SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguín, Chair
2025 - 2026 Regular

Bill No:	SB 1446	**Hearing Date:**	April 21, 2026
Author:	Committee on Public Safety		
Version:	March 19, 2026		
Urgency:	No	**Fiscal:**	Yes
Consultant:	SJ		

Subject: ***Incarcerated persons: release and parole***

HISTORY

Source: Author

Prior Legislation: SB 81 (Skinner), vetoed, 2023

Support: Unknown

Opposition: California Public Defenders Association; Justice2Jobs Coalition; La Defensa; UnCommon Law

PURPOSE

The purpose of this bill is to require the decision and the vote of each Board of Parole Hearing (BPH) commissioner for an en banc review to be a public record; provide that the standard of review that generally applies for en banc review does not apply for cases referred by the Governor; and requires the Secretary of the California Department of Corrections and Rehabilitation (CDCR) to refer indeterminately sentenced individuals for evaluation if the Secretary determines that the person may be a sexually violent predator (SVP).

Existing law requires the Board of Parole Hearings (BPH) to meet with each incarcerated person during the sixth year prior to the person's minimum eligible parole date (MEPD) for the purposes of reviewing and documenting the person's activities and conduct pertinent to both parole eligibility. Requires that the BPH provide the incarcerated person with information about the parole hearing process, legal factors relevant to their suitability or unsuitability for parole, and individualized recommendations for the person regarding their work assignments, rehabilitative programs, and institutional behavior during the consultation. (Pen. Code, § 3041, subd. (a)(1).)

Existing law provides that one year prior to the incarcerated person's MEPD, a panel of two or more commissioners or deputy commissioners must meet with the person and shall normally grant parole. (Pen. Code, § 3041, subd. (a)(2).)

Existing law requires, in the event of a tie vote, the matter to be referred for an en banc review of the record that was before the panel that rendered the tie vote. Requires the board to vote to either grant or deny parole and render a statement of decision upon en banc review. (Pen. Code, § 3041, subd. (a)(3).)

Existing law requires that an incarcerated person be released upon a grant of parole, subject to all applicable review periods. Prohibits the release of an incarcerated person who has not reached their MEPD unless the person is eligible for earlier release pursuant to their youth offender parole eligibility date or elderly parole eligible date. (Pen. Code, § 3041, subd. (a)(4).)

Existing law requires the panel or board, sitting en banc, to grant parole to an incarcerated person unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual. (Pen. Code, § 3041, subd. (b)(1).)

Existing law requires that any decision of the parole panel finding an incarcerated individual suitable for parole becomes final within 120 days of the date of the hearing. Authorizes the board to review the panel's decision during that period. Requires the panel's decision to become final pursuant unless the board finds that the panel made an error of law, or that the panel's decision was based on an error of fact, or that new information should be presented to the board, any of which when corrected or considered by the board has a substantial likelihood of resulting in a substantially different decision upon a rehearing. Requires the board to consult with the commissioners who conducted the parole consideration hearing in making this determination. (Pen. Code, § 3041, subd. (b)(2).)

Existing law prohibits a decision of a panel from being disapproved and referred for rehearing except by a majority vote of the board, sitting en banc, following a public meeting. (Pen. Code, § 3041, subd. (b)(3).)

Existing law provides that 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. (Pen. Code, § 3041, subd. (e).)

Existing law requires that an en banc review be conducted in compliance with the following:

- The commissioners conducting the review must consider the entire record of the hearing that resulted in the tie vote.
- The review must be limited to the record of the hearing. Requires the record to 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. Prohibits new evidence or comments from being considered in the en banc proceeding.
- The board must separately state reasons for its decision to grant or deny parole.
- A commissioner who was involved in the tie vote must be recused from consideration of the matter in the en banc review.
  (Pen. Code, § 3041, subd. (e).)

Existing law authorizes the Governor, any time before an incarcerated person's release, to request review of a decision by a parole authority concerning the grant or denial of parole to any inmate in a state prison. Requires the Governor to state the reason or reasons for the request, and whether the request is based on a public safety concern, a concern that the gravity of current or past convicted offenses may have been given inadequate consideration, or on other factors. (Pen. Code, § 3041.1, subd. (a).)

Existing law requires the request, if one has been made, to be reviewed by a majority of commissioners specifically appointed to hear adult parole matters and who are holding office at the time. Requires, in case of a review, a vote in favor of parole by a majority of the commissioners reviewing the request to be required to grant parole to any incarcerated person. (Pen. Code, § 3041.1, subd. (b).)

