



Board of Parole Hearings

NOTICE OF PROPOSED RULEMAKING ACTION

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

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

NOTICE IS HEREBY GIVEN that the Executive Officer of the Board of Parole Hearings (Board), under the authority granted by Government Code section 12838.4 and Penal Code sections 3052 and 5076.2, authorizes the Board to add sections 2267, 2840, 2841, 2842, 2843, 2844, 2845, 2846, 2847, 2848, 2849, 2850, 2851, 2852, 2853, 2854, 2855, 2856, 2857, 2858, and 2859 of the California Code of Regulations, Title 15, Division 2, concerning consultations, and the commutation and recall of sentence recommendation assessment process.

PUBLIC WRITTEN COMMENT PERIOD

The public comment period begins **September 5, 2025**, and closes on midnight **October 21, 2025**. Any person may submit written comments relevant to the proposed regulations to the Board by mail or email to the contact person listed below. For comments to be considered by the Board, they must be submitted in writing before the close of the comment period. When submitting a comment or inquiry, please identify the action by using the Board's regulation rulemaking number **BPH RN 25-01**.

PRIMARY CONTACT PERSON:

Mina Y. Choi, Assistant Chief Counsel
Board of Parole Hearings, Legal Division
P.O. Box 4036
Sacramento, CA 95812-4036
Phone: (916) 838-8943
Email: BPH.Regulations@cdcr.ca.gov

SECONDARY CONTACT PERSON:

Christopher Hoeft, Senior Staff Attorney
Board of Parole Hearings, Legal Division
P.O. Box 4036
Sacramento, CA 95812-4036
Phone: (916) 838-8943
Email: BPH.Regulations@cdcr.ca.gov

PUBLIC HEARING SCHEDULED

The Board will conduct a public hearing regarding the proposed regulations on October 30, 2025, beginning at 9.00 a.m. PST. The hearing will proceed until all oral comments are submitted or until 11:00 a.m. PST, whichever is later.

The purpose of the hearing is to receive comments about the proposed regulations. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these

regulations will be made at the conclusion of this hearing. The Board is not required to, and will not, provide responses to comments at the public hearing. However, pursuant to Government Code section 11346.8, subdivision (a), the Board will consider all relevant matters presented before further adopting, amending, or repealing any regulation. The Board will include a response to all timely-submitted comments in its final rulemaking package submitted to the Office of Administrative Law.

The public may participate in the hearing remotely or in person. For those who wish to attend remotely, they may do so via the Microsoft Teams online meeting platform or telephone conferencing.

- To participate via the Microsoft Teams online meeting platform, please use this link, <https://tinyurl.com/BPHPublicHearing2501>. A link to the meeting will also be posted on the Board's website at <https://www.cdcr.ca.gov/bph/statutes/reg-revisions/>, under the heading "Public Hearings on Pending Changes to Board Regulations." If prompted to enter a videoconference ID, the videoconference ID for this meeting is 116 691 906 9.
- To participate by telephone, call (916) 701-9994 and enter Conference ID: 549 547 906#.

For those who wish to attend the hearing in person, limited seating will be available in Room 550, located at 1515 K Street, Sacramento, CA 95814. This hearing site is accessible to persons with mobility disabilities. For disability accommodations, please contact the Board's disability coordinators by phone at (279) 300-5755 or email at BPH.ADAUNIT@cdcr.ca.gov at least five working days before the hearing.

Government Code section 11346.8, subdivision (a), states, "If a public hearing is held, both oral and written statements, arguments, or contentions, shall be permitted." At the October 30, 2025 hearing, any person may present, pursuant to the procedures set forth below, an oral or written statement or argument relevant to this proposed rulemaking action, the proposed regulatory text, or any rulemaking procedures.

During the public hearing, the Board shall accept any oral statement, argument, or contention expressed by the public during the hearing. Government Code section 11346.8, subdivision (a), states "the agency may impose reasonable limitations on oral presentations." The Board limits oral comments to two minutes per speaker. Participants will be given instructions on how to provide oral comment at the start of the meeting. The Board requests, but does not require, that persons who will make oral comments at the hearing also submit a written copy of their comments via email to BPH.Regulations@cdcr.ca.gov.

Additionally, in accordance with subdivision (a), the Board will accept any written comment submissions from the public received via email to BPH.Regulations@cdcr.ca.gov on the day of the public hearing between 9:00 a.m. PST and 11:00 a.m. PST.

AUTHORITY AND REFERENCE

Government Code section 11126 authorizes the Board to hold a closed session executive board meeting to consider or act upon a Board decision concerning an incarcerated person.

Government Code section 12838.4 vests the Board with all the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the Board of Prison Terms and Narcotic Addict Evaluation Authority, which no longer exist.

