether the incarcerated person meets the standard for a C&R recommendation.

(e) “Commutation and recall of sentence hearing panel” (C&R hearing panel) is a panel of two or three hearing officers who are assigned to make a C&R hearing determination. Only one panel member may be a deputy commissioner. One member of the panel shall be designated the presiding hearing officer.

(f) “Commutation and recall of sentence recommendation” (C&R recommendation) is a notification by the board to the Governor and to the court that a C&R hearing panel made a determination that an incarcerated person meets the standard in subsection (b) of section 2856, pursuant to the board’s authority under subdivision (a) of section 4801 of the Penal Code and paragraph (1) of subdivision (a) of section 1172.1 of the Penal Code.

(g) “Commutation and recall of sentence review” (C&R review) is a meeting between an incarcerated person and a hearing officer to determine whether the person should be referred for a C&R hearing. For a C&R review, the hearing officer may be a commissioner or deputy commissioner.

(h) “Commutation and recall of sentence review outcome” (C&R review outcome) is the determination a hearing officer makes at the conclusion of a C&R review about whether the incarcerated person should be referred for a C&R hearing.

(i) “Consultation” is a meeting required by Penal Code section 3041, subdivision (a)(1), and described in section 2267 of chapter 3 of this division.

(j) “Effective communication” is defined the same as in section 2051 of article 6 of chapter 1 of this division.

(k) “Hearing officer” means a commissioner or deputy commissioner of the board.

(l) “Incarceration” means detention in any city or county jail, local juvenile facility, mental health facility, former Division of Juvenile Justice facility, or department facility.

(m) A “meeting” between a hearing officer and an incarcerated person may be achieved by any means sufficient to enable two-way communication between the hearing officer and the person. A meeting may be conducted in person or by videoconference, as described in section 2842.

(n) “Member of a victim’s family” is a person identified in subdivision (e) of section 3043 of the Penal Code who has registered as a member of a victim’s family with the department’s Office of Victim and Survivor Rights and Services.

(o) “Physical presence” or being “physically present” is defined the same as in section 2051 of article 6 of chapter 1 of this division.

(p) “Prosecuting agency or agencies” includes any California district attorney office responsible for prosecuting the incarcerated person for any crimes for which the person is currently incarcerated, or the State of California Office of the Attorney General if that office was responsible for prosecuting the person for any crimes for which the person is currently incarcerated.

(q) A “referral” for a C&R hearing is a determination by a hearing officer at a C&R review or consultation that an incarcerated person should be scheduled for a C&R hearing.

(r) “Sentencing court” means a California superior court that imposed a sentence for which a person is currently incarcerated.

(s) “Victim” is defined the same as in section 2051 of article 6 of chapter 1 of this division.

(t) “Victim’s next of kin” is defined the same as in section 2051 of article 6 of chapter 1 of this division.

(u) “Victim’s representative” is defined the same as in section 2051 of article 6 of chapter 1 of this division.

(v) “Victim support person” is a person designated by a victim, victim’s next of kin, or member of a victim’s family to appear and offer support at a C&R hearing and is identified in advance of the hearing to the department’s Office of Victim and Survivor Rights and Services.

(w) “Videoconference” is defined the same as in section 2051 of article 6 of chapter 1 of this division.

Note: Authority cited: Section 12838.4, Government Code; and Sections 1172.1(a), 4801(a), and 5076.2, Penal Code. Reference: Sections 1172.1(a) and 4801(a), Penal Code.

§ 2841. Authority.

(a) The provisions of this chapter establish a framework for the board to exercise its discretion under Penal Code section 4801, subdivision (a), to report to the Governor the names of incarcerated persons who ought to have a commutation of sentence, and to exercise its discretion under Penal Code section 1172.1, subdivision (a)(1), to recommend an incarcerated person to a sentencing court for recall of sentence and resentencing, in a manner that promotes informed decision-making and allows victims and prosecutors to participate in the process.

(b) The board’s C&R review outcomes, C&R hearing determinations, and C&R recommendations are not parole release decisions. C&R reviews and C&R hearings are not parole release proceedings.

(c) Nothing in this chapter affects an incarcerated person's ability to file a request for a commutation of sentence directly with the Governor.

(d) The provisions of other chapters within division 2 do not apply to the commutation and recall of sentence recommendation assessment process described in this chapter, unless expressly incorporated.

Note: Authority cited: Section 12838.4, Government Code; and Sections 1172.1(a), 4801(a), and 5076.2, Penal Code. Reference: Sections 1172.1(a) and 4801(a), Penal Code; *Marston v. Kernan* (C.D. Cal., Jan. 12, 2018, No. CV 17-9167-VAP (DFM)) 2018 WL 6262855 at 1.

§ 2842. Method of Conducting a C&R Review or C&R Hearing.

(a) A C&R review is conducted by videoconference if the incarcerated person communicates by videoconference with the hearing officer assigned to conduct the review.

