

**CHANGES WITHOUT REGULATORY EFFECT
STATEMENT OF REASONS**

**TITLE 15. CRIME PREVENTION AND CORRECTIONS
DIVISION 2. BOARD OF PAROLE HEARINGS ~~PRISON TERMS~~
CHAPTER 1. GENERAL
ARTICLE 1. RULES OF CONSTRUCTION AND DEFINITIONS**

Amendment of Title of Division 2

The Board of Parole Hearings (BPH) (formerly known as the Board of Prison Terms) proposes to change the name of Division 2 of the California Code of Regulations, Title 15 from the “Board of Prison Terms” to the “Board of Parole Hearings”. This action is a change without regulatory effect.

Specific Modification to Regulation

The Board of Parole Hearings makes the following proposed amendment to regulation:

Division 2. Board of Parole Hearings ~~Prison Terms~~

Background

In 2005, Governor Arnold Schwarzenegger introduced a plan to reorganize the various boards and agencies associated with the former Youth and Adult Correctional Agency, which was comprised of the former Department of Corrections, the former Department of the Youth Authority, the former Board of Prison Terms, the former Board of Corrections, the former Youth Authority Board, and the former Narcotic Addict Evaluation Authority. The Governor’s Reorganization Plan No. 1 (2005-2006 Reg. Sess.) was presented to the Legislature on February 22, 2005, and pursuant to Government Code section 12080.5, became effective 60 days later on May 5, 2005. The operative date of statutory changes made by the Governor’s Reorganization Plan was July 1, 2005.

In addition to consolidating some of the boards and agencies, the Governor’s Reorganization Plan changed the names of the boards and agencies. The Governor’s Reorganization Plan amended Penal Code section 5075, subdivision (a) to read:

Commencing July 1, 2005, there is hereby created the Board of Parole Hearings. As of July 1, 2005, any reference to the Board of Prison Terms by this or any other code refers to the Board of Parole Hearings. As of that date, the Board of Prison Terms is abolished.

Since July 1, 2005, the Board of Parole Hearings has used this new title whenever referring to its name, including in written documents and verbal statements. This includes reference to the Board of Parole Hearings in regulatory changes made after July 1, 2005.

For disability related accommodations, please contact the BPH Americans with Disabilities Act Coordinator at (916) 445-4072, at least five (5) working days prior to the scheduled meeting. All persons and property entering into this facility may be subject to search. No unauthorized weapons are allowed pursuant to Penal Code Section 171b.

Discussion

The Board of Parole Hearings proposes to change the name of Division 2 of the California Code of Regulations, Title 15 from the “Board of Prison Terms” to the “Board of Parole Hearings”. This action is a change without regulatory effect. The current name of Division 2 of the California Code of Regulations, Title 15 is inconsistent with and superseded by Penal Code section 5075, subdivision (a). Additionally, the Board of Parole Hearings has no discretion to not implement Penal Code section 5075, subdivision (a). Penal Code section 5075, subdivision (a) is clear and unambiguous that the Board of Parole Hearings is to be called the Board of Parole Hearings, and that all references to the former Board of Prison Terms now refer to the Board of Parole Hearings. This change of the name of Division 2 of the California Code of Regulations, Title 15, is merely a change to the structure of the regulations division and does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element. This is most clearly evidenced by the language of Penal Code section 5075, subdivision (a) that “any reference to the Board of Prison Terms by this or any other code refers to the Board of Parole Hearings,” making it clear that the two names for the Board of Parole Hearings are synonymous for all legal purposes. Changing the name of Division 2 of the California Code of Regulations, Title 15 will simply make the Division consistent with the Penal Code and will provide better clarity to the public when seeing references to the Board of Parole Hearings.

Additional Findings

The Board of Parole Hearings has determined this action will not have a significant adverse economic impact on business. Additionally, there have been no facts, evidence, documents, testimony, or other evidence provided that would alter the Board’s initial determination.

The Board of Parole Hearings has determined this action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement to Part 7 (Section 17561) of Division 4 of the Government Code.

The Board of Parole Hearings has determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected private persons than the action proposed.

The Board of Parole Hearings, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

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**AMENDED PROPOSED REGULATORY TEXT
CHANGES WITHOUT REGULATORY EFFECT**

Proposed additions are indicated by underline and deletions are indicated by ~~striketrough~~.

