Date of Hearing: June 30, 2026
Chief Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 1446 (Committee on Public Safety) – As Amended April 27, 2026

SUMMARY: Establishes procedures for en banc review of parole decisions by the Board of Parole Hearings (BPH), and extends the authority to refer individuals incarcerated in the custody of the California Department of Corrections and Rehabilitation (CDCR) for a sexually violent predator (SVP) evaluation to the Executive Officer of BPH. Specifically, **this bill**:

1) Provides the decision and the vote of each commissioner for an en banc review to be a public record.

2) Requires BPH, when reviewing a parole decision referred en banc by the Governor or by the BPH chief counsel, as specified, to do all of the following

    a) Review the record of the hearing unless there is new information that when corrected or considered by the board has a substantial likelihood of resulting in a different decision.

    b) Defer to the hearing panel's factual findings and credibility determinations.

    c) Decide if the hearing panel's decision is supported by substantial evidence.

    d) Vote to do any of the following:

        i) Affirm the proposed decision.

        ii) Order a new hearing.

        iii) Rescind the proposed decision.

        iv) Set the parole decision for a rescission hearing based on new information.

    e) Render a public statement of decision that shall include the vote of the commissioners.

3) Extends to the Executive Officer of BPH the authority to refer an individual, at least six months prior to that individual's scheduled release date, for an evaluation to determine if the person has a diagnosed mental health disorder so that the person is likely to engage in acts of sexual violence without appropriate treatment and custody.

4) Provides that the Secretary of CDCR or the Executive Officer of BPH shall refer an incarcerated individual for an evaluation pursuant to the above paragraph if the person is serving a determinate sentence, and may do so if the individual is serving a indeterminate sentence.

5) Adds that the referral by the Secretary of CDCR or the Executive Officer of BPH for the evaluation may be made less than six months prior to the person's scheduled release date if the incarcerated person will be scheduled for a parole hearing in the next six months.

EXISTING LAW:

1) Requires 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 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).)

2) 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).)

3) 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).)

4) 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).)

5) 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).)

6) 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).)

7) 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).)

8) 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).)

9) Requires that an en banc review be conducted in compliance with the following:

   a) The commissioners conducting the review must consider the entire record of the hearing that resulted in the tie vote.

   b) 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.

   c) The board must separately state reasons for its decision to grant or deny parole.

   d) 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).)

10) 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).)

11) 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).)

12) 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.)

13) 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).)

14) 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).)

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

16) 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).)

17) 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).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) **Sponsor**: Author-sponsored.

2) **Author's Statement**: According to the author, "For the public, the release of someone back into the community after serving a significant amount of time in custody for the conviction of serious crimes can be confusing and unsettling. That's why California law—similar to other states—does not treat parole suitability decisions lightly.

   "To be suitable, an initial parole hearing panel consisting of two commissioners must evaluate and agree whether a person will pose an unreasonable risk of danger to society if released from prison. Even after applying the law faithfully and evaluating all of the facts and forensic interviews, parole commissioners' decisions aren't final. They are subject to internal review, the Governor's review, and ultimately, a review by other commissioners.

   "These parole decisions aren't easy and require several things to be balanced: due process rights, the public safety risk presented by the individual, victims, and the public's interest. In order to honor prior federal court decisions that required California to implement measures to reduce prison overcrowding and establish additional parole mechanisms while still providing the flexibility for the State to balance those various interests – paramount of them being public safety – SB 1446 provides additional discretion for en banc review while still ensuring those decisions are transparent in order to protect the general public."

3) **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 include that the person committed the offense in an especially heinous, atrocious or cruel manner; 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; and the person has engaged in serious misconduct in prison or jail. (Cal. Code of Regs., tit. 15, § 2281, subd. (c).)

Circumstances tending to show suitability include that 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).)

4) **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.[1]

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[1] 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> [as of June 25, 2026] [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 board must separately state reasons for its decision to grant or deny parole; and 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). [2]

5) **Sexually Violent Predator Act (SVPA):** Enacted in 1996, the SVPA authorizes an involuntary civil commitment of any person "who has been convicted of a sexually violent offense … 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, § 6601, subd. (a).) The SVPA was designed to accomplish the dual goals of protecting the public, by confining violent sexual predators likely to reoffend, and providing treatment to those offenders. "Those committed pursuant to the SVPA are to be treated not as criminals, but as sick persons. They are to receive treatment for their disorders and must be released when they no longer constitute a threat to society." (*People v. Superior Court (Karsai)* (2013) 213 Cal.App.4th 774, 783, citing Welf. & Inst. Code, § 6250.)

Civil commitment is not a prison sentence. Once a person has been deemed no longer a threat to public safety, they must, as a matter of law, be released from custody. Involuntary commitment under the SVPA only begins after a person has completed their prison sentence. Originally, the SVP laws provided for an initial commitment of two years and then a review every two years thereafter. However, effective September 20, 2006, the law now provides for indeterminate commitments for persons found to be sexually violent predators. (Welf. & Inst. Code § 6604.)