Existing law provides for the civil commitment for psychiatric and psychological treatment of an individual incarcerated in state prison found to be a sexually violent predator (SVP) after the person has served his or her prison commitment. (Welf. & Inst. Code, § 6600, et seq.)

Existing law defines a "sexually violent predator" as "a person who has been convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior." (Welf. & Inst. Code, § 6600, subd. (a)(1).)

Existing law requires the Secretary of CDCR, when they have determined that an individual who is in custody (who is either serving a determinate prison sentence or whose parole has been revoked, and who is not in custody for the commission of a new offense committed while the individual was serving an indeterminate term in a state hospital as an SVP) may be an SVP, to refer the person for evaluation at least six months prior to that individual's scheduled release date for release from prison. Allows the referral to be made less than six months prior to the person's scheduled release date if the person was received by CDCR with less than nine months of their sentence to serve, or if the person's release date is modified by judicial or administrative action. (Welf. & Inst. Code, § 6601, subd. (a)(1).)

Existing law permits a person committed as an SVP to be held for an indeterminate term upon commitment. (Welf. & Inst. Code, §§ 6604 & 6604.1.)

Existing law requires that a person found to have been an SVP and committed to the Department of State Hospitals (DSH) have a current examination on their mental condition made at least yearly. Requires the report to include consideration of whether the committed person currently meets the definition of an SVP and whether conditional release to a less restrictive alternative or an unconditional discharge is in the best interest of the person and conditions can be imposed that would adequately protect the community. (Welf. & Inst. Code, § 6604.9, subds. (a) & (b).)

Existing law outlines a process for the conditional release to a less restrictive alternative or for an unconditional discharge, as specified. (Welf. & Inst. Code, §§ 6604.9, 6607, 6608, 6608.5, 6608.6, 6609.1; Pen. Code, § 1605, subd. (a).)

This bill requires the decision and the vote of each commissioner for an en banc review to be a public record.

This bill provides that, for en banc review referred by the Governor, the standard of review that generally applies for en banc review does not apply.

This bill requires the Secretary to refer indeterminately sentenced individuals for evaluation if they determine that the person may be an SVP.

COMMENTS

1. Parole Suitability

Incarcerated individuals who are indeterminately sentenced must be granted parole by the BPH in order to be released from prison. The Penal Code provides that the parole board "shall grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual." (Pen. Code, § 3041, subd. (b).) The fundamental consideration when making a determination about an individual's suitability for parole is whether the individual currently poses an unreasonable risk of danger to society if released from prison. (*In re Shaputis* (2008) 44 Cal.4th 1241.) The decision whether to grant parole is an inherently subjective determination. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 655.)

In deciding whether to grant parole, the BPH must consider all relevant and reliable information available. (Cal. Code Regs., tit. 15, § 2281, subd. (b).) Factors the BPH must consider include the nature of the commitment offense, including the circumstances of the person's social history; past and present mental state; past criminal history, including involvement in other criminal misconduct which is reliably documented; the base and other commitment offenses, including behavior before, during and after the crime; past and present attitude toward the crime; any conditions of treatment or control, including the use of special conditions under which the individual may safely be released to the community; and any other information which bears on the individual's suitability for release. (Cal. Code Regs., tit. 15, §§ 2281, subd. (b).) The regulations further state that "[c]ircumstances which taken alone may not firmly establish unsuitability for parole may contribute to a pattern which results in a finding of unsuitability." (*Ibid*.)

Although the parole board is required to consider the circumstances of the offense, the California Supreme Court has held that the parole board may not rely solely on the commitment offense when deciding to grant parole unless the circumstances of the offense "continue to be predictive of current dangerousness." (*In re Lawrence* (2008) 44 Cal.4th 1181, 1221.) The parole board is prohibited from requiring an admission of guilt to any crime for which an incarcerated person was committed to CDCR when considering whether to grant an inmate parole. (Pen. Code, § 5011, subd. (b).) However, "an implausible denial of guilt may support a finding of current dangerousness, without in any sense requiring the inmate to admit guilt as a condition of parole….it is not the failure to admit guilt that reflects a lack of insight, but the fact that the denial is factually unsupported or otherwise lacking in credibility." (*In re Shaputis* (2011) 53 Cal.4th 192, 216.) Although the term "insight" is not explicitly included in the regulations, the regulations "direct the Board to consider the inmate's 'past and present attitude toward the crime' and 'the presence of remorse,' expressly including indications that the inmate 'understands the nature and magnitude of the offense'.… fit[ting] comfortably within the descriptive category of 'insight.'" (*Id*. at 218 (citations omitted).)

