

**State of California
Office of Administrative Law**

In re:
Board of Parole Hearings

Regulatory Action:

Title 15, California Code of Regulations

**Adopt sections: 2150, 2151, 2152, 2153,
2154, 2155, 2156, 2157**

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2018-1012-03

OAL Matter Type: Emergency (E)

The Board of Parole Hearings submitted this emergency action to adopt regulations that establish procedures for advancing parole consideration hearings pursuant to Penal Code section 3041.5(b)(4) and (d).

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 10/22/2018 and will expire on 4/23/2019. The Certificate of Compliance for this action is due no later than 4/22/2019.

Date: October 22, 2018



Richard L. Smith
Senior Attorney

For: Debra M. Cornez
Director

Original: Jennifer Shaffer, Executive
Officer

Copy: Heather McCray

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

EMERGENCY

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-		2018-1012-03E

For use by Office of Administrative Law (OAL) only	
NOTICE	REGULATIONS

2018 OCT 12 P 1:44
OFFICE OF ADMINISTRATIVE LAW

ENDORSED - FILED
in the office of the Secretary of State
of the State of California
OCT 22 2018
3:43pm

AGENCY WITH RULEMAKING AUTHORITY Board of Parole Hearings	AGENCY FILE NUMBER (if any) BPH RN 18-01
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Advancing Parole Consideration Hearing Dates	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) n/a
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 2150, 2151, 2152, 2153, 2154, 2155, 2156, and 2157
TITLE(S) 15	AMEND REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) n/a

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY		
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Heather L. McCray	TELEPHONE NUMBER (916) 322-6729	FAX NUMBER (Optional) (916) 322-3475	E-MAIL ADDRESS (Optional) BPH.Regulations@cdcr.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 10/12/2018
TYPED NAME AND TITLE OF SIGNATORY Jennifer P. Shaffer, Executive Officer	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

OCT 22 2018

Office of Administrative Law

BPH RN 18-01: PROPOSED REGULATORY TEXT

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

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

Chapter 2.5. ADVANCING PAROLE CONSIDERATION HEARING DATES is *added* to read as follows:

CHAPTER 2.5. ADVANCING PAROLE CONSIDERATION HEARING DATES

Article 1. Petition to Advance the Date of an Inmate's Next Parole Consideration Hearing is *added* to read as follows:

ARTICLE 1. PETITION TO ADVANCE THE DATE OF AN INMATE'S NEXT PAROLE CONSIDERATION HEARING

§ 2150. General.

(a) Following a parole consideration hearing resulting in a denial of parole under paragraph (3) of subdivision (b) of Penal Code section 3041.5 or a stipulation of unsuitability under subsection 2253(c) of article 3 of chapter 3, the inmate or the inmate's attorney of record may file a written petition requesting that the board advance the date of the inmate's next parole consideration hearing. The inmate or the inmate's attorney of record may file a subsequent written petition once every three years from the date of the board's previous review on the merits issued under section 2156.

(b) To file a written petition to advance the date of the inmate's next parole consideration hearing, the inmate or inmate's attorney of record shall send to the board a completed BPH Form 1045-A or a written request that includes the following:

- (1) Inmate's name;
- (2) CDCR number;
- (3) Institution at which the inmate is housed;
- (4) A change in circumstances or new information since the date of the inmate's most recent hearing resulting in a denial or stipulation of unsuitability;
- (5) How the change in circumstances or new information establishes a reasonable likelihood that consideration of the public safety does not require that the inmate remain incarcerated until the date of his or her next parole consideration hearing; and
- (6) Inmate's signature and date of signature.

NOTE: Authority cited: Section 12838.4, Government Code and Sections 3052 and 5076.2, Penal Code. Reference: Section 3041.5, Penal Code and *In re Vicks* (2013) 56 Cal.4th 274.

§ 2151. Preliminary Review.

(a) Within 10 business days of receiving a petition under section 2150, board staff shall review the petition to determine whether the board has jurisdiction under this section to advance the date of the inmate's next parole consideration hearing.

(b) The board has jurisdiction to advance the date of the inmate's next parole consideration hearing if all of the following are true:

(1) The inmate's last parole consideration hearing resulted in a denial of parole under paragraph (3) of subdivision (b) of Penal Code section 3041.5 or a stipulation of unsuitability under subsection 2253(c) of article 3 of chapter 3; and

(2) The inmate has not submitted a petition to advance a parole consideration hearing date that was reviewed on the merits within the past three years under section 2156.

(c) If board staff determines the board has jurisdiction under subsection (b) to review the petition, the board shall proceed with the notification process outlined in section 2155.

(d) If board staff determines the board does not have jurisdiction under subsection (b) to review the petition, staff shall issue a written decision, a copy of which shall be served on the inmate and placed in the inmate's central file within 15 business days of being issued. The date of the inmate's next parole consideration hearing shall not be advanced.

