STATE OF CALIFORNIA

BOARD OF PAROLE HEARINGS

EMERGENCY RULEMAKING ACTION BPH RN 26-01E

BPH RN 26-01E: NOTICE OF PROPOSED EMERGENCY ACTION
SEXUAL DANGEROUSNESS SCREENING, SEXUALLY VIOLENT PREDATOR PROCESS, AND ELDERLY PAROLE FOR PERSONS SENTENCED FOR SPECIFIED SEXUAL OFFENSES

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS TITLE 15. CRIME PREVENTION AND CORRECTIONS DIVISION 2. BOARD OF PAROLE HEARINGS

Chapter 3. Parole Release
Article 2. Information Considered
Adoption of Section 2239.5

Chapter 3. Parole Release
Article 17. Parole Consideration Hearings for Elderly Inmates
Amendment of Section 2449.40

Chapter 6. Parole Revocation
Article 1. Parole Hold Policy
Adoption of Sections 2600 and 2600.2

Chapter 6. Parole Revocation
Article 1. Parole Hold Policy
Amendment of Section 2600.1

NOTICE OF PROPOSED EMERGENCY ACTION

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of a proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

NOTICE IS HEREBY GIVEN that the Board of Parole Hearings (Board) will submit the proposed emergency regulations to add Section 2239.5 to the California Code of Regulations, Title 15,

Division 2, Chapter 3, Article 2; amend Section 2449.40 to the California Code of Regulations, Title 15, Division 2, Chapter 3, Article 17; add Sections 2600 and 2600.2 and amend Section 2600.1 to the California Code of Regulations, Title 15, Division 2, Chapter 6, Article 1.

FINDING OF EMERGENCY

On September 30, 2026, the Governor signed Assembly Bill (AB) 2727, which makes three changes to the parole and sexually violent predator processes: 1) Persons who are serving an indeterminate term for a sexually violent offense and will be scheduled for a parole consideration hearing will receive a sexual dangerousness screening before their parole hearing; 2) Persons who are sentenced to an indeterminate term and are granted parole will be screened and may be evaluated for sexually violent predator proceedings 3) The criteria for statutory elderly parole was changed for persons who are sentenced under Penal Code sections 269, 288.7, 667.61, or 667.71 such that they are not eligible for elderly parole until they reach 65 years of age and have served 25 years of continuous incarceration.

The bill also included two sections making the bill retroactive and requiring the Board to act on January 1, 2027. First the bill added Penal Code section 3055, subdivision (h)(2):

> Effective January 1, 2027, the Department of Corrections and Rehabilitation shall recalculate Elderly Parole Eligible Dates for people designated in this subdivision. Effective January 1, 2027, the Board of Parole Hearings shall cancel parole hearings for people designated in this subdivision that were previously scheduled based solely on an Elderly Parole Eligible Date calculated using 50 years of age and 20 years of continuous incarceration, as described in subdivision (a).

Second, the bill added Welfare and Institutions Code section 6601, subdivision (h)(4):

> Paragraphs (1) and (3) of this subdivision shall apply retroactively to any individual in the custody of the Department of Corrections and Rehabilitation on January 1, 2027, regardless of the date the individual's sentence was imposed or the date the underlying offense was committed.

The legislature enacted AB 2727 to establish additional safeguards ensuring that individuals with sexual offense histories are thoroughly evaluated before release and to protect communities from the risks posed by individuals who may meet the criteria for commitment as sexually violent predators. Without emergency regulations to operationalize these statutory requirements, the Board cannot implement the mandated screenings, referrals, or updated parole eligibility criteria by the January 1, 2027 effective date. Further, because these processes require coordinated implementation by the California Department of Corrections and Rehabilitation, the Board, and the Department of State Hospitals, regulations are necessary to clarify the Board's responsibilities and ensure uniform application. Failure to adopt the proposed emergency regulations would require the Board to implement these processes without formally adopted regulatory standards, reducing transparency and creating a significant risk that the process could be viewed as an underground regulation under the Administrative Procedure Act.

With respect to the sexual dangerousness screening, failure to adopt emergency regulations clearly identifying the applicable screening criteria would likely result in inconsistent assessments for incarcerated persons and undermine the uniform implementation of AB 2727. This may result in hearing panels making parole decisions without essential clinical information or postponing hearings to allow for screening completion, causing operational delays, increased state costs, unnecessary prolonged incarceration for eligible individuals, and possible due process violations. Additionally, under AB 2727, the Board is statutorily required to consider the results of the screening at parole hearings. Without defined procedures, timelines, and criteria, the Board cannot ensure that the information will be complete and available for parole hearings, compromising public safety and legal compliance.

With respect to the sexually violent predator screening and referral process, AB 2727 expands the sexually violent predator eligibility to include indeterminately sentenced individuals who are granted parole. Starting January 1, 2027, the Board must conduct sexually violent predator screenings for indeterminately sentenced persons granted parole and refer persons likely to be a sexually violent predator to the Department of State Hospitals for further evaluation. Emergency regulations are necessary to establish clear, transparent criteria and timelines so that incarcerated persons and the public understand when referral to the Department of State Hospitals is required and how it may impact a person's release date. Absent regulations, the screening and referral process would be inconsistent and unclear, undermining both public safety and due process expectations.

With respect to elderly parole eligibility changes, the emergency regulations are necessary to ensure the Board can timely and uniformly implement the new statutory eligibility requirements effective January 1, 2027. As of that date, existing regulations will no longer accurately reflect the statutory requirements governing eligibility for elderly parole consideration. Without immediate regulatory action, this discrepancy will create uncertainty for incarcerated persons, victims, and other stakeholders regarding whether previously scheduled elderly parole hearings will proceed and when affected persons will next become eligible for parole consideration. The absence of clear, uniform procedures also creates a risk of inconsistent eligibility determinations, unnecessary hearing preparation, and avoidable delays in providing hearings to persons who remain statutorily eligible for an elderly parole hearing. Emergency regulations are therefore necessary to provide a consistent framework for reviewing scheduled hearings, notifying affected persons of cancellations and future eligibility, and administering the Board's hearing calendar in accordance with AB 2727. Delaying implementation until completion of the regular rulemaking process would leave these time-sensitive matters unresolved when the new statutory requirements take effect.