Additional guidance for making parole suitability determinations is provided in the regulations which list circumstances tending to show suitability and those tending to show unsuitability. The following circumstances tend to show unsuitability for release:

- The person committed the offense in an especially heinous, atrocious or cruel manner. The factors to be considered include:

  - Multiple victims were attacked, injured or killed in the same or separate incidents.
  - The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder.
  - The victim was abused, defiled or mutilated during or after the offense.
  - The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering.
  - The motive for the crime is inexplicable or very trivial in relation to the offense.
- The person on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the incarcerated person demonstrated serious assaultive behavior at an early age.
- The person has a history of unstable or tumultuous relationships with others.
- The person has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.
- The person has a lengthy history of severe mental problems related to the offense.
- The person has engaged in serious misconduct in prison or jail. (Cal. Code of Regs., tit. 15, § 2281, subd. (c).)

The following are circumstances tending to show suitability:

- The person does not have a record of assaulting others as a juvenile or committing crimes with a potential of personal harm to victims.
- The person has experienced reasonably stable relationships with others.
- The person performed acts which tend to indicate the presence of remorse, such as attempting to repair the damage, seeking help for or relieving suffering of the victim, or indicating that he understands the nature and magnitude of the offense.
- The person committed his or her crime as the result of significant stress in his or her life, especially if the stress has built over a long period of time.
- At the time of the commission of the crime, the person suffered from Battered Woman Syndrome, as defined, and it appears the criminal behavior was the result of that victimization.
- The person lacks any significant history of violent crime.
- The person's present age reduces the probability of recidivism.
- The person has made realistic plans for release or has developed marketable skills that can be put to use upon release.
- Institutional activities indicate an enhanced ability to function within the law upon release. (Cal. Code of Regs., tit. 15, § 2281, subd. (d).)

The circumstances which tend to show suitability and unsuitability for parole are set forth as general guidelines, and the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel. (Cal. Code of Regs., tit. 15, § 2281, subds. (c) & (d).)

2. En Banc Review of a BPH Decision

Cases are referred for en banc review when a parole suitability hearing ends with a tie vote regarding whether to grant the person parole (occurs when there is a two-person hearing panel), when the Chief Counsel of BPH refers the case, and when the Governor requests review of a parole decision. (Pen. Code, §§ 3041, subds. (a), (b), (e); 3041.1.) Under Penal Code section 3041, subdivision (a)(5), a member of the hearing panel may also refer a case for en banc review.

The Board meets monthly over a few days at its headquarters in Sacramento to manage the Board's business, including reviewing cases that are referred for en banc review. BPH's Parole Hearing Process Handbook describes the monthly executive meetings as follows:

The Board holds an executive board meeting each month, which is open to the public. The meetings are conducted over two or more days. Members of the public may attend in person, by video, or by phone, as indicated on the meeting agenda. The meeting agenda, including all the decisions or "cases" that will be considered at the meeting, is posted on the Board's website at least 10 calendar days before the date of the meeting. For all cases listed on the agenda, the Board notifies the incarcerated person, their attorney, the prosecutor, and any registered victims and victims' family members. At the monthly executive board meeting, panels of commissioners hear public comment on the cases. Comments may be submitted in writing to the Board before the meeting. Those who want to speak during the meeting may attend the meeting and provide their comments. Comments are generally limited to two minutes per speaker. Once public comments have been received, the Board goes into closed session to deliberate and vote on each case. (BPH, *The California Parole Hearing Process Handbook* (Mar. 8, 2024), p. 46 <https://www.cdcr.ca.gov/bph/wp-content/uploads/sites/161/2025/03/CA-Parole-Hearing-Process-Handbook-For-Publication-03-08-24-2.pdf>.) (Internal footnotes omitted.)

The Board consists of 21 parole commissioners. (Gov. Code, § 12838.4.) Penal Code section 3041, subdivision (e), provides that 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." Section 3041 requires an en banc review to comply with the following:

- The commissioners conducting the review must consider the entire record of the hearing that resulted in the tie vote.
- The review must be limited to the record of the hearing. The record must 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 is prohibited from being considered in the en banc proceeding.
- The board must separately state reasons for its decision to grant or deny parole.
- A commissioner who was involved in the tie vote must be recused from consideration of the matter in the en banc review.

The agenda for the monthly executive meeting typically divides agenda items to be voted on between two groups of commissioners with each group consisting of a majority of commissioners (i.e., more than half of the total number of commissioners but fewer than the entire board). (See BPH, *Executive Board Meeting, April 2026 Agenda*, pp. 4, 11-12 <https://www.cdcr.ca.gov/bph/wp-content/uploads/sites/161/2026/04/April-2026-Agenda-FINAL.pdf>.)