(e) Inmates may seek review of decisions issued under this section by writing the board in accordance with section 2157 within 30 calendar days of being served with the decision. Decisions issued under this section are not subject to the department's inmate appeal process under article 8 of chapter 1 of division 3 of this title.

(f) Nothing in this section precludes the board from conducting an ad hoc administrative review to determine whether to advance the date of the inmate's next parole consideration hearing under section 2152.

NOTE: Authority cited: Section 12838.4, Government Code and Sections 3052 and 5076.2, Penal Code. Reference: Section 3041.5, Penal Code.

Article 2. Administrative Review to Advance the Date of an Inmate's Next Parole Consideration Hearing is *added* to read as follows:

ARTICLE 2. ADMINISTRATIVE REVIEW TO ADVANCE THE DATE OF AN INMATE'S NEXT PAROLE CONSIDERATION HEARING

§ 2152. Ad Hoc Administrative Review.

The board may, at any time, initiate an administrative review of any inmate to determine whether to advance the date of the inmate's next parole consideration hearing under paragraph (4) of subdivision (b) of Penal Code section 3041.5. Once an administrative review is initiated under this section, the board shall proceed with the notification process outlined in section 2155.

NOTE: Authority cited: Section 12838.4, Government Code and Sections 3052 and 5076.2, Penal Code. Reference: Section 3041.5, Penal Code and *In re Vicks* (2013) 56 Cal.4th 274.

§ 2153. Administrative Review of Three-Year Denials.

The board shall, 11 months after a parole consideration hearing results in a denial period of three years, initiate an administrative review to determine whether to advance the date of the inmate's next parole consideration hearing under paragraph (4) of subdivision (b) of Penal Code section 3041.5. This section shall not apply to determinately sentenced inmates who were within 24 months of being released as a result of their Earliest Possible Release Date.

NOTE: Authority cited: Section 12838.4, Government Code and Sections 3052 and 5076.2, Penal Code. Reference: Section 3041.5, Penal Code and *In re Vicks* (2013) 56 Cal.4th 274.

§ 2154. Preliminary Screening.

(a) Within 10 business days of an administrative review being initiated under section 2153 of this article, board staff shall conduct a preliminary screening to determine whether the inmate will be excluded from a review on the merits under section 2156.

(b) An inmate will be excluded from a review on the merits under section 2156 if any of the following circumstances apply:

- (1) The inmate stipulated to unsuitability under subsection 2253(c) of article 3 of chapter 3 of this title at his or her last parole consideration hearing;
- (2) The inmate's last parole consideration hearing resulted in a denial period of more than three years under paragraph (3) of subdivision (b) of Penal Code section 3041.5;
- (3) The inmate's overall risk rating is high on his or her most recent comprehensive risk assessment completed under section 2240 of article 1 of chapter 3 of this title;
- (4) The inmate or the inmate's attorney of record has, since the inmate's last hearing, submitted a petition under section 2150 that was reviewed on the merits under section 2156;
- (5) The inmate has been found guilty of a Division A-1, A-2, B, C, D, or E rule violation as specified in section 3323 of article 5 of subchapter 4 of chapter 1 of division 3 of this title since the inmate's last parole consideration hearing;

(6) The inmate has been convicted of a new crime since the inmate's last parole consideration hearing; or

(7) The inmate's next hearing date has already been advanced since his or her last parole consideration hearing.

(c) If board staff determines that none of the circumstances in subsection (b) apply, the board shall proceed with the notification process outlined in section 2155 and a review on the merits under section 2156.

(d) If board staff determines that at least one of the circumstances in subsection (b) of this section applies, the inmate's next parole consideration hearing shall not be advanced under section 2153.

(e) Nothing in this section precludes the board from conducting an ad hoc administrative review to determine whether to advance the date of the inmate's next parole consideration hearing under section 2152.

NOTE: Authority cited: Section 12838.4, Government Code and Sections 3052 and 5076.2, Penal Code. Reference: Section 3041.5, Penal Code and *In re Vicks* (2013) 56 Cal.4th 274.

Article 3. Review on the Merits is *added* to read as follows:

ARTICLE 3. REVIEW ON THE MERITS

§ 2155. Victim Notification.

(a) Within five business days of board staff determining the board has jurisdiction under section 2151 or determining none of the circumstances in subsection 2154(b) apply, or within five business days of the board initiating an ad hoc administrative review under section 2152, the board shall notify registered victims of the board's pending review on the merits under section 2156 and provide an opportunity to submit a written statement.

(b) Responses to the board under this section must be in writing and postmarked or electronically stamped no later than 30 calendar days after the board issued the notification.

(c) A registered victim is any person who is registered as a victim with the department's Office of Victim and Survivor Rights and Services on the date board staff determined the board has jurisdiction under section 2151 of article 1, the date board staff determined none of the circumstances in subsection 2154(b) apply, or on the date the board initiated an ad hoc administrative review under section 2152.