Immediate regulatory action is essential to initiate sexual dangerousness screenings, ensure appropriate sexually violent predator referrals, ensure that only statutorily eligible individuals receive parole hearings and consideration of elderly factors, and safeguard the public from the potential release of high-risk individuals without the specialized assessments designed to evaluate sexual offending risk.

Failure to adopt these regulations before January 1, 2027, would create an immediate gap between the new statutory requirements under AB 2727 and the regulatory procedures governing their implementation. This will leave incarcerated persons without clear guidance regarding whether

they are subject to a sexual dangerousness screening, whether they may be subject to a sexually violent predator screening or evaluation, and how their eligibility for elderly parole consideration will be determined, all of which may impact due process for incarcerated persons and public safety. Further, without these regulations, the Board also faces a risk of inconsistent sexual dangerousness screenings, sexually violent predator screenings and referrals to the Department of State Hospitals, and elderly parole eligibility determinations. Given the Legislature's clear intent to enhance public safety in enacting AB 2727 and requiring implementation by January 1, 2027, it is necessary for the Board to take immediate regulatory action to implement that statutory purpose while safeguarding due process for incarcerated persons in the parole process.

Therefore, the Board submits this emergency rulemaking action to establish the required procedures for sexual dangerousness screening, sexually violent predator referrals, and elderly parole eligibility under AB 2727.

AUTHORITY
Government Code section 12838.4 and Penal Code sections 3052 and 5076.

REFERENCE
Penal Code sections 269, 288.7, 667, 667.61, 667.71, 1170.12, 3000, 3041, 3041.1, 3041.2, 3053.9, 3055; Welfare and Institutions Code section 6600, 6600.1, 6601, 6601.3; *Coleman v. Brown* (E.D. Cal. February 10, 2014) No. 2:90-cv-0520, Doc. 2766; and *Plata v. Brown* (N.D. Cal. February 10, 2014) No. C01-1351, Doc. 2766.

INFORMATIVE DIGEST
Assembly Bill 2727, signed on September 30, 2026, makes three significant changes to the Board's existing practices, making emergency regulations necessary to ensure the timely and consistent implementation of the new statutory requirements.

First, Assembly Bill 2727 establishes new statutory requirements governing parole consideration for individuals convicted of specified sexual offenses and updates the procedures for identifying and referring individuals who may meet the criteria for civil commitment as sexually violent predators. Under existing law, a person serving a determinate sentence may be civilly committed as a sexually violent predator only after multiple steps occur, including screening by the Board of Parole Hearings, an independent evaluation by the Department of State Hospitals, the filing of a petition by county counsel or the prosecutor, and a judicial finding that the individual is likely to engage in sexually violent predatory criminal behavior if released. Assembly Bill 2727 expands eligibility for this process to include individuals serving indeterminate sentences who are granted parole. These regulations will ensure that all incarcerated persons understand when they may be subject to a sexually violent predator screening and possible civil commitment and will promote uniform application of the sexually violent predator referral process.

Second, Assembly Bill 2727 also creates a new assessment, known as a sexual dangerousness screening, for incarcerated persons serving indeterminate sentences for specific offenses prior to their parole hearings. The purpose of the screening is to determine whether the person is likely to be a sexually violent predator and to ensure that this information is available to the hearing panel prior to parole determination. These regulations will ensure that all incarcerated persons

understand when they may be subject to a sexually violent predator screening and possible civil commitment and will promote uniform application of the sexually violent predator referral process.

Third, Assembly Bill 2727 amends the eligibility criteria for elderly parole. Existing law makes an incarcerated person eligible for elderly parole consideration at age 50 after serving 20 years of incarceration, unless certain exceptions apply. Assembly Bill 2727 adds Penal Code sections 269, 288.7, 667.61, and 667.71 to the list of offenses that disqualify a person from eligibility under that standard. Individuals convicted of these offenses will now become eligible for elderly parole consideration at age 65 after serving 25 years of continuous incarceration on their current sentence.

This emergency rulemaking updates the Board's existing regulations to reflect these changes, clarifies who is eligible for elderly parole, and removes inconsistent language. The regulations also explain that hearings scheduled for persons who no longer meet eligibility criteria must be cancelled in compliance with the Penal Code amendment and rescheduled based on the person's earliest parole eligible date, ensuring transparency for incarcerated persons and stakeholders.

Emergency regulatory action is necessary because effective January 1, 2027, the Board must implement the new statutory requirements impacting incarcerated persons. These regulations will ensure that the new statutory requirements are applied transparently and consistently and that all stakeholders clearly understand the procedures governing sexual dangerousness screening, sexually violent predator referrals, and elderly parole eligibility. Without these regulations, incarcerated persons, victims, the public, and other stakeholders would lack clear information about what information will be considered at parole hearings, when evaluations for sexually violent predator consideration must occur, and how elderly parole eligibility dates are determined. The absence of defined procedures creates uncertainty, increases the risk of inconsistent statewide practices, and may result in parole decisions being made without the necessary information the Legislature intended hearing panels to review. These gaps pose significant public safety concerns, as individuals who may present an elevated risk of sexual re-offense could be considered for release without the assessments and referrals required to identify that risk. Immediate regulatory clarification is therefore required to promote transparency, ensure due process, protect public safety, and fulfill the legislative purpose of Assembly Bill 2727.

OTHER STATUTORY REQUIREMENTS

Any existing regulations regarding parole eligibility can be found in Division 2 of Title 15 of the California Code of Regulations. Upon review, the Board has determined that the proposed changes are not inconsistent or incompatible with existing regulations, federal statutes, or state statutes.

LOCAL MANDATE DETERMINATION

The Board has determined the proposed changes do not impose a mandate on local agencies or school districts.