Penal Code section 1172.1 authorizes the Board to recommend an incarcerated person to a sentencing court for a recall of sentence and resentencing.

Penal Code section 3041 requires the Board provide an incarcerated person with a consultation during the sixth year before their minimum eligible parole date. The purpose of the consultation is to review and document the incarcerated person's activities and conduct relevant to the person's suitability for parole. Additionally, the Board is required to provide the incarcerated person with information about the parole hearing process and recommendations concerning their work assignments, rehabilitative programs, and institutional behavior.

Penal Code section 3051 requires the Board provide an incarcerated person who qualifies as a youthful offender with a consultation as described in Penal Code section 3041.

Penal Code section 3052 generally vests the Board with the authority to establish and enforce rules and regulations under which incarcerated persons committed to state prisons may be allowed to go upon parole outside of prison when eligible for parole.

Penal Code section 3055 requires the Board provide an incarcerated person who qualifies as an elderly offender with a consultation as described in Penal Code section 3041.

Penal Code section 4801 authorizes the Board to report to the Governor the names of incarcerated persons who, in its judgment, should receive a commutation of sentence.

Penal Code section 5076.2 requires the Board to promulgate, maintain, publish, and make available to the general public a compendium of its rules and regulations.

SPECIFIC AGENCY STATUTORY REQUIREMENTS

There are no other statutory requirements specific to the Board or to any specific regulation or class of regulations promulgated by the Board.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Consultations: On September 16, 2013, the Governor approved Senate Bill 260 (2013–2014 Reg. Sess.), which amended Penal Code section 3041 to require the Board to conduct a consultation with an incarcerated person during the sixth year prior to their minimum eligible parole date (MEPD). This proposed rulemaking includes draft regulations on the consultation process.

The purpose of the consultation is to review and document the incarcerated person's activities and conduct pertinent to their parole eligibility. The hearing officer shall provide the incarcerated person with information about the parole hearing process, legal factors relevant to their suitability

or unsuitability for parole, and individualized recommendations for the incarcerated person regarding their work assignments, rehabilitative programs, and institutional behavior.

Prior to 2014, an incarcerated person serving a sentence of life with the possibility of parole had an MEPD that triggered the date they would be eligible for a parole hearing. Now, the date an incarcerated person is eligible for a parole hearing can be triggered by the MEPD, youth parole eligible date (YPED), elderly parole eligible date (EPED), or nonviolent parole eligible date (NPED), whichever date entitles the incarcerated person to the earliest possible hearing. Therefore, the Board schedules the person's consultation based on the date the person is first eligible for a parole hearing.

This rulemaking outlines the consultations process and clarifies that an incarcerated person will be scheduled for a consultation based on their earliest parole eligible date. Also at the consultation, the hearing officer will be able to consider whether to refer the incarcerated person for a Commutation and Recall of Sentence (C&R) hearing, as part of the C&R Recommendation Assessment Process described below.

Commutation and Recall of Sentence Recommendation Assessment Process: In addition to regulating the consultation process, this rulemaking action seeks to create one process for the Board to exercise its existing authority under Penal Code section 4801 to recommend incarcerated persons for commutation of sentence to the Governor and Penal Code section 1172.1 to recommend incarcerated persons for recall of sentence and resentencing to the sentencing court.

These regulations establish a process for the Board to exercise its existing authority to make recommendations to both the Governor for commutations and to sentencing courts for recall and resentencing. By promulgating these regulations, it will be clear to the public who will be considered for a recommendation, what the process will be, and the criteria that will be considered. In doing so, the Board will create a transparent and equitable process by which eligible incarcerated persons will be reviewed and considered by the Board and during which victims and law enforcement have the opportunity to meaningfully participate.

This rulemaking also creates procedures for the Board to review and evaluate eligible incarcerated persons for possible recommendation for commutation and recall of sentence, which includes persons with sentences longer than 25 years. In doing so, it creates a two-step process for considering eligible incarcerated persons for these recommendations. First, eligible incarcerated persons meet with a Board hearing officer at a C&R review. At the review, the hearing officer will determine whether the incarcerated person is a suitable candidate, based on the criteria established in this rulemaking package, to refer to the second step, a C&R hearing. After a referral, and subject to additional procedural steps, the Board will conduct the incarcerated person's hearing within one year. After a referral, the California Department of Corrections and Rehabilitation's Office of Victim and Survivor Rights and Services (OVSRS) will be notified to assist with outreach to victims, victims' next of kin, and victims' family members (collectively referred to as victims) prior to the C&R hearing. Registered victims and prosecuting agencies will be notified of any C&R hearing and provided information on how to participate. The proposed rulemaking provides victims with an opportunity to meaningfully participate in the Board's process, which is similar to

victims' opportunity to participate in the parole suitability hearing process. Victim participation ensures that the C&R hearing panel has the relevant information they need to make their decision.