**TITLE 15. CRIME PREVENTION AND CORRECTIONS
DIVISION 2. BOARD OF PAROLE HEARINGS ~~PRISON TERMS~~
CHAPTER 1. GENERAL
ARTICLE 1. RULES OF CONSTRUCTION AND DEFINITIONS**

15 CCR § 2000 to read as follows:

§ 2000. Rules of Construction and Definitions.

(a) Rules of Construction. The following rules of construction apply to the regulations contained in this division, except as otherwise noted:

- (1) The enumeration of some criteria for the making of discretionary decisions does not prohibit the application of other criteria reasonably related to the decision being made.
- (2) The order in which criteria are listed does not indicate their relative weight or importance.
- (3) "Inmate," "prisoner," or "parolee" applies to any person who is or has been committed to the custody of the Director of Corrections, including inmates, residents, parolees, and dischargees, regardless of that person's present status.
- (4) "Regulation" means rule or regulation.
- (5) "Shall" is mandatory, "should" is advisory, and "may" is permissive.
- (6) The past, present, or future tense includes the others.
- (7) The masculine gender includes the feminine gender; the singular includes the plural.
- (8) The symbol § refers only to board rules contained in this division.
- (9) The time limits specified in these rules do not create a right to have the specified action taken within the time limits. The time limits are directory, and the failure to meet them does not preclude taking the specified action beyond the time limits.

(b) Definitions. For the purpose of the regulations contained in this division the definitions below shall have the following meanings:

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BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
TITLE 15. CRIME PREVENTION AND CORRECTIONS
DIVISION 2. ~~BOARD OF PRISON TERMS~~ BOARD OF PAROLE HEARINGS
CHAPTER 3. PAROLE RELEASE
ARTICLE 4. PAROLE CONSIDERATION PROCEDURES for LIFE PRISONERS and NONLIFE
1168 PRISONERS

15 CCR § 2275 to read as follows:

(a) General. As required by Penal Code section 3000.1, when parole is revoked for any prisoner sentenced under Penal Code section 1168 for any offense of first or second degree murder with a maximum term of life imprisonment, the prisoner shall be given a hearing as provided in Penal Code sections 3041.5 and 3041.7 within 12 months of the date of any revocation of parole to consider the release of the inmate on parole.

(b) Panel. This hearing shall be conducted by a two person panel comprised of one commissioner and one deputy commissioner.

(c) Disposition. At this hearing, the panel shall release the prisoner within one year of the date of the revocation, unless it determines that the circumstances and gravity of the parole violation are such that consideration of the public safety requires a more lengthy period of incarceration, or unless there is a new prison commitment following a conviction. If the panel concludes that a more lengthy period of incarceration is warranted, then notwithstanding the provisions of paragraph (2) of subdivision (b) of section 3041.5, there shall be annual parole consideration hearings thereafter, unless the person is otherwise ineligible for parole release.

(d) Application. This section shall only apply to parolees who have a pending adjudication for a parole violation on July 1, 2013, and to revocation proceedings conducted by the Board of Parole Hearings prior to July 1, 2013, if reopened on or after July 1, 2013. This section shall remain in effect until June 30, 2014, and as of that date is repealed.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3000.08(j), 3052 and 5076.2, Penal Code. Reference: Section 3000.1, Penal Code.

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TITLE 15. CRIME PREVENTION AND CORRECTIONS
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Introduction of 15 CCR § 2276 to read as follows:

§ 2276. Penal Code 3000.1 Proceedings.

(a) General. Penal Code section 3000.08(h) provides that persons on parole for specified crimes, who following a lawful determination that the person has committed a violation of law or violated his or her conditions of parole, shall be remanded to the custody of the Department of Corrections and Rehabilitation and remanded to the jurisdiction of the Board of the Parole Hearings for future parole consideration. Parolees who are subject to remand upon a lawful determination are specified as follows: a) parolees convicted of crimes listed in Penal Code section 3000(b)(4) where the crime was committed on or after September 9, 2010; b) parolees convicted of crimes listed in Penal Code section 3000.1(a)(1) where the crime was committed on or after January 1, 1983; and c) parolees convicted of crimes listed in Penal Code section 3000.1(a)(2) where the crime was committed on or after September 9, 2010. These Board of Parole hearings are collectively referred to as Penal Code section 3000.1 proceedings.