FISCAL IMPACT
The Board has made the following initial determinations:

- Cost to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630: **None**

- Cost or savings to any state agency: **To implement these regulations and comply with the requirements of AB 2727, the Board anticipates a cost of $233,000 for the current 2026-27 fiscal year, but this will be absorbed by the Board's existing budget. The Board requires additional funding of $2,759,907 in fiscal year 2027-28 and $2,734,232 in fiscal year 2028-29.**

- Other non-discretionary cost or savings imposed on local agencies: **None**

- Cost or savings in federal funding to the state: **None**

Significant Statewide Adverse Economic Impact on Business: The Board has determined there is no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impacts on Representative Private Persons or Businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment of Effects on Job and/or Business Creation, Elimination or Expansion: 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.

Effect on Housing Costs: The Board has made an initial determination that the proposed action will have no significant effect on housing costs because housing costs are not affected by the internal processes governing the Board's requirements in conducting Board proceedings.

Small Business Determination: The Board has determined that the proposed regulations do not have a significant adverse economic impact on small business because small businesses are not affected by the internal processes governing the Board's requirements in conducting Board screenings and proceedings.

Documents Relied Upon: The Board, in proposing these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

NECESSITY

Section 2239.5 is added to establish the sexual dangerousness screening that is to be prepared prior to a parole suitability hearing. This regulation is necessary to create a consistent, research-supported screening process that ensures statutory compliance, promotes due process, and enhances public safety.

Subsection (a) is necessary to clarify the hearings for which a sexual dangerousness screening must be prepared and to identify the screening's purpose. This subsection specifies that a sexual dangerousness screening shall be completed before a parole suitability hearing or subsequent reconsideration hearing, and that the screening is conducted to determine whether an incarcerated person is likely to meet the definition of a sexually violent predator. This clarification is necessary to ensure that incarcerated persons understand when a sexual dangerousness screening will be prepared and the purpose for which it is conducted.

Subsection (b) is necessary to identify the population of incarcerated persons who are subject to a sexual dangerousness screening and to establish the hearings for which a screening must be completed.

Subsection (b)(1) requires a sexual dangerousness screening for incarcerated persons serving an indeterminate sentence for a sexually violent offense as defined in Section 6600 of the Welfare and Institutions Code. This provision is necessary to clearly define the population subject to the screening requirement and to ensure the regulation is applied consistently to the individuals for whom the screening is intended.

Subsection (b)(2) clarifies which hearings require a sexual dangerousness screening and ensures the effective implementation of the screening process. Specifically, the subsection provides that a screening is required only for parole suitability hearings and subsequent parole reconsideration hearings that are first scheduled on or after January 1, 2027. This distinction is necessary because parole hearings are often scheduled several months in advance, resulting in some hearings occurring after January 1, 2027, that were scheduled before that date. Using the date the hearing is first scheduled, rather than the date the hearing will be conducted, provides a clear standard for determining when a screening is required.

This subsection is further necessary to promote consistent implementation of the statute and to provide clarity to incarcerated persons, attorneys, victims, and other stakeholders regarding the applicability of the screening requirement. By identifying both the qualifying incarcerated population and the hearings subject to the screening requirement, the subsection establishes clear criteria for when a sexual dangerousness screening must be completed and helps avoid confusion regarding the statute’s application.

Subsection (c) is necessary to specify the requirements that the sexual dangerousness screening must satisfy. It is necessary to include these requirements to ensure all sexual dangerousness screenings are uniform and all persons subject to the sexual dangerousness screening are treated equally.

Subsection (c)(1) is necessary to identify the individuals authorized to conduct a sexual dangerousness screening and to ensure that screenings are performed by qualified professionals. This subsection specifies that a sexual dangerousness screening shall be conducted by a licensed psychologist who is either employed by or under contract with the Board. This requirement is necessary to provide clarity regarding who may perform the screening and to ensure that screenings are completed by individuals with the appropriate professional qualifications. This subsection is also necessary to clarify that secondary sexual dangerousness screenings may only be conducted by the Department of State Hospitals. This provision establishes a clear distinction between the agencies responsible for conducting initial and secondary screenings and ensures that incarcerated persons understand that the Department of State Hospitals conducts a sexual dangerousness screening only if a secondary sexual dangerousness screening is requested by the Board.

Subsection (c)(2) is necessary to specify the information that will be considered by the psychologist when preparing a sexual dangerousness screening. Subsection (c)(2)(A) provides that the psychologist shall review all available and reliable information relevant to the screening, including, but not limited to, information regarding the incarcerated person's criminal history, misconduct, commitment offense, programming while incarcerated, and institutional behavior. This provision is necessary to identify the areas of information that may be considered during the screening process and to provide transparency regarding the factors that inform the psychologist's assessment. Although the list is not exhaustive, it provides representative examples of the information commonly reviewed in preparing a sexual dangerousness screening, which will provide guidance to the incarcerated population as well as stakeholders as to what information is considered relevant to identifying risk.

Subsection (c)(2)(B) is necessary to clarify that the incarcerated person will not be interviewed as part of the sexual dangerousness screening and that the screening will be based solely on a review of available records. This provision is necessary because incarcerated persons may be familiar with the Board's comprehensive risk assessment process, which includes a clinical interview conducted by a Board psychologist. By expressly stating that no interview will occur as part of the sexual dangerousness screening, this subsection ensures that incarcerated persons understand the nature of the screening process, prevents confusion, and avoids creating an expectation that they will meet with the psychologist before the screening is completed.

Subsection (c)(3) is necessary to identify the static and dynamic factors related to sexual re-offense risk that the psychologist will consider when preparing a sexual dangerousness screening. This subsection provides transparency regarding the screening process by specifying the categories of information that may be evaluated and ensures that incarcerated persons, victims, and other stakeholders understand the basis for the psychologist's assessment. Specifically, subsections (c)(3)(A) through (H) provide that the psychologist may consider factors including victim demographics and victim selection characteristics, the nature and severity of violence perpetrated against a victim, persistence indicators, indicators of predatory tendencies, evidence of sexual deviance, current sexual and behavioral self-regulation and control, antisocial orientation, and the presence of protective factors. The examples included within each category are necessary to clarify the types of information that may be considered by the psychologist and to promote a consistent understanding of the factors used in the screening process. Providing these examples helps ensure transparency, facilitates uniform application of the regulations, and informs incarcerated persons

and stakeholders about the information that may be relevant to the psychologist's assessment.