(b) A C&R hearing is conducted by videoconference if the incarcerated person, or their attorney if the person waives participation in the hearing, communicates by videoconference with the hearing officers assigned to conduct the hearing. Neither the incarcerated person, nor their attorney at a C&R hearing, is physically present with the hearing officers.

(c) A C&R review is conducted in person if the incarcerated person communicates with the hearing officer assigned to conduct the review while physically present with the hearing officer.

(d) A C&R hearing is conducted in person if the incarcerated person, or their attorney if the person waives participation in the hearing, communicates with all the hearing officers assigned to conduct the hearing while physically present with the hearing officers.

(e) Sections 2053, 2054, 2055, and 2056 of article 6 of chapter 1 of this division apply to determining whether the board will conduct a C&R review or C&R hearing by videoconference or in person.

Note: Authority cited: Section 12838.4, Government Code; and Sections 1172.1(a), 4801(a), and 5076.2, Penal Code. Reference: Sections 1172.1(a) and 4801(a), Penal Code.

§ 2843. Eligibility for C&R Recommendation Assessment Process.

(a) An incarcerated person currently serving a sentence under the jurisdiction of the department is eligible for the C&R recommendation assessment process and to receive an initial C&R review after completing 25 years of continuous incarceration, except as provided in subsection (b).

(b) An incarcerated person who meets one or more of the following criteria is not eligible for the C&R recommendation assessment process:

(1) A person who is sentenced to death;

(2) A person who has been convicted of a sexual offense that currently requires or will require registration for a sex offense under section 290 of the Penal Code;

- (3) A person who is expected to be released from incarceration within three years;
- (4) A person whose controlling parole eligible date is in the past;
- (5) A person who will be eligible for parole consideration by the board under any provision of law within three years; or
- (6) A person who received a commutation of sentence during their current term of incarceration.

(c) The department's case records staff determines who meets the eligibility criteria described in subsection (a) and calculates a CRED for each eligible incarcerated person.

(d) For purposes of this section, "controlling parole eligible date" is the earliest applicable date upon which an incarcerated person is eligible for parole consideration based on any provision of law.

Note: Authority cited: Section 12838.4, Government Code; and Sections 1172.1(a), 4801(a), and 5076.2, Penal Code. Reference: Sections 1172.1(a) and 4801(a), Penal Code.

§ 2844. C&R Review Process.

(a) At a C&R review, an eligible incarcerated person described in section 2843, subsection (a), shall meet with a hearing officer who shall determine whether the person should be referred for a C&R hearing.

(b) For an incarcerated person who is eligible for an initial C&R review on or before December 31, 2035, the board shall conduct the initial C&R review by December 31, 2035. The board will conduct C&R reviews for eligible persons under this subsection based on the availability of staff and resources.

(c) For an incarcerated person who is first eligible for an initial C&R review on or after January 1, 2036, the board shall conduct an initial C&R review within one year following the person's CRED.

(d) At least 30 days prior to the date an incarcerated person's C&R review will be conducted, the person shall be served with notice of the date of the review. The notice shall include a brief written description of the C&R review and C&R hearing processes. A copy of the notice shall be placed in the person's central file.

(e) The board shall provide an incarcerated person with reasonable accommodations for participating in the C&R review process, as required under the Americans with Disabilities Act.

(f) The board shall provide an incarcerated person with a foreign language interpreter at a C&R review if necessary to achieve effective communication between the hearing officer and the incarcerated person.

(g) An incarcerated person shall not have legal representation at a C&R review.

(h) Prior to making a C&R review outcome, the hearing officer shall meet with the person on the date the C&R review is conducted, unless the person declines to attend the meeting. If the person declines to attend, the review will be held in absentia, without the person.

(i) During the meeting, the hearing officer shall provide the incarcerated person with information about the board's C&R hearing process and may question the person regarding matters relevant to making a C&R review outcome.

(j) At a C&R review, the hearing officer shall make a C&R review outcome. The hearing officer shall refer the person for a C&R hearing only if there is a reasonable likelihood a C&R hearing panel will find the person meets the standard for a C&R recommendation under section 2856.

(k) In making a C&R review outcome, the hearing officer shall consider all relevant and reliable information, as described in section 2850, subsection (a).

(l) The hearing officer may request an investigation to obtain specific relevant information for consideration by the board at a future C&R review or a C&R hearing.

(m) Within 30 days of the C&R review, the hearing officer shall issue a written decision specifying the C&R review outcome. The written decision shall include findings and individualized recommendations for the person regarding their work assignments, rehabilitative programs, and institutional behavior. Within 15 business days of issuing the decision, a copy of the decision shall be served on the person and placed in their central file.

(n) If the incarcerated person is referred for a C&R hearing, the board shall notify the department's Office of Victim and Survivor Rights and Services of the referral so that the Office of Victim and Survivor Rights and Services can make reasonable efforts to notify victims, victims' next of kin, or members of a victim's family who are not yet registered with the Office of Victim and Survivor Rights and Services of the C&R hearing process.