(b) Lawful Determination. Parole violation charges are adjudicated by the court in accordance with Penal Code section 1203.2, or by another lawful authority for multijurisdiction parolees. Upon the lawful determination that a parolee has committed a violation of law or violated a condition of parole, the matter is remanded to the Board of Parole Hearings for a Penal Code section 3000.1 initial hearing.

(c) Penal Code section 3000.1 initial hearings. A Penal Code section 3000.1 initial hearing shall be held by the Board of Parole Hearings on the next available calendar, but no later than 12 months following a lawful determination that a parolee has committed a violation of law or violation of condition of parole. At a Penal Code section 3000.1 initial hearing, the Board shall consider the violation of law or violation of condition of parole in the context of the parolee's history and all relevant suitability factors of California Code of Regulations, title 15, section 2402. The Board shall not retry the evidentiary findings of the court or other lawful authority. The Board shall grant parole unless it determines that the circumstances and gravity of the violation of law or violation of condition of parole are such that consideration of the public safety requires a more lengthy period of incarceration.

(d) Penal Code section 3000.1 annual parole consideration hearings. Within one year of a Penal Code section 3000.1 initial hearing, parolees who do not have a parole grant and who are not otherwise ineligible for release shall receive a Penal Code section 3000.1 annual parole consideration hearing. At a Penal Code section 3000.1 annual parole consideration hearing, the Board shall grant parole in accordance with Penal Code section 3041 and California Code of Regulations, title 15, section 2402. A parolee who does not have a parole grant and who is not otherwise ineligible for release shall continue to

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receive Penal Code section 3000.1 annual parole consideration hearings each year until he or she receives a parole grant.

(1) Ineligible for Release. For purposes of Penal Code section 3000.1 proceedings, a parolee is ineligible for release if the parolee is serving a separate indeterminate term, or until the parolee reaches the third year prior to his or her earliest possible release date while serving a separate determinate term, or the parolee is incarcerated under other similar circumstances.

(2) Earliest Possible Release Date. The earliest possible release date is calculated by the California Department of Corrections and Rehabilitation. Using the inmate's maximum release date, it is a calculation of the earliest date the inmate could be released, accounting for all of the credits earned and lost by the inmate, and including a projection of the inmate continuing to earn credits until released.

(e) Parole Grant. A parole grant at a Penal Code section 3000.1 proceeding is a finding by the Board the parolee is eligible for release. Despite a parole grant, the parolee may continue to be incarcerated if serving a separate sentence or if subject to the jurisdiction of another authority.

(f) Notice. Prior to any Penal Code section 3000.1 proceeding, notices shall be sent pursuant to Penal Code sections 3041.7 and 3043 to parties related to the life crime, or related to other crimes for which the parolee has been convicted as defined in Penal Code section 3043(a). No notices are required pursuant to Penal Code section 3042.

(g) Hearing Rights. At Penal Code section 3000.1 proceedings, the parolee shall be provided all hearing rights in accordance with Penal Code section 3041.5, with the exception of subdivisions (b)(3) and (d), and shall be provided all hearing rights in accordance with Penal Code section 3041.7, and California Code of Regulations, title 15, sections 2245 through 2256, or section 2367 for multijurisdiction parolees, as relevant.

(h) Hearing Panel. Penal Code section 3000.1 proceedings shall be heard by a panel of two or more commissioners or deputy commissioners, of which no more than one may be a deputy commissioner. En banc referrals shall be conducted in accordance with Penal Code section 3041.

(i) Review of Decision. Proposed decisions at Penal Code section 3000.1 proceedings are subject to decision review pursuant to California Code of Regulations, title 15, section 2041(h). Decisions are subject to the Governor's review pursuant to Penal Code sections 3041.1 and 3041.2.

(j) Parole Discharge. For purposes of a parolee's discharge from parole, a lawful determination that a parolee has committed a violation of law or violation of condition of parole shall be considered an interruption in parole for purposes of Penal Code sections 3000(b)(4), 3000.1(b), and 3001.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3000(b)(4), 3000.1, 3052 and 5076.2, Penal Code. Reference: Sections 1203.2, 3000(b)(4), 3000.08(h), 3000.1, 3001, 3041.7, 3041.1, 3041.2, and 3043, Penal Code; and Sections 2041(h) and 2402, California Code of Regulations, Title 15.

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