NOTE: Authority cited: Section 12838.4, Government Code and Sections 3052 and 5076.2, Penal Code. Reference: Sections 3041.5 and 3043, Penal Code and *In re Vicks* (2013) 56 Cal.4th 274.

§ 2156. Review on the Merits.

(a) Within 15 business days of the conclusion of the notification process described under section 2155, a commissioner or deputy commissioner acting in accordance with Penal Code section 5076.1 shall, as a hearing officer, conduct a review on the merits and determine whether the date of the inmate's next parole consideration hearing should be advanced under paragraph (4) of subdivision (b) or under subdivision (d) of Penal Code section 3041.5.

(b) The hearing officer shall review and consider all relevant and reliable information about the inmate, including, but not limited to:

- (1) Information contained in the inmate's central file;
- (2) Any petition filed by the inmate under section 2150; and
- (3) Written statements submitted by registered victims who received notice under section 2155.

(c) If the inmate committed his or her controlling offense, as defined in subdivision (a) of Penal Code section 3051, when he or she was 25 years of age or younger, the hearing officer shall consider the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the inmate.

(d) If the inmate is 60 years of age or older and has served a minimum of 25 years of continuous incarceration on his or her current sentence, the hearing officer shall consider the inmate's age, time served, and diminished physical condition, if any.

(e) After reviewing and considering all relevant and reliable information and the factors in subsections (c) and (d), the hearing officer shall determine whether the date of the inmate's next parole consideration hearing should be advanced. If the hearing officer determines there has been a change in circumstances or new information that establishes a reasonable likelihood that consideration of the public and the victim's safety does not require that the inmate remain incarcerated until the date of his or her next parole consideration hearing, the hearing officer shall advance the date of the inmate's next parole consideration hearing. In the absence of such a determination, the date of the inmate's next parole consideration hearing shall not be advanced.

(f) The hearing officer shall issue a written decision that includes a statement of reasons supporting the decision. A copy of the decision shall be served on the inmate and placed in the inmate's central file within 15 business days of being issued. The board shall, within five business days of issuing a decision, send notice of the decision to any registered victim who received notice under section 2155.

(g) Parole consideration hearing dates advanced under subsection (e) shall be advanced by the hearing officer either to the next available calendar or by decreasing the length of the inmate's previous parole denial to a shorter allowable period under paragraph (3) of subdivision (b) of Penal Code section 3041.5, whichever the hearing officer determines is appropriate based on the information reviewed and considered.

(h) Inmates may seek review of decisions issued under this section by writing the board in accordance with section 2157 within 30 calendar days of being served the decision. Decisions issued under this section are not subject to the department's inmate appeal process under article 8 of chapter 1 of division 3 of this title.

NOTE: Authority cited: Section 12838.4, Government Code and Sections 3052 and 5076.2, Penal Code. Reference: Sections 3041.5, 3051, 3055, 4801 and 5076.1, Penal Code and *In re Vicks* (2013) 56 Cal.4th 274.

Article 4. Decision Review is *added* to read as follows:

ARTICLE 4. DECISION REVIEW

§ 2157. Decision Review.

(a) An inmate may request review of a decision issued under section 2151, or a review on the merits decision issued under section 2156 by submitting a written request to the board within 30 calendar days of the inmate being served the decision. The inmate's written request shall include a description of why the inmate believes the previous decision was not correct and may include additional information not available to the board at the time the previous decision was issued.

(b) The Chief Hearing Officer or an associate chief deputy commissioner may also initiate a review under this section at any time prior to the date of the inmate's next parole consideration hearing if the previous decision contained an error of law, an error of fact, or if the board receives new information that would have materially impacted the previous decision had it been known at the time the decision was issued.

(c) A hearing officer, associate chief deputy commissioner, or the Chief Hearing Officer, who was not involved in the original decision, shall complete a review of the decision within 15 business days of the board receiving the request.

(d) The hearing officer, associate chief deputy commissioner, or the Chief Hearing Officer reviewing the previous decision shall consider all relevant and reliable information and issue a decision either concurring with the previous decision or overturning the previous decision with a statement of reasons supporting the new decision.

(e) A copy of the decision shall be served on the inmate and placed in the inmate's central file within 15 business days of being issued.

(f) Within five business days of issuing a decision under this section that overturns a previous decision that determined the board had jurisdiction under section 2151, or a review on the merits decision issued under section 2156, the board shall send notice of the decision to any victim who received notice under section 2155.

(g) If a decision under this section overturns a previous decision that determined the board did not have jurisdiction to conduct a review under section 2151 or that determined one or more of the circumstances in subsection 2154(b) applied, the board shall proceed with the notification process outlined in section 2155. The board shall also conduct a review on the merits under section 2156.

(h) Decisions under this section are not subject to the department's inmate appeal process under article 8 of chapter 1 of division 3 of this title.

NOTE: Authority cited: Section 12838.4, Government Code and Sections 3052 and 5076.2, Penal Code. Reference: Section 3041.5, Penal Code and *In re Vicks* (2013) 56 Cal.4th 274.