Subsection (c)(4) is necessary to establish when an incarcerated person will receive a copy of their sexual dangerousness screening and to clarify the effect of a delayed disclosure. This subsection requires the Board to provide the screening at least 60 calendar days before the parole suitability or subsequent parole reconsideration hearing to ensure the incarcerated person and their attorney have sufficient time to review the document and prepare for the hearing. This subsection further clarifies that providing the screening fewer than 60 calendar days before the hearing does not automatically require or warrant a postponement. Instead, the hearing panel must determine whether the incarcerated person and their attorney had sufficient time to review the screening and whether the delayed disclosure resulted in prejudice to the incarcerated person. This standard is necessary because even though a document may be provided after the deadline identified in the regulations, there will still be adequate time for meaningful review by the incarcerated person or their attorney. By requiring a case-specific determination of prejudice, this subsection helps avoid unnecessary postponements while protecting the incarcerated person's interests.

Subsection (c)(5) is necessary to ensure the Board has current information when considering an incarcerated person for parole. This subsection provides that a new sexual dangerousness screening shall be prepared if more than three years have passed since the most recent screening was finalized. An updated screening is necessary because an incarcerated person's risk factors, behavior, and programming participation may change over time and their risk for sexual re-offense may also change. This requirement also aligns with the Board's existing comprehensive risk assessment regulations, which require a new assessment when more than three years have elapsed since the prior assessment was finalized. By establishing a three-year threshold, this subsection provides clear guidance regarding when a new screening is required and informs incarcerated persons when they can expect an updated sexual dangerousness screening before a hearing.

Subsection (c)(6) is necessary to clarify that a secondary sexual dangerousness screening is not required unless the criteria in subsection (e) are met. This provision informs incarcerated persons and stakeholders that the preparation of a secondary sexual dangerousness screening is determined on a case-by-case basis and is not automatically required whenever a sexual dangerousness screening is completed. This clarification is necessary because an incarcerated person may receive a secondary sexual dangerousness screening for one hearing but not for a subsequent hearing if the circumstances in subsection (e) are not present at their next screening. By specifying when a secondary screening may be ordered, this subsection promotes consistent application of the regulations and ensures that incarcerated persons and stakeholders understand that a prior secondary screening does not mean the incarcerated person will receive future secondary screenings.

Subsection (d) is necessary to ensure that the sexual dangerousness screening criteria remain consistent with current peer-reviewed research and evidence-based risk assessment practices relating to sexually violent predators and individuals convicted of sex offenses. This subsection requires the Board and the Department of State Hospitals to review the screening criteria at least once every three years and update the criteria as needed. This subsection also identifies the types of research that may be considered during the review process and provides examples of relevant sources. These examples are necessary to provide transparency regarding the basis for any updates

to the screening criteria. By requiring periodic review and revision, this subsection helps ensure that the Board's screening process remains informed by current scientific research and evolving best practices in the assessment of sexual re-offense risk.

Subsection (e) clarifies the Board's referral to the Department of State Hospitals for a secondary sexual dangerousness screening. Subsection (e)(1) is necessary to establish the circumstances under which the Board may refer a case to the Department of State Hospitals for a secondary sexual dangerousness screening. The subsection permits referral when the Board psychologist identifies factors suggesting the incarcerated person may qualify as a sexually violent predator, including complex sexual violence risk, uncertainty regarding a predatory element to sexual violence risk, a diagnosis associated with criminal sexual offending that is relevant to being a sexually violent predator, or circumstances in which prior sex-offender treatment or interventions may limit the ability of the Board's screening to adequately assess risk. The subsection also authorizes referral when the executive officer determines that complexities or unique circumstances may affect the accuracy or completeness of the Board's screening and the Department of State Hospitals agrees to conduct a secondary screening. This language is permissive because a secondary sexual dangerousness screening will not be necessary in every case. However, it is necessary to provide the Board with the discretion to seek the expertise of the Department of State Hospitals when the facts of a particular case warrant additional review. As the agency responsible for evaluating sexually violent predators, the Department of State Hospitals possesses specialized expertise that may assist in assessing complex cases. This subsection also promotes transparency by identifying the circumstances under which a secondary sexual dangerousness screening may be requested, ensuring incarcerated persons and stakeholders understand when additional review by the Department of State Hospitals may occur.

Subsection (e)(2) is necessary to establish the timeframe for providing an incarcerated person with a copy of a secondary sexual dangerousness screening. Consistent with the requirements for the initial sexual dangerousness screening, the secondary sexual dangerousness screening must be provided at least 60 calendar days before the hearing to ensure the incarcerated person and their attorney have a meaningful opportunity to review the screening and prepare for the hearing. This subsection further clarifies that disclosure fewer than 60 calendar days before the hearing does not automatically require or warrant a postponement. Instead, the hearing panel must determine whether the incarcerated person and their attorney had sufficient time to review the screening and whether the delayed disclosure resulted in prejudice to the incarcerated person. This standard is necessary because there may be circumstances in which the screening is provided after the deadline but still allows adequate time for meaningful review by the incarcerated person and their attorney. By requiring a case-specific determination of prejudice, this subsection helps avoid unnecessary postponements while protecting the incarcerated person's interests.

Subsection (f) is necessary to clarify how the Board will use the sexual dangerousness screening in its parole decision-making process. Specifically, the subsection requires the hearing panel to review and consider the sexual dangerousness screening and any secondary sexual dangerousness screening when conducting a parole suitability or subsequent parole reconsideration hearing. This provision ensures that the use of these screenings in the hearing process is clearly established and consistently applied. This subsection is also necessary to promote transparency by informing incarcerated persons, their attorneys, victims, and other stakeholders how the screenings will be

used by the Board. Clearly identifying that the hearing panel will review and consider the screenings provides notice regarding the purpose and relevance of these screenings in parole proceedings.