(o) If the incarcerated person is not referred for a C&R hearing at a C&R review, the board will conduct a subsequent C&R review three years after the date of the person's last C&R review, unless the person is determined to no longer be eligible for a C&R review under section 2843 at the time of the subsequent C&R review.

(p) C&R review outcomes are not subject to the department's grievance and appeal process under article 1 of subchapter 5.1 of chapter 1 of division 3 of this title.

Note: Authority cited: Section 12838.4, Government Code; and Sections 1172.1(a), 4801(a), and 5076.2, Penal Code. Reference: Sections 1172.1(a) and 4801(a), Penal Code.

§ 2845. Referral for C&R Hearing After Penal Code Section 3041 Consultation.

(a) At a consultation required by Penal Code section 3041, subdivision (a)(1), and described in section 2267 of chapter 3 of this division, if a hearing officer finds there is a reasonable likelihood a C&R hearing panel will find an incarcerated person meets the standard for a C&R

recommendation under section 2856, the hearing officer shall issue a written referral as described in subsection (j) of section 2267 of chapter 3 of this division and the board shall notify the department's Office of Victim and Survivor Rights and Services of the referral so that the Office of Victim and Survivor Rights and Services can make reasonable efforts to notify victims, victims' next of kin, or members of a victim's family who are not yet registered with the Office of Victim and Survivor Rights and Services of the C&R hearing process.

(b) If the hearing officer does not find there to be a reasonable likelihood the incarcerated person meets the standard for a C&R recommendation under section 2856, or if the hearing officer determines the person is excluded from eligibility for the C&R recommendation assessment process under section 2843, subsection (b), the hearing officer shall not issue a written referral as described in subsection (j) of section 2267 of chapter 3 of this division.

Note: Authority cited: Section 12838.4, Government Code; and Sections 1172.1(a), 4801(a), and 5076.2, Penal Code. Reference: Sections 1172.1(a) and 4801(a), Penal Code.

§ 2846. Purpose and Timing of a C&R Hearing.

(a) The board shall conduct a C&R hearing for an incarcerated person after the person is referred for a C&R hearing following a C&R review under subsection (j) of section 2844 or following a consultation under subsection (j) of section 2267 of chapter 3 of this division. At a C&R hearing, the board shall determine if the person meets the standard for a C&R recommendation under section 2856.

(b) A C&R hearing shall be conducted no later than one year from the date the incarcerated person was referred for a C&R hearing at a C&R review or consultation.

Note: Authority cited: Section 12838.4, Government Code; and Sections 1172.1(a), 4801(a), and 5076.2, Penal Code. Reference: Sections 1172.1(a) and 4801(a), Penal Code.

§ 2847. Procedures Before a C&R Hearing.

(a) At least 120 days prior to the date an incarcerated person's C&R hearing will be conducted, the person shall be served with notice of the date of the hearing. The notice shall include a brief written description of the C&R hearing process. A copy of the notice shall be placed in the person's central file.

(b) At least 90 days prior to the date an incarcerated person's C&R hearing will be conducted, the board shall notify victims, victims' next of kin, and members of a victim's family registered with the department's Office of Victims and Survivor Rights and Services at that time, as well as the prosecuting agency or agencies, of the date the person's C&R hearing will be conducted. The notice shall include the methods by which they may attend the hearing, as described in sections 2852, subsections (e) and (f), and 2851, subsections (g) and (h).

(c) At least 15 days prior to the date the C&R hearing will be conducted, a victim, victim's next of kin, or member of a victim's family planning to attend the hearing shall notify the department's Office of Victim and Survivor Rights and Services of:

- (1) their intention to attend and the method by which they will attend; and
- (2) the name of any victim support person who will be supporting them at the hearing.

(d) At least 15 days prior to the date the C&R hearing will be conducted, a victim or victim's next of kin shall notify the department's Office of Victim and Survivor Rights and Services of:

- (1) the name of any victim's representative they are designating as their representative at the hearing; and
- (2) the intention of the representative to attend the hearing and the method by which the representative will attend.

(e) At least 14 days prior to the date the C&R hearing will be conducted, a representative of the prosecuting agency or agencies planning to attend the C&R hearing shall notify the board of their intention to attend and the method by which they will attend. The incarcerated person's attorney shall be notified that a representative of the prosecuting agency or agencies will attend.

(f) An incarcerated person shall receive state-appointed legal representation for the C&R hearing, unless the person retains private legal representation in lieu of state-appointed legal representation or knowingly and voluntarily waives state-appointed legal representation and chooses self-representation.

(g) In the case of an incarcerated person convicted of the murder of a peace officer, the board shall notify the law enforcement agency that employed the peace officer at the time of the murder of the C&R hearing at least 30 days prior to the date the person's C&R hearing will be conducted. The notice shall include the date the C&R hearing will be conducted and information regarding the ability of any individual to submit information concerning the incarcerated person and their commitment offense(s) to the board under this section.