3. SVP Background

The Sexually Violent Predator Act (SVPA) establishes an extended civil commitment scheme for sex offenders who are about to be released from prison but are referred to DSH for treatment in a state hospital because they have suffered from a mental illness which causes them to be a danger to the safety of others. The initial screening is conducted by the California Department of

Corrections and Rehabilitation (CDCR) and the Board of Parole Hearings. (Welf. & Inst. Code, § 6601, subd. (b).) If a determination is made that the person is likely a sexually violent predator, CDCR is required to refer to the person to DSH for a full evaluation. (*Ibid*.)

Under existing law, a person may be deemed an SVP if: the person has been convicted of specified sex offenses against one or more victims; the person has been diagnosed with a mental disorder that makes the person a danger to the health and safety of others in that it is likely that the person will engage in sexually violent criminal behavior; and, two licensed psychiatrists or psychologists concur in the diagnosis. (Welf. & Inst. Code, §§ 6600, subd. (a), 6601, subd. (d).) If DSH finds that the person meets the criteria to be considered an SVP, the case is referred to the county's designated counsel who may file a petition for civil commitment. (Welf. & Inst. Code, § 6601, subd. (i).)

Once a petition has been filed, a judge holds a probable cause hearing. (Welf. & Inst. Code, § 6602.) If probable cause is found, the case proceeds to a trial at which the prosecutor must prove beyond a reasonable doubt that the person meets the statutory criteria to be considered an SVP. (Welf. & Inst. Code, § 6604.) If the prosecutor meets this burden, the person can be civilly committed to a DSH facility for treatment.

DSH must conduct an examination of an SVP's mental condition at least annually and submit an annual report to the court. (Welf. & Inst. Code, § 6604.9, subd. (a).) This annual review is prepared by a professionally qualified person. **(***Ibid*.) In addition, DSH has an obligation to seek judicial review any time it believes a person committed as an SVP no longer meets the criteria. **(**Welf. & Inst. Code, § 6607.)

The SVPA was substantially amended by Proposition 83 ("Jessica's Law") which became operative on November 7, 2006. An SVP commitment, as originally enacted, was for two years and subject to possible extension. Under Jessica's Law, a person committed as an SVP may be held for an indeterminate term upon commitment or until it is shown that the defendant no longer poses a danger to others. (See *People v. McKee* (2010) 47 Cal.4th 1172, 1185-87.) Jessica's Law also amended the SVPA to make it more difficult for SVPs to petition for less restrictive alternatives to commitment. These changes have survived due process, ex post facto, and equal protection challenges. (See *Id.* at p. 1193 (finding no due process violation because the SVPA has appropriate constitutional protections in place and the committed person "may not be held in civil commitment when he or she no longer meets the requisites of such commitment" (i.e., the person has the opportunity for release); *People v. McKee* (2012) 207 Cal.App.4th 1325; *People v. Superior Court (Karsai)* (2013) 213 Cal.App.4th 774.) Due to the significant deprivation of a person's liberty while SVP proceedings are conducted, and potentially indefinitely after being committed as an SVP, the California Supreme Court recently held that all trial courts in the state are required to advise criminal defendants prior to pleading guilty or nolo contendere to an offense enumerated in the SVPA, or in cases where the court is aware that the defendant has a prior conviction for such an offense, of potential repercussions related to the SVPA. (*In re Tellez* (2024) 17 Cal.5th 77, 92.)

4. Release of SVPs

Two types of release exist for SVPs—unconditional discharge and conditional release. Both types of release require a petition for release. The petition can be filed with or without the concurrence of the Director of State Hospitals, and the Director's concurrence or lack thereof determines which is process used.

An SVP can, with the concurrence of the Director of State Hospitals, petition for unconditional discharge if the patient "no longer meets the definition of a sexually violent predator," or for conditional release. (Welf. & Inst. Code, § 6604.9, subd. (d).) When the petition is filed for unconditional discharge (i.e., with the concurrence of the DSH), the court must order a show cause hearing. (Welf. & Inst. Code, § 6604.9, subd. (f).) If the court at the show cause hearing determines that probable cause exists to believe that the committed person's diagnosed mental disorder has so changed that he or she is not a danger to the health and safety of others and is not likely to engage in sexually violent criminal behavior if discharged, then the court must hold a hearing on the issue. (Welf. & Inst. Code, § 6605, subd. (a)(2).) At the hearing, the committed person has a right to a jury trial and is entitled to relief unless the prosecuting attorney proves "beyond a reasonable doubt that the committed person's diagnosed mental disorder remains such that he or she is a danger to the health and safety of others and is likely to engage in sexually violent behavior if discharged." (Welf. & Inst. Code, § 6605, subd. (a)(3).)