Subsection (g) is necessary to clarify that the sexual dangerousness screening is a confidential document and not a public record. The subsection further establishes that, when provided to a prosecuting agency in advance of a parole suitability or subsequent parole reconsideration hearing, the screening may only be used for purposes related to the parole hearing process. This provision is necessary to ensure that sensitive information contained in the screening is protected and used only for the purpose for which it was disclosed. The subsection also identifies potential consequences for misuse of the screening by a prosecuting agency. Specifically, the executive officer may limit the prosecuting agency's access to the incarcerated person's central file and Board documents by requiring review of those materials on a state-issued device at the Board's headquarters or another departmental facility. This enforcement mechanism is necessary to promote compliance with the confidentiality requirements and to protect sensitive information from unauthorized disclosure. This subsection is further necessary because there have been instances in which confidential documents prepared for Board proceedings have been improperly disclosed or used in proceedings unrelated to the Board's parole hearing process. By expressly limiting the permissible use of the sexual dangerousness screening and identifying the consequences of misuse, the subsection provides clear guidance to incarcerated persons, prosecuting agencies, and other stakeholders regarding the confidential nature of the screening and the Board's expectations for its handling and use.

Section 2600 is necessary to establish the process for referring incarcerated persons for evaluation under the Sexually Violent Predator Act**.** Subsection (a) clarifies that when the Board determines an incarcerated person is likely to meet the definition of a sexually violent predator as set forth in Section 6600 of the Welfare and Institutions Code, the Board must refer the person to the Department of State Hospitals as required by Section 6601 of the Welfare and Institutions Code. This subsection is necessary to ensure the Board's regulations are consistent with the statutory referral requirements and to clearly identify the responsibilities of the agencies involved in the sexually violent predator evaluation process. This subsection is further necessary to provide transparency to incarcerated persons and other stakeholders regarding the Board's role and the role of the Department of State Hospitals. Specifically, it clarifies that the Board's responsibility is limited to making the referral determination, while the Department of State Hospitals is responsible for conducting the evaluations required as part of the sexually violent predator process. This subsection promotes understanding of the process and helps ensure consistent implementation of the statutory requirements.

Subsection (b**)** is necessary to establish the timing and components of the sexually violent predator screening process. The subsection clarifies that the screening must occur before an incarcerated person's release from incarceration or upon a grant of parole and identifies the two-part process used to determine whether referral to the Department of State Hospitals is required.

Subsection (b)(1) is necessary to establish the sexually violent predator qualifying offense screening. This screening requires the Board to review the incarcerated person's central file and other relevant and reliable information, including criminal history records, to determine whether

the person has committed a qualifying offense as defined in Section 6600 of the Welfare and Institutions Code. Because committing a qualifying offense is a statutory prerequisite for designation as a sexually violent predator, it is necessary to establish a process for making this determination.

Subsection (b)(2) is necessary to establish the sexually violent predator clinical screening process. The subsection requires the clinical screening to be completed by a licensed psychologist employed or contracted by the Board and specifies that the psychologist must review the incarcerated person's central file and other relevant and reliable information to determine whether the person is likely to meet the criteria of a sexually violent predator under Section 6600 of the Welfare and Institutions Code. Establishing who conducts the screening and the information that must be considered is necessary to promote consistency, reliability, and transparency in the screening process.

Overall, subsection (b) is necessary to clearly define the two parts of the sexually violent predator screening process and to explain the requirements governing each part of the screening. By identifying the purpose, scope, and procedures for both the qualifying offense screening and the clinical screening, the subsection provides clear guidance to incarcerated persons and stakeholders regarding how sexually violent predator screening determinations are made.

Subsection (c) is necessary to clarify the relationship between the sexual dangerousness screening and the sexually violent predator screening process. The subsection provides that when a sexual dangerousness screening concludes that an incarcerated person is likely a sexually violent predator and the person is subsequently granted parole, the sexual dangerousness screening will serve as the sexually violent predator clinical screening required under this section. As a result, and in compliance with AB 2727, a sexually violent predator clinical screening is not required before the person is referred to the Department of State Hospitals for evaluation. This subsection is necessary to prevent duplicative screenings and to promote efficiency in the administration of the sexually violent predator referral process. Because the sexual dangerousness screening already evaluates whether an incarcerated person is likely a sexually violent predator using criteria relevant to that determination, requiring a separate clinical screening would unnecessarily duplicate the assessment already performed. This subsection is further necessary to provide transparency to incarcerated persons and stakeholders regarding how the sexual dangerousness screening and sexually violent predator process interact. By clarifying that a sexual dangerousness screening finding that an incarcerated person is likely a sexually violent predator may be used as the sexually violent predator screening upon a grant of parole, the subsection ensures incarcerated persons understand that they may be referred to the Department of State Hospitals for evaluation without an additional screening. This clarification promotes consistency, efficiency, and understanding of the referral process.

Subsection (d) is necessary to clarify the statutory criteria that must be satisfied before the Board refers an incarcerated person to the Department of State Hospitals for evaluation as a potential sexually violent predator. The subsection clarifies that referral is appropriate only when the Board determines the incarcerated person is likely to be a sexually violent predator based on evidence supporting three required findings. As stated in subsection (d)(1), the incarcerated person must have committed a qualifying offense as defined in Section 6600 of the Welfare and Institutions

Code. As stated in subsection (d)(2), the person must likely have, or reasonably could have, a qualifying diagnosable mental disorder as defined in the Welfare and Institutions Code. As stated in subsection (d)(3), the person must exhibit static and dynamic risk factors indicating they are likely to engage in sexually violent criminal behavior if released. These criteria are necessary because each represents a fundamental consideration of the sexually violent predator determination and ensures referrals are made only when there is sufficient evidence to support further evaluation by the Department of State Hospitals. This subsection is further necessary to promote consistency, transparency, and uniform application of the referral process. By clearly identifying the findings required for referral, the regulation provides guidance to Board staff, informs incarcerated persons and stakeholders of the standards used by the Board, and ensures that referrals to the Department of State Hospitals are based on objective and clearly defined criteria. If the Board finds evidence supporting all three criteria, the case will be referred to the Department of State Hospitals for a sexually violent predator evaluation.