(h) In the case of an incarcerated person convicted of the murder of a firefighter, the board shall notify the fire department that employed the firefighter at the time of the murder of the C&R

hearing at least 30 days prior to the date the person's C&R hearing will be conducted, if the fire department requests to receive that notification from the board. The notice shall include the date the C&R hearing will be conducted and information regarding the ability of any individual to submit information concerning the incarcerated person and offenses committed by the person to the board under this section.

(i) Any person may submit information to the board concerning an incarcerated person and their commitment offense(s). Written comments from the public shall be directed to the board's executive officer, who shall make the documents available for the C&R hearing panel.

(j) Documents submitted under this section by any party will be considered by the C&R hearing panel if they are received by the board at least 10 days prior to the hearing.

(k) At least 10 days prior to the date the C&R hearing will be conducted, an incarcerated person may review non-confidential documents in their department central file, in compliance with department procedures for reviewing the documents, and shall receive notice of any confidential documents in their department central file that may be used to make a C&R hearing determination.

(l) Prior to the date of the C&R hearing, a representative from the prosecuting agency may review non-confidential documents in the incarcerated person's department central file.

Note: Authority cited: Section 12838.4, Government Code; and Sections 1172.1(a), 4801(a), and 5076.2, Penal Code. Reference: Sections 1172.1(a) and 4801(a), Penal Code.

§ 2848. Comprehensive Risk Assessment.

(a) A licensed psychologist employed by the board shall prepare a comprehensive risk assessment before a C&R hearing is conducted. Psychologists shall consider factors impacting an incarcerated person's risk of violence, which may include factors listed in section 2850, subsection (a). The psychologist shall incorporate structured risk assessment instruments like the HCR-20-V3 and STATIC-99R that are commonly used by mental health professionals who assess risk of violence of incarcerated persons.

(b) The Chief Psychologist or a senior psychologist shall review the comprehensive risk assessment to ensure that the psychologist's opinions are based upon adequate scientific foundation.

(c) Comprehensive risk assessments shall be completed, approved, and served on the incarcerated person within six months following a referral for a C&R hearing.

(d) The objection process outlined in subsections (e) through (h) of section 2240 of article 2 of chapter 3 of this division does not apply for any comprehensive risk assessment prepared under this section. Objections to information in a comprehensive risk assessment prepared under this section can be raised at the C&R hearing with the C&R hearing panel.

Note: Authority cited: Section 12838.4, Government Code; and Sections 1172.1(a), 4801(a), and 5076.2, Penal Code. Reference: Sections 1172.1(a) and 4801(a), Penal Code.

§ 2849. Cancellation of C&R Hearing After Referral.

- (a) The board shall cancel a C&R hearing and not conduct the hearing under section 2846 if:
- (1) an incarcerated person's overall risk rating is high on the comprehensive risk assessment prepared under section 2848 after the person is referred for a C&R hearing; or
 - (2) after the person is referred for a C&R hearing, the incarcerated person receives a Rules Violation Report classified by the department as serious, as specified in subsection (a) of section 3315 of article 5 of subchapter 4 of chapter 1 of division 3 of this title, for which the department found the incarcerated person guilty at a disciplinary hearing.
- (b) If the board cancels an incarcerated person's C&R hearing under subsection (a), the board shall conduct a subsequent C&R review for the person three years after the date the C&R hearing was cancelled, as long as the person still meets the eligibility criteria described in section 2843 at the time of the subsequent C&R review.

Note: Authority cited: Section 12838.4, Government Code; and Sections 1172.1(a), 4801(a), and 5076.2, Penal Code. Reference: Sections 1172.1(a) and 4801(a), Penal Code.

§ 2850. Information Considered at a C&R Hearing.

- (a) A C&R hearing panel shall consider all relevant and reliable information available in the incarcerated person's confidential and non-confidential records, including but not limited to the person's criminal and parole history, demonstration of self-control, involvement with available programming, institutional behavior, degree of personal change since the commitment offense, release plans, age and circumstances at the time of the commitment offense, current age, and diminished physical condition, if any.
- (b) A C&R hearing panel shall review all of the following information:
- (1) all information regarding the incarcerated person received by the board from the prosecuting agency or agencies, police or fire departments, and the public at least 10 days prior to the date the C&R hearing will be conducted;
 - (2) any written statement received by the board from a victim, victim's next of kin, member of a victim's family, and victim's representative that was submitted under section 2852, subsection (h), prior to the hearing panel making a decision at the hearing;
 - (3) any documents submitted to the board by the incarcerated person at least 10 days prior to the date the C&R hearing will be conducted; and,
 - (4) any comprehensive risk assessment prepared by a board psychologist under section 2848.

Note: Authority cited: Section 12838.4, Government Code; and Sections 1172.1(a), 4801(a), and 5076.2, Penal Code. Reference: Sections 1172.1(a) and 4801(a), Penal Code.

§ 2851. C&R Hearing Process.

(a) On the date an incarcerated person's C&R hearing is conducted, a C&R hearing panel shall determine whether the person meets the standard for a C&R recommendation under section 2856.