A person committed as an SVP may also petition the court for conditional release, with or without the recommendation or concurrence of the Director of State Hospitals. (Welf. & Inst. Code, § 6608, subd. (a).) A hearing on the petition cannot be held until the SVP has been under commitment for at least one year. (Welf. & Inst. Code, § 6608, subd. (f).) Upon receipt of a first or subsequent petition from a committed person without the concurrence of the Director, the court is required whenever possible to review the petition and determine if it is based upon frivolous grounds and, if so, to deny the petition without a hearing. (Welf. & Inst. Code, § 6608, subd. (a).) If the petition is not found to be frivolous, the court is required to hold a hearing. (*People v. Smith* (2013) 216 Cal.App.4th 947.)

Once the court sets the hearing on the petition, the petitioner is entitled to both the assistance of counsel and the appointment of experts. (Welf. & Inst. Code, § 6608, subds. (c), (g); *People v. McKee*, *supra*, 47 Cal.4th 1172, 1193.) At the hearing, the person petitioning for release has the burden of proof by a preponderance of the evidence. (Welf. & Inst. Code, § 6608, subd. (i); *People v. Rasmuson* (2006) 145 Cal.App.4th 1487, 1503.) If the petition is denied, the SVP may not file a subsequent petition until one year from the date of the denial. (Welf. & Inst. Code, § 6608, subd. (j).)

If a person is approved for conditional release, DSH is required to find a suitable housing placement for the person in the community. Existing law requires that the person be placed in the county of domicile prior to the person's incarceration unless the court finds that extraordinary circumstances require placement outside the county of domicile and the designated county of placement was given prior notice and an opportunity to comment on the proposed placement of the committed person in the county. (Welf. & Inst. Code, § 6608.5, subd. (a).) DSH is required to convene a housing committee consisting of the committed person's attorney, the sheriff or the chief of police of the locality for placement, the county counsel, and the district attorney from the county of domicile, and the housing committee is required to provide assistance and consultation in DSH's process of locating and securing housing. (Welf. & Inst. Code, § 6608.5, subd. (d)(1).) DSH must consider a number of factors when locating housing, including statutory residency restrictions, the concerns or proximity to the victim or victim's next of kin, and the age and profile of the victim or victims of the sexually violent offenses committed by the person subject to placement. (Welf. & Inst. Code, § 6608.5, subds. (e) & (f).) Notably, if no housing placement has been found and the court has ordered the person to conditional release, the person can be released as a transient. (*Karsai*, *supra*, at p. 788-89.)

5. Effect of This Bill

This bill has three components. First, it requires the decision and the vote of each BPH commissioner for an en banc review to be a public record. Second, it provides that the standard of review that generally applies for en banc review does not apply to parole decisions referred by the Governor. Finally, this bill requires the Secretary of CDCR to refer indeterminately sentenced individuals for evaluation if the Secretary determines that the person may be an SVP.

6. Argument in Opposition

The California Public Defenders Association writes:

> SB 1446 would amend existing law to do two things in response to a highly publicized case in the Sacramento area. Good public policy should entail a thorough examination of perplexing problems including all the evidence and research regarding an issue combined with weighing the community's need for public safety and the need to spend precious resources wisely.
>
> First SB 1446 would require that when an en banc review is conducted by the board of a decision to parole an individual, each commissioner's vote and stated reason shall be part of the public record. Second, SB 1446 would require the Executive Officer of the Board of Parole Hearings to make a referral requiring the Department of State Hospitals to evaluate an individual who is serving an indeterminate prison sentence and will come before the parole board withing six months for possible "SVP" commitment. This amendment, which would require SVP evaluations for those serving indeterminant life sentences, would cost the state a tremendous amount of money, and do little to protect public safety. They would also require redundant evaluations that are costly and unnecessary.
>
> Such an assessment is extremely wasteful as these individuals have already undergone, or will undergo, prior to their parole hearing a thorough risk assessment specific to sexual offenders conducted by a qualified Department of Corrections psychologist. There is no reason to subject these individuals to two separate risk assessments by two separate entities. Moreover, parole hearings may be waived or continued within 45 days of the set for the hearing. Under this bill a person who may not even appear before the parole board and thus has no chance of release will still be evaluated. Conducting an "SVP" evaluation when there is no chance a person will be released serves no purpose. This bill will cost the state a significant amount of money. It is wasteful and unnecessary and will do nothing to protect the public.

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