Procedures in the proposed regulations identify who is eligible for C&R reviews by the Board, the information the Board will consider when determining whether a person should receive a C&R hearing, the process associated with a C&R hearing, and the standard the Board will apply when determining whether to recommend an incarcerated person for commutation and recall of sentence. Any recommendation made by the hearing panel under this process is called a "commutation and recall of sentence recommendation," and results in a recommendation to the Governor and sentencing courts.

DOCUMENTS INCORPORATED BY REFERENCE

None.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

Consultations: The proposed regulations set forth clear guidelines on the consultation process, including the timeline and eligibility criteria for a consultation and details of how a commissioner conducts consultations. These regulations will increase the incarcerated person's understanding of the consultation process, which will likely allow them to better prepare for, participate in, and integrate the guidance they receive during the consultation.

C&R Regulations: The proposed rulemaking will create a transparent and equitable process for the Board to exercise its statutory authority to recommend incarcerated persons to the Governor and the sentencing court for commutation and recall of sentence. Additionally, the proposed regulations may incentivize engagement in rehabilitation, which will increase the safety of all who live and work in CDCR institutions.

The proposed hearing process will provide victims and prosecutors with a consistent and timely opportunity to participate in the C&R recommendation assessment process before a recommendation is made.

EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS, STATE STATUTES, OR FEDERAL STATUTES

Pursuant to Government Code section 11346.5, subdivision (a)(3)(D), the Board has determined the proposed regulations are not inconsistent or incompatible with existing state regulations, state statutes, and federal statutes. After conducting a review for any regulations that would relate to or affect this area, the Board has concluded that these are the only regulations that concern the commutation and recall of sentence recommendation assessment process. Existing regulations mention consultations; however, these regulations are not inconsistent or incompatible with this proposed rulemaking.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

This rulemaking action does not impose a mandate on local agencies or school districts, or a mandate requiring reimbursement of costs or savings pursuant to Government Code sections 17500 through 17630.

FISCAL IMPACT STATEMENT

- Cost or savings to any state agency: For the Board of Parole Hearings, approximately \$712,083.36 will be absorbed within existing budgets and resources starting in fiscal year 2026-2027 and approximately \$175,605.32 will require additional funding starting fiscal year 2027-2028 and will be ongoing. For Case Records Services of the California Department of Corrections and Rehabilitation, approximately \$50,239.90 of overtime costs in fiscal year 2026-2027 will require additional funding, approximately \$120,216.00 for a limited two-year term employee starting fiscal year 2026-2027 will require additional funding, and approximately \$27,432.05 of overtime costs will require additional funding starting fiscal year 2027-2028 and be ongoing.
- Cost to any local agency or school district that is required to be reimbursed: NONE.
- Other nondiscretionary cost or savings imposed on local agencies: NONE.
- Cost or savings in federal funding to the state: NONE.

EFFECT ON HOUSING COSTS

The Board has determined that the proposed action will have no effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Board has determined the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed regulations do not have a significant adverse economic impact on small businesses because this action places no obligations or requirements on any business.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

The Board has determined that the proposed regulations do not have a significant impact on the following: (1) elimination of any jobs, (2) creation of any new businesses, (3) elimination of any existing businesses, or (4) expansion of businesses currently doing business within California. The Board has also determined that the proposed regulations will have no effect on worker safety or the state's environment.

These regulations may benefit the health and welfare of California residents by continuing to promote public safety and encourage rehabilitation among the incarcerated population.

The Board currently anticipates the proposed regulations will require the creation of 1.05 Forensic Assessment Division psychologist positions with the Board, ongoing, and 1 Correctional Case Records Administrator with Case Records Services of the California Department of Corrections and Rehabilitation on a limited two-year term.

CONSIDERATION OF ALTERNATIVES

Pursuant to Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written public comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The Board will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all the information on which the proposal is based (i.e., the rulemaking file) is available to the public upon request directed to the Board's contact person identified in this Notice. The proposed text, ISOR, and this Notice will be made available on the Board's website at <https://www.cdcr.ca.gov/bph/statutes/reg-revisions/>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the Board's contact person identified in this Notice or by visiting the Board's website at <https://www.cdcr.ca.gov/bph/statutes/reg-revisions/>.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this Notice. If the Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts, amends, or repeals the regulations as revised. Please send requests for copies of any modified regulation text to the attention of the contact person identified in this Notice. The modified text will also be made available on the Board's website at <https://www.cdcr.ca.gov/bph/statutes/reg-revisions/>. If the Board makes modifications, the Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

****END****