(b) The board shall provide an incarcerated person with reasonable accommodations for participating in the C&R hearing process, as required under the Americans with Disabilities Act.

(c) The board shall provide an incarcerated person with a foreign language interpreter at a C&R hearing if necessary to achieve effective communication between the hearing panel and the incarcerated person.

(d) An attorney representing an incarcerated person at a C&R hearing shall be physically present with the person during the hearing, unless the person waives the attorney's physical presence.

(e) The panel shall meet with the incarcerated person, unless the person waives their appearance at or refuses to participate in the hearing. If the person waives their appearance at or refuses to participate in a hearing, the C&R hearing panel shall conduct the hearing in absentia, without the person. If an incarcerated person has not chosen self-representation at the hearing and the hearing is conducted in absentia, the person's state-appointed or private attorney may still appear at and participate in the hearing on the person's behalf.

(f) C&R hearing panel members may request an investigation into information necessary to determine whether the person meets the standard for a C&R recommendation under section 2856.

(g) If a C&R hearing is conducted in person, as described in section 2842, any representatives from prosecuting agencies may attend in person, by videoconference, or by telephone.

(h) If a C&R hearing is conducted by videoconference, as described in section 2842, any representatives from prosecuting agencies may attend by videoconference or by telephone.

(i) A representative from the prosecuting agency may ask the hearing panel to pose clarifying questions to the incarcerated person during the C&R hearing. The C&R hearing panel may limit the clarifying questions to questions the panel determines to be relevant and useful to assist in making their determination. The panel shall also provide the representative from the prosecuting agency the opportunity to make a final statement regarding whether the incarcerated person meets the standard for a C&R recommendation under section 2856.

(j) A representative from the prosecuting agency shall be available at the scheduled start time of the C&R hearing. If they are not, the presiding hearing officer shall use the criteria set forth in section 2061 of article 6 of chapter 1 of this division to determine whether to permit the representative to participate in the hearing.

(k) An attorney representing an incarcerated person at a C&R hearing may ask clarifying questions of the person during the hearing. The C&R hearing panel shall also provide the attorney an

opportunity to make a final statement regarding whether the incarcerated person meets the standard for a C&R recommendation under section 2856.

(l) The panel shall provide the incarcerated person an opportunity to make a final statement regarding whether the person meets the standard for a C&R recommendation under section 2856.

(m) Final statements in subsections (i), (k), and (l) shall be made before the hearing panel makes the C&R hearing determination. The statements shall be limited to ten minutes per speaker.

(n) The board shall create a transcript of the C&R hearing, which shall be the record of the hearing. A copy of the transcript shall be provided to the incarcerated person and, upon request, made available to a victim, a victim's next of kin, a member of a victim's family, and the public.

Note: Authority cited: Section 12838.4, Government Code; and Sections 1172.1(a), 4801(a), and 5076.2, Penal Code. Reference: Sections 1172.1(a) and 4801(a), Penal Code.

§ 2852. Victim Participation at a C&R Hearing.

(a) A victim, victim's next of kin, member of a victim's family, or victim's representative may appear personally or be represented by counsel at a C&R hearing. A represented party or their counsel may make a final statement described in subsection (d), but not both.

(b) A victim, victim's next of kin, or member of a victim's family attending a hearing may be accompanied by one victim support person of their choosing, who shall attend the hearing by the same method as the person they are supporting. A victim support person shall not participate in the hearing nor make comments while in attendance. For a victim support person to be admitted to the hearing, a victim, victim's next of kin, or member of a victim's family shall advise the department's Office of Victim and Survivor Rights and Services of the name of the victim support person as described in section 2847, subsection (c).

(c) A victim or victim's next of kin may designate up to two persons as a victim's representative for a C&R hearing. For a victim's representative to be admitted to the hearing, a victim or victim's next of kin shall advise the department's Office of Victim and Survivor Rights and Services of the name of any victim's representative as described in section 2847, subsection (d).

(d) A victim, victim's next of kin, member of a victim's family, and victim's representative, or counsel for any of these persons, shall have the opportunity to make a statement regarding whether the incarcerated person meets the standard for a C&R recommendation under section 2856 before the panel makes the C&R hearing determination.

(e) If a C&R hearing is conducted in person, as described in section 2842, a victim, victim's next of kin, member of a victim's family, or victim's representative and counsel for any of these persons may attend in person, by videoconference, or by telephone.

(f) If a C&R hearing is conducted by videoconference, as described in section 2842, a victim, victim's next of kin, member of a victim's family, or victim's representative and counsel for any of these persons may attend by videoconference or by telephone.

(g) A victim, victim's next of kin, member of a victim's family, and victim's representative who notified the board of their intention to attend a C&R hearing shall be available at the scheduled start time of the hearing. If they are not, the presiding hearing officer shall use the criteria set forth in section 2061 of article 6 of chapter 1 of this division to determine whether to permit the victim, victim's next of kin, member of a victim's family, or victim's representative to participate in the hearing.