Subsection (e**)** is necessary to establish the timelines for referring incarcerated persons to the Department of State Hospitals for a sexually violent predator evaluation. Because referral timing varies depending on the person's sentence structure, whether the person has been granted parole, and other circumstances that may affect a person's release date, the subsection provides clear standards to ensure referrals occur sufficiently in advance of release while accommodating circumstances that may affect the timing of a referral.

Subsection (e)(1) is necessary to clarify that a determinately sentenced incarcerated person who is found by the Board to likely be a sexually violent predator and is scheduled for release without a grant of parole must be referred to the Department of State Hospitals at least six months before the person's earliest possible release date. Establishing this timeframe is necessary to provide adequate time for the completion of the sexually violent predator evaluation process before release from incarceration.

Subsection (e)(2) is necessary to clarify that determinately and indeterminately sentenced incarcerated persons who are granted parole and found likely to be sexually violent predators will be referred to the Department of State Hospitals as soon as the Board makes that determination. This provision is necessary because the timing of a parole grant may not align with a person's release date, and prompt referral following a grant of parole helps ensure the evaluation process begins as soon as the Board determines referral criteria have been met.

Subsection (e)(3) is necessary to identify circumstances in which the Board may refer a person to the Department of State Hospitals less than six months before the person's release date. These circumstances include when the person was received by the department with less than nine months remaining on their sentence, when a judicial or administrative action modifies the person's release date, or when the person is scheduled for a parole hearing within the next six months. This provision is necessary because these circumstances may make compliance with the six-month referral timeframe impossible, and the Board must retain the ability to make referrals when new information or changes in release status occur.

Subsection (e)(4) is necessary to clarify that an incarcerated person who is found likely to be a sexually violent predator through the sexual dangerousness screening process will be automatically

referred to the Department of State Hospitals upon a grant of parole. This provision is necessary to ensure consistency between the sexual dangerousness screening process and the sexually violent predator referral process and to eliminate uncertainty regarding when a sexually violent predator screening or referral to the Department of State Hospitals is required.

Overall, subsection (e) is necessary to provide clear and transparent referral timelines and inform incarcerated persons and stakeholders when referrals to the Department of State Hospitals will occur. By establishing specific timeframes and identifying exceptions, the subsection promotes consistent implementation of the referral process and helps ensure evaluations are completed prior to the date an incarcerated person is scheduled for release from custody.

Subsection (f) is necessary to define the scheduled release date used for purposes of the sexually violent predator referral process and to establish how that date is determined for different categories of incarcerated persons. Because release dates vary depending on whether a person is serving a determinate or indeterminate sentence and whether the person has been granted parole, clarification is necessary to ensure consistent application of the referral timelines established in this section.

Subsection (f)(1) is necessary to clarify that, for an indeterminately sentenced incarcerated person who has been granted parole, the scheduled release date is the date on which the person can no longer be lawfully held in custody. This clarification is necessary because a parole grant does not establish a fixed release date. Even after gubernatorial review has been completed, the Board may take additional actions, such as referring the case for en banc review and ordering a rescission hearing, which may affect the person's release. As a result, a specific release date may not exist for this population, making it necessary to establish an alternative method for determining the scheduled release date.

Subsection (f)(2) is necessary to clarify that, for a determinately sentenced incarcerated person who has been granted parole, the scheduled release date is the date on which the person can no longer be lawfully held in custody. The subsection further clarifies that if the person's earliest possible release date occurs before that date, the earliest possible release date controls. This provision is necessary to ensure that referrals occur with sufficient time for evaluation and to account for circumstances in which a person's release may occur before the applicable decision review periods conclude.

Subsection (f)(3**)** is necessary to clarify that, for a determinately sentenced incarcerated person who has not been granted parole, the scheduled release date is the person's earliest possible release date. Establishing this standard is necessary because the earliest possible release date represents the date the person should be released from custody and therefore provides the appropriate date from which referral timelines should be calculated.

Overall, subsection (f) is necessary to provide clear and uniform definitions of scheduled release dates across different sentencing structures and release circumstances. By specifying how the scheduled release date is determined for each category of incarcerated persons, the subsection promotes consistency in the referral process and provides incarcerated persons and stakeholders with a clear understanding of how referral timelines will be calculated.

Section 2600.1 is amended to remove outdated and inaccurate language and to clarify the Board's authority to issue custody holds for incarcerated persons who are subject to the sexually violent predator evaluation process. Specifically, the existing subsection (a) contains language permitting the Board to issue a three-day temporary hold that is no longer permitted under the Welfare and Institutions Code. Subsection (a) is revised to clarify that the section governs custody holds associated with sexually violent predator evaluations.

Subsection (a)(1) specifies that when a person is determined likely to meet the criteria for a sexually violent predator, the Board may retain the person in custody for up to 90 days beyond the scheduled release date to allow completion of the sexually violent predator evaluation process. The amendment further defines "good cause" for issuing such a hold as circumstances in which fewer than 180 days remain before the person's scheduled release date.

Subsection (a)(2) clarifies that, for incarcerated persons who do not fall within subsection (a)(1), the Board may issue a hold for no more than 45 days beyond the person's scheduled release date. The subsection also defines "good cause" for issuing a hold in these circumstances as a change in specified conditions, including recalculation or restoration of credits, resentencing, receipt into custody, or other exigent circumstances that result in fewer than 45 days remaining before the person's scheduled release date.

