



# BOARD OF PAROLE HEARINGS



ADMINISTRATIVE DIRECTIVE NO: 2013-01

**SUBJECT: PROCEDURES TO RESOLVE A TIE VOTE AT A PAROLE SUITABILITY HEARING**

## INTRODUCTION

This Administrative Directive clarifies the procedures to follow in order to resolve a tie vote regarding the determination of suitability, fixing a parole date or scheduling the next hearing.

## LEGAL AUTHORITY

**Penal Code section 3041(a)** provides, "In the event of a tie vote, the matter shall be referred for an en banc review of the record that was before the panel that rendered the tie vote. Upon en banc review, the board shall vote to either grant or deny parole and render a statement of decision. The en banc review shall be conducted pursuant to subdivision (e)."

**Penal Code section 3041(e)** provides, "For purposes of this section, an en banc review by the board means a review conducted by a majority of commissioners holding office on the date the matter is heard by the board. An en banc review shall be conducted in compliance with the following:

- (1) The commissioners conducting the review shall consider the entire record of the hearing that resulted in the tie vote.
- (2) The review shall be limited to the record of the hearing. The record shall consist of the transcript or audiotape of the hearing, written or electronically recorded statements actually considered by the panel that produced the tie vote, and any other material actually considered by the panel. New evidence or comments shall not be considered in the en banc proceeding.
- (3) The board shall separately state reasons for its decision to grant or deny parole.
- (4) A commissioner who was involved in the tie vote shall be recused from consideration of the matter in the en banc review."

**DIRECTIVE**

In the event a hearing of a tie vote regarding the determination of suitability, fixing of a parole date or scheduling of the next hearing, the matter shall be referred to the full board en banc for a final decision. The commissioners conducting the review shall only consider the record of the hearing and all materials considered by the original panel. By statute, commissioners may not consider any new evidence (including comments or letters) submitted after the hearing. Therefore, no additional public comments or written materials will be considered by the Board when resolving the tie vote.

*This Administrative Directive shall take effect immediately. If you have any questions concerning the contents of this Administrative Directive please contact the legal office at (916) 324-7604.*

APPROVED BY:	 _____ <b>JENNIFER P. SHAFFER</b> Executive Officer, BPH	DATE: <u>2/27/13</u>
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