(h) A victim, victim's next of kin, member of a victim's family, and victim's representative may submit a written statement for a C&R hearing panel to consider when making a decision at a C&R hearing anytime prior to the panel making the decision.

Note: Authority cited: Section 12838.4, Government Code; and Sections 1172.1(a), 4801(a), and 5076.2, Penal Code. Reference: Sections 1172.1(a) and 4801(a), Penal Code.

§ 2853. Participant and Attendee Restrictions.

(a) Unless approved by the board in advance of a C&R hearing, participants and attendees at a C&R hearing, including but not limited to a victim, victim's next of kin, member of a victim's family, victim's representative, counsel for any of these persons, a victim support person, and any representative from a prosecuting agency, shall not record or transmit by any means any portion of the hearing. Participants and attendees shall not allow any unauthorized individual to hear, view, record, or transmit any portion of a hearing. To maintain hearing decorum and to preserve the integrity of the hearing process, the presiding hearing officer shall take all necessary actions, up to and including removal of a participant or attendee from the hearing, for failure to comply with this subsection.

(b) Participants and attendees shall not engage in disruptive behavior during a C&R hearing, including but not limited to, having excessive background noise or displaying inappropriate gestures. To maintain hearing decorum and to preserve the integrity of the hearing process, the presiding hearing officer shall take all necessary actions, up to and including removal of a participant or attendee from the hearing, for failure to comply with this subsection.

(c) All participants are subject to institution and facility procedures if they are attending a C&R hearing in person.

Note: Authority cited: Section 12838.4, Government Code; and Sections 1172.1(a), 4801(a), and 5076.2, Penal Code. Reference: Sections 1172.1(a) and 4801(a), Penal Code.

§ 2854. Equipment and Connectivity Issues.

(a) Participants and attendees at a C&R hearing, including but not limited to a victim, victim's next of kin, member of a victim's family, victim's representative, counsel for any of these persons,

a victim support person, and any representative from a prosecuting agency, are responsible for ensuring that they have the proper equipment and internet connection to ensure their successful attendance and participation at the hearing.

(b) C&R hearing panels are not required to continue or postpone a hearing due to a participant's equipment or connectivity issue, but may continue or postpone a hearing in accordance with section 2855.

Note: Authority cited: Section 12838.4, Government Code; and Sections 1172.1(a), 4801(a), and 5076.2, Penal Code. Reference: Sections 1172.1(a) and 4801(a), Penal Code.

§ 2855. Postponement and Continuance of a C&R Hearing.

(a) Notwithstanding section 2846, subsection (b), the C&R hearing panel or board's executive officer may postpone the date an incarcerated person's C&R hearing will be conducted due to:

(1) the unavailability of a C&R hearing panel;

(2) the absence or untimeliness of a required notice described in section 2847;

(3) the incarcerated person's inability to review non-confidential documents despite timely requests or the absence of a timely disclosure of confidential documents;

(4) the absence of required accommodations for the incarcerated person under the Americans with Disabilities Act;

(5) the absence of a foreign language interpreter if necessary to achieve effective communication between the hearing panel and the incarcerated person;

(6) exigent circumstances, such as illness of the incarcerated person or their attorney, natural disasters, or institutional emergencies; or

(7) the need for additional information necessary to make a C&R hearing determination that cannot be obtained before the date the C&R hearing will be conducted.

(b) An incarcerated person may request the board postpone a C&R hearing to resolve matters relevant to making the C&R hearing determination. The board may grant a postponement under this subsection only upon an incarcerated person's demonstration of good cause and only if the person did not know and could not have known about the need for the postponement earlier than when they made the postponement request. Good cause is an incarcerated person's excused inability to obtain essential documents or other material evidence or information despite their diligent efforts.

(c) A postponed C&R hearing shall be rescheduled to be conducted on a date consistent with resolution of the issue that caused the postponement, the need to provide required notices, and C&R hearing panel availability. When the postponed hearing is rescheduled, it shall not displace a previously scheduled C&R hearing or parole consideration, rescission, or reconsideration hearing.

(d) If a postponement is granted during the week a C&R hearing is scheduled to be conducted, the board shall provide victims, victims' next of kin, members of a victim's family, and victims' representatives, or counsel for any of these persons, and representatives of prosecuting agencies scheduled to appear at the hearing an opportunity to give a statement on the record regarding

whether the incarcerated person meets the standard for a C&R recommendation under section 2856. Exercising this option does not preclude the speaker from making a statement at the rescheduled C&R hearing. The board shall transcribe the statement and make the statement available for consideration by subsequent C&R hearing panels or parole consideration hearing panels, if applicable. The transcript shall also be provided to the incarcerated person.

(e) After starting a C&R hearing, the C&R hearing panel may continue the hearing to a future date only upon a showing of good cause, which was unknown, and could not reasonably have been known by the party requesting the continuance, prior to the commencement of the hearing. In considering a continuance, the panel shall weigh the reasons and the need for a continuance and any inconvenience to the board, department, or appearing parties, and determine what will best serve the interest of justice.