These amendments are necessary to distinguish between the two circumstances under which the Board may issue a custody hold and to clarify the applicable standards and maximum duration of each hold. Without this clarification, it may be unclear to incarcerated persons, victims, and other interested parties when a hold may be imposed or how long a person's release may be delayed. The amendments provide clear guidance regarding the Board's authority, promote consistent implementation of statutory requirements, and ensure transparency concerning the effect of custody holds on release dates.

Subsection (b) is amended to remove language concerning the temporary three-day hold that is no longer authorized by the Welfare and Institutions Code. Subsection (b) is amended and the new language is necessary to clarify that the authority to issue a hold rests with the executive officer or the executive officer's designee. This subsection replaces former subsection (c), which inaccurately identified the individual responsible for issuing a hold as a commissioner or deputy commissioner. The amendment is necessary to ensure the regulation accurately reflects Board practice and clearly identifies the official responsible for making hold determinations. Clear identification of this authority promotes consistency in implementation and provides incarcerated persons and stakeholders with a clear understanding of who is authorized to issue a hold.

Subsection (c) is amended to remove reference to a hold determination being conducted by one commissioner and one deputy commissioner as hearing officers are not responsible for issuing holds. Subsection (c) is amended to establish when a hold becomes effective and the circumstances under which it terminates. Specifically, the subsection clarifies that a hold begins on the day following the incarcerated person's scheduled release date, as defined in subsection (f), and remains in effect until the Department of State Hospitals determines that the person is not a sexually violent predator or a superior court orders the person's release. Establishing these

parameters is necessary to ensure the duration of a hold is clearly defined and consistently applied. This subsection further promotes transparency by informing incarcerated persons and stakeholders when a hold will take effect and the conditions under which it will end. By clearly defining the commencement and termination of a hold, the regulation provides notice regarding the legal status of individuals subject to the sexually violent predator evaluation process and helps ensure uniform administration of the hold procedure.

Subsection (d) is necessary to remove language that no longer reflects the standard for issuing a custody hold under the sexually violent predator process. The existing subsection defines good cause for issuing a hold as a finding that the incarcerated person is a sexually violent predator. However, that is no longer the applicable standard in the Welfare and Institutions Code. The standard for good cause is now established in subsection (a), which provides the criteria governing when a hold may be issued. Retaining the existing language would create an inconsistency within the regulation by establishing a conflicting definition of good cause. Such a conflict could lead to confusion regarding the circumstances under which a hold may be imposed and could result in the misapplication of the hold authority. Deleting this subsection is therefore necessary to ensure the regulation accurately reflects the current Welfare and Institutions Code, eliminates ambiguity, and provides clear guidance to incarcerated persons, Board staff, and other stakeholders regarding the requirements for issuing a custody hold under the sexually violent predator process.

Subsection (e**)** is necessary to delete outdated regulatory language concerning the duration of a custody hold. The circumstances under which a hold terminates are now addressed in subsection (c), making the provisions in subsection (e) redundant and potentially inconsistent with the current regulation and Welfare and Institutions Code. Retaining this outdated language would create confusion regarding the applicable standards and timelines governing custody holds. Removing subsection (e) ensures that all requirements relating to the termination of a hold are contained in a single regulatory provision, providing clear and consistent guidance to incarcerated persons, Board staff, and other stakeholders. This amendment is therefore necessary to eliminate ambiguity, improve the organization of the regulation, and ensure the regulation accurately reflects the current hold process.

Subsection (f) is necessary to remove provisions concerning the tolling of a parole period from the section governing custody holds and relocate them to Section 2600.2, where they are more appropriately addressed. The subject matter of subsection (f) pertains to the calculation and tolling of a parole period for individuals determined to be sexually violent predators, rather than the issuance or administration of custody holds. Relocating these provisions improves the organization and clarity of the regulations by grouping related requirements in a single section and separating procedures governing custody holds from those governing parole tolling. Maintaining parole tolling provisions within the hold section could create confusion regarding the purpose and scope of the regulation and make it more difficult for incarcerated persons, stakeholders, and staff to identify the applicable requirements. This amendment is therefore necessary to improve the logical structure of the regulations, eliminate potential confusion, and ensure that requirements concerning parole tolling are addressed in the section specifically dedicated to that subject.

Section 2600.2 is added to establish a separate section governing the tolling of parole periods for persons subject to sexually violent predator proceedings. These provisions were previously

contained within Section 2600.1; however, they address a distinct subject matter and are relocated to improve the organization, clarity, and usability of the regulations. Creating a standalone section allows the requirements related to parole tolling during sexually violent predator proceedings to be more easily identified and understood by persons subject to parole, stakeholders, and the public. This section clarifies that, following a finding of probable cause that a person is a sexually violent predator, the person's parole period is tolled. The parole period remains tolled if the person is subsequently committed as a sexually violent predator and continues until the person is no longer subject to that commitment. Upon the person's release from commitment, the parole period resumes. The section also clarifies the treatment of parole periods when a person is detained pursuant to sexually violent predator proceedings but is ultimately not committed as a sexually violent predator. In those circumstances, the parole period is reinstated as of the date it was originally tolled, thereby providing credit toward the parole period for the time the person was detained during the proceedings. These provisions are necessary to clarify how parole periods are calculated and administered for persons involved in sexually violent predator proceedings. The existing regulations do not sufficiently explain when tolling begins, how long tolling continues, when a parole period resumes, or whether a person receives credit toward their parole period if they are detained but ultimately not committed as a sexually violent predator. By expressly addressing these circumstances, the regulation provides clear guidance to persons on parole and other stakeholders, promotes the uniform administration of parole periods, and reduces confusion regarding the effect of sexually violent predator proceedings on a person's parole period.

Section 2449.40 is amended to update the definition of an elderly incarcerated person. Subsection (a), (a)(1), (a)(2), and (a)(5) make non-substantive changes to language to reflect current terminology used to describe incarcerated persons, change "fifty" to "50," and update the format of cites to the Penal Code.