(f) If a C&R hearing is continued, the board shall attempt to assign the same C&R hearing panel members when the hearing is reconvened. However, if the board is unable to assign the same panel members, the board may assign new panel members and commence a new C&R hearing or, if the new panel members are able to review the transcript from the continued hearing, the new panel may continue from where the original panel ended the hearing.

(g) In the event of a continuance, victims, victims' next of kin, members of a victim's family, and victims' representatives, or counsel for any of these persons, and representatives of prosecuting agencies may elect to give a statement on the record regarding whether the incarcerated person meets the standard for a C&R recommendation under section 2856 before the hearing is continued. The board shall make this statement available to subsequent C&R hearing panels.

Note: Authority cited: Section 12838.4, Government Code; and Sections 1172.1(a), 4801(a), and 5076.2, Penal Code. Reference: Sections 1172.1(a) and 4801(a), Penal Code.

§ 2856. C&R Hearing Determination.

(a) Unless there is a tie vote, a C&R hearing panel shall determine whether or not the incarcerated person meets the standard for a C&R recommendation under subsection (b).

(b) A C&R hearing panel shall make a determination that an incarcerated person meets the standard for a C&R recommendation if a majority of the C&R panel determines, based on the information considered, the person does not currently pose an unreasonable risk of danger to the public. This 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.

(c) After making a determination that an incarcerated person meets the standard for a C&R recommendation under subsection (b), the C&R hearing panel shall include in its determination:
(1) a recommendation the incarcerated person be considered for release from incarceration, pending all applicable review periods;

(2) a recommendation that the incarcerated person's new sentence include a period of supervised release in the community under the supervision of the department's Division of Adult Parole Operations, should the person be released; and

(3) a recommendation that specified conditions of parole be placed on the incarcerated person while serving the period of supervised release in the community, which may include a requirement the person spend a specified amount of time in transitional housing upon release, to increase the likelihood the person will successfully reintegrate into society.

(d) If a majority of the C&R hearing panel determines that subsection (b) does not apply, the panel shall not find the incarcerated person meets the standard for a C&R recommendation.

(e) If the C&R hearing panel renders a tie vote on whether to find the person meets the standard for a C&R recommendation under subsection (b), the panel shall refer the matter for en banc review, as described in subsection (k). At the C&R hearing, the panel members shall separately state the reasons for their determination to find the person meets or does not meet the standard for a C&R recommendation.

(f) The C&R hearing panel shall inform the incarcerated person of its determination at the conclusion of the hearing.

(g) C&R hearing panels making determinations under this section shall be impartial, as described in section 2250 of article 3 of chapter 3 of this division.

(h) If a C&R hearing panel relies on confidential information to make a determination under this section, the panel shall notify the incarcerated person of confidential reports the panel relied on and document a finding of reliability of the confidential information used by the panel.

(i) Except in the case of a tie vote as described in subsection (e), a C&R hearing panel shall issue a written decision on the date the C&R hearing is conducted, specifying the determination made. A copy of the decision shall be served on the incarcerated person and their attorney and placed in the person's central file within 15 business days of being issued. Following a tie vote, the incarcerated person will receive the determination of the board sitting en banc, as specified in subsection (k).

(j) The written decision shall include individualized recommendations for the incarcerated person regarding their work assignments, rehabilitative programs, and institutional behavior.

(k) En banc review of a C&R hearing that resulted in a tie vote is a review conducted by a majority of commissioners holding office on the date the en banc review is conducted. The commissioners conducting the review shall consider the record from the C&R hearing that was before the C&R hearing panel that rendered the tie vote. New evidence or comments shall not be considered by the en banc panel. Any commissioner involved in the tie vote shall not participate in the en banc review. The commissioners reviewing the matter en banc shall vote on whether the incarcerated person meets the standard for a C&R recommendation under this section. A majority vote of the commissioners reviewing the matter en banc shall be the en banc panel's determination on whether the incarcerated person meets the standard for a C&R recommendation under this section. The

outcome of the en banc panel's determination shall be published on the board's website. A written decision specifying the determination made shall be sent to the incarcerated person and placed in the person's central file within 15 business days.

(l) Determinations under this section, including en banc panel determinations under subsection (k), are proposed decisions and subject to review under section 2859. They do not become final until upheld under section 2859.

(m) Determinations made under this section, including en banc panel determinations under subsection (k), are not subject to the department's grievance and appeal process under article 1 of subchapter 5.1 of chapter 1 of division 3 of this title.

Note: Authority cited: Section 12838.4, Government Code; and Sections 1172.1(a), 4801(a), and 5076.2, Penal Code. Reference: Sections 1172.1(a) and 4801(a), Penal Code.

§ 2857. Actions Following Determination Person Does Not Meet the Standard for a C&R Recommendation.

If a C&R hearing panel, or en banc panel under section 2856, subsection (k), does not recommend an incarcerated person for commutation and for recall of sentence, the board shall conduct a subsequent C&R review three years after the date of the C&R hearing or en banc review, as long as the person still meets the eligibility criteria described in section 2843 at the time of the subsequent C&R review.

Note: Authority cited: Section 12838.4, Government Code; and Sections 1172.1(a), 4801(a), and 5076.2, Penal Code. Reference: Sections 1172.1(a) and 4801(a), Penal Code.

§ 2858. Actions Following Determination Person Meets the Standard for a C&R Recommendation.

(a) After a C&R hearing panel determines an incarcerated person meets the standard for a C&R recommendation under section 2856, the determination will undergo the review process outlined in section 2859.

(b) If, under section 2859, the board upholds a C&R hearing determination that an incarcerated person meets the standard for a C&R recommendation under section 2856, the determination shall become final and the board shall not conduct a subsequent C&R review for the person.

(c) Within 30 days of the board upholding a C&R hearing determination under section 2859 that an incarcerated person meets the standard for a C&R recommendation under section 2856, the board shall notify the Governor pursuant to subdivision (a) of Penal Code section 4801. A copy of the notice shall be served on the incarcerated person within 15 business days and a copy of the notice shall be placed in the person's central file.

(d) Within 30 days of the board upholding a C&R hearing determination under section 2859 that an incarcerated person meets the standard for a C&R recommendation under section 2856, the

board shall notify all sentencing courts under subdivision (a)(1) of Penal Code section 1172.1. A copy of the notice shall be served on the incarcerated person within 15 business days and a copy of the notice shall be placed in the person's central file.

Note: Authority cited: Section 12838.4, Government Code; and Sections 1172.1(a), 4801(a), and 5076.2, Penal Code. Reference: Sections 1172.1(a) and 4801(a), Penal Code.

§ 2859. Review of C&R Determinations.

(a) The board's chief counsel, or a designee, shall review a C&R hearing panel or en banc panel determination an incarcerated person meets the standard for a C&R recommendation under section 2856 within 120 days after the determination is made. If the chief counsel or designee finds an error of law or fact, new information that became available after the determination was made, or the determination raises concerns regarding consistency in decision-making, the chief counsel or designee shall refer the determination to the full board for en banc review if correction of the error, consideration of the new information, or concerns regarding consistency in decision-making suggest there may be a substantial likelihood a future C&R hearing panel would make a different determination. At least 10 days prior to the en banc review, the board shall provide notice of the referral to the incarcerated person, their attorney, victims, victims' next of kin, members of a victim's family, and the prosecuting agency or agencies.

(b) Upon referral for en banc review, a determination an incarcerated person meets the standard for a C&R recommendation under section 2856 shall be vacated if a majority of the commissioners reviewing the determination find there is a substantial likelihood a future C&R hearing panel would make a different determination after considering the error of law or fact, new information, or concerns regarding consistency in decision-making. The outcome of the en banc review shall be published on the board's website. A written decision specifying the outcome shall be served on the incarcerated person and their attorney and placed in the person's central file within 15 business days.

(c) If, after referral for en banc review, a majority of commissioners reviewing a determination an incarcerated person meets the standard for a C&R recommendation under section 2856 vote to vacate the determination, the same commissioners who conducted the en banc review shall vote on whether the board should conduct a new C&R hearing or a new C&R review for the person. If a majority of commissioners vote the board should conduct a new C&R hearing, the board shall conduct a new C&R hearing for the person within one year of the en banc review. If a majority of commissioners vote the board should conduct a new C&R review, the board shall conduct a new C&R review for the person within one year of the en banc review.

(d) If, after referral for en banc review, a majority of commissioners reviewing a determination an incarcerated person meets the standard for a C&R recommendation under section 2856 vote to uphold the determination, the board shall notify the Governor in accordance with section 2858.

(e) If a C&R hearing panel's determination an incarcerated person meets the standard for a C&R recommendation under section 2856 is not referred for en banc review, the board shall uphold the determination and notify the Governor in accordance with section 2858.

(f) If a C&R hearing panel's determination an incarcerated person meets the standard for a C&R recommendation under section 2856 is upheld under subsections (d) and (e), the board shall notify the relevant sentencing court(s) in accordance with section 2858.

(g) The board's chief counsel, or designee, may review a determination an incarcerated person does not meet the standard for a C&R recommendation under section 2856 any time after the determination is made, so long as the Governor or a relevant sentencing court has not commuted or has not recalled and resentenced the person. If the chief counsel or designee finds an error of law or fact, new information became available after the determination was made, or concerns exist regarding consistency in decision-making, and finds there is a substantial likelihood a future C&R hearing panel would make a different determination, the chief counsel or designee may vacate the determination and order a new C&R hearing be conducted within one year of the chief counsel's or designee's finding.

Note: Authority cited: Section 12838.4, Government Code; and Sections 1172.1(a), 4801(a), and 5076.2, Penal Code. Reference: Sections 1172.1(a) and 4801(a), Penal Code.