Subsection (a)(4) is amended to identify additional Penal Code sections that make an incarcerated person ineligible for elderly parole consideration at age 50 after serving a minimum of 20 years of incarceration. These amendments are necessary to clarify that individuals sentenced pursuant to Penal Code sections 269, 288.7, 667.61, or 667.71 are no longer eligible for statutory elderly parole consideration at age 50. The amendments ensure consistency with Penal Code section 3055, which, effective January 1, 2027, excludes incarcerated persons sentenced under any of those sections from elderly parole consideration at age 50. By expressly incorporating these exclusions into the regulation, the amendments provide clear guidance regarding eligibility requirements and promote uniform application of the statutory provisions governing elderly parole. In addition, an incarcerated person is not eligible if they were sentenced pursuant to Penal Code section 1170.12 or Penal Code section 667, subdivisions (b) through (i), or if they were convicted of the first-degree murder of a peace officer or former peace officer under any of the Penal Code sections identified in subsection (a)(5). This provision is necessary to capture existing exclusions under statutory elderly parole.

Subsection (b) is amended to establish new elderly parole eligibility criteria for incarcerated persons sentenced pursuant to Penal Code sections 269, 288.7, 667.61, or 667.71, as required by AB 2727. Under these amendments, an incarcerated person sentenced pursuant to any of those sections must be at least 65 years of age and have served a minimum of 25 years of continuous incarceration before becoming eligible for elderly parole consideration. These amendments are

necessary to implement and clarify the elderly parole eligibility requirements applicable to incarcerated persons sentenced pursuant to Penal Code sections 269, 288.7, 667.61, or 667.71. The amendments make clear that such individuals are not eligible for elderly parole consideration at age 50 and instead may be considered only after reaching age 65 and serving at least 25 years of continuous incarceration. Establishing these criteria in regulation provides clear guidance regarding eligibility requirements, ensures consistency with the governing statutory provisions, and promotes the uniform application of elderly parole eligibility standards. Existing subsection (b) is now subsection (e). In addition, an incarcerated person is not eligible if they were sentenced pursuant to Penal Code section 1170.12 or Penal Code section 667, subdivisions (b) through (i), or if they were convicted of the first-degree murder of a peace officer or former peace officer under any of the Penal Code sections identified in subsection (b)(5). This provision is necessary to capture existing exclusions under statutory elderly parole.

Subsection (c) is added to clarify that, notwithstanding the eligibility criteria and exclusions set forth in subsections (a) and (b), an incarcerated person may still receive an elderly parole hearing when required by a court order or other operation of law. Specifically, eligibility for an elderly parole hearing under this section does not limit or supersede eligibility established through judicial orders, settlement agreements, or other legal authorities. This subsection is necessary to inform incarcerated persons, stakeholders, and the public that an individual's eligibility for an elderly parole hearing may arise from legal authorities other than the statutory elderly parole provisions contained in this section. Without this clarification, individuals who do not satisfy the age, sentencing criteria, or the threshold for years incarcerated established in subsections (a) and (b) may incorrectly conclude that they are categorically ineligible for elderly parole consideration. Specifically, the federal three-judge court overseeing California's prison overcrowding litigation ordered the California Department of Corrections and Rehabilitation to implement an elderly parole process under which incarcerated persons who are at least 60 years of age and have served a minimum of 25 years of incarceration are referred to the Board for parole consideration. Since the court order remains in effect, certain incarcerated persons who are not eligible for statutory elderly parole consideration until age 65 may nevertheless be referred to the Board under the court order at age 60 after serving 25 years of incarceration. This subsection is necessary to ensure that the regulation accurately reflects the existence of alternative legal authorities governing elderly parole referrals and to prevent confusion regarding parole hearing eligibility.

Subsection (d) is added to clarify how elderly parole eligibility dates and scheduled parole hearings will be administered for incarcerated persons sentenced pursuant to Penal Code sections 269, 288.7, 667.61, or 667.71 who received an elderly parole hearing or had an elderly parole eligible date calculated before January 1, 2027. Under this subsection, the elderly parole eligible date for these incarcerated persons will be recalculated in accordance with the eligibility criteria set forth in subsection (b). If the recalculated elderly parole eligible date establishes that the incarcerated person is not currently eligible for a parole hearing, any previously scheduled hearing will be cancelled, and future hearings will be scheduled in accordance with the incarcerated person's earliest parole eligible date. This subsection is necessary to provide direction regarding the implementation of the changes to elderly parole eligibility that take effect on January 1, 2027. Without this provision, the regulation would not explain how the Board will address incarcerated persons whose eligibility dates were previously calculated, or whose hearings were already scheduled, under the eligibility criteria that existed before the statutory changes became operative.

The subsection establishes a uniform process for recalculating elderly parole eligible dates, cancelling hearings that are no longer authorized under the revised eligibility criteria, and scheduling future hearings consistent with applicable law. These provisions are necessary to ensure the accurate and consistent application of the amended elderly parole eligibility requirements and to provide clear notice to incarcerated persons, stakeholders, and the public regarding the effect of the statutory changes on previously calculated eligibility dates and scheduled hearings.

Subsection (e)(1), formerly subsection (b)(1), is renumbered without substantive change. The only amendment to this subsection is an update to the format used to cite the Penal Code. No changes are made to the meaning, requirements, or application of the provision. The renumbering is necessary to accommodate the addition of new subsections and to maintain the logical organization and readability of the section. Updating the citation format is necessary to ensure consistency with current drafting conventions and to improve clarity and uniformity throughout the regulations.

Subsection (e)(2), formerly subsection (b)(2), is renumbered without substantive change. The amendments to this provision are limited to updating terminology used to refer to incarcerated persons and removing repetitive language where a term has already been defined, leaving only the applicable acronym. No changes are made to the meaning, requirements, or operation of the subsection. The renumbering is necessary to accommodate the addition of new subsections and to maintain the logical organization, readability, and overall structure of the section. Reorganizing the subsection in this manner makes the regulation easier for incarcerated persons, stakeholders, and staff to navigate while preserving the existing requirements.