An SVP is a person convicted of specified sex offenses against at least one person 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).) Welfare and Institutions Code, section 6600 further defines a sexually violent predator as someone who suffered the following: a prior or current conviction that resulted in a determinate prison sentence for a sexually violent offense; conviction for a sexually violent offense that was committed prior to July 1, 1977, and that resulted in an indeterminate prison sentence; a prior conviction in another jurisdiction for an offense that includes all of the elements of a sexually violent offense; a conviction for an offense under a predecessor statute that includes all of the elements of a

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[2] 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> [as of June 25, 2026].

sexually violent offense; a prior conviction for which the inmate received a grant of probation for a sexually violent offense; a prior finding of not guilty by reason of insanity for a sexually violent offense; a conviction resulting in a finding that the person was a mentally disordered sex offender; a prior conviction for a sexually violent offense for which the person was committed to the Division of Juvenile Facilities, Department of Corrections and Rehabilitation, as specified; or, a prior conviction for a sexually violent offense that resulted in an indeterminate prison sentence. (Welf. & Inst. Code, § 6600, subd. (a)(1)(A-I).)

A sexually violent offense means any of the following crimes when committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or threatening to retaliate in the future against the victim or any other person, and that are committed on, before, or after the effective date of the SVPA and resulted in a conviction or a finding of not guilty by reason of insanity: (i) a felony violation of rape, (ii) former provision of spousal rape, (iii) aiding abetting rape or sexual penetration, (iv) aggravated sexual assault of a child, (v) sodomy, (vi) forcible oral copulation, (vii) child molestation, (viii) continuous sexual abuse of a child, or (ix) sexual penetration, or (x) former provision on child molest, or any felony violation of (xi) kidnapping, (xii) kidnapping with intent to commit robbery or rape, or (xiii) assault with intent to commit rape, (xiv) former provision of spousal rape, (xv) aiding and abetting rape, (xvi) sodomy, (xvii) forcible oral copulation, (xviii) child molest, or (xix) sexual penetration. (Welf. & Inst. Code, § 6600, subd. (b).)

When the CDCR determines that an inmate "may be a sexually violent predator," the CDCR Secretary refers the inmate to the DSH for a thorough evaluation. (*Hubbart v. Superior Court* (1999) 19 Cal.4th 1138, 1145; Welf. & Inst., § 6601, subd. (b).) A "diagnosed mental disorder" for purposes of determining whether someone is an SVP means a "congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others." (Welf. & Inst. Code, § 6600, subd. (c).)

An evaluation "must be conducted by at least two practicing psychiatrists or psychologists in accordance with a standardized assessment protocol[.]" (Welf. & Inst. Code, § 6601, subd. (c)-(d).) If the two evaluators agree the inmate is likely to reoffend without treatment or custody due to their mental disorder, the Director of DSH must request a petition for commitment pursuant to the Welfare and Institutions Code section 6602 to the county in which the inmate was last convicted. (Welf. & Inst. Code, § 6601, subd. (d).) Thereafter, the county district attorney will file a petition for civil commitment. Due process requires any deprivation of liberty by the state to first provide notice and a meaningful opportunity to be heard.

Accordingly, a court then reviews the petition and determines whether there is probable cause to believe the inmate "is likely to engage in sexually violent predatory criminal behavior upon their release. If the court or jury determines that the person is a sexually violent predator, the person [is] committed for an indeterminate term" to a state mental hospital "for appropriate treatment and confinement." (Welf. & Inst. Code, § 6604.)

The burden then shifts to the "offender seeking his or her release from an SVPA commitment" to prove he or she is no longer a significant risk to society.[3]

If the Director of DSH determines that the inmate's diagnosed mental disorder has so changed that the inmate is not likely to commit acts of predatory sexual violence while under supervision and treatment in the community, the Director will forward a report and recommendation for conditional release. If the court at the hearing determines that the SVP would not be a danger to others due to his or her diagnosed mental disorder while under supervision and treatment in the community, the court will order the person placed with an appropriate forensic conditional release program operated by the state for one year, a substantial portion of which is required to include outpatient supervision and treatment. (Welf. & Inst. Code, § 6608, subd. (f).)

After a judicial determination that a person would not be a danger to the health and safety of others (i.e., in that it is not likely that the person will engage in sexually violent criminal behavior due to the person's diagnosed mental disorder while under supervision and treatment in the community), they will be placed in their pre-incarceration county of domicile, unless the court finds that extraordinary circumstances require placement outside the county domicile. (Welf. & Inst. Code, § 6608.5, subd. (a); see Welf. & Inst. Code, § 6608.5, subd. (b).)

6) **Argument in Support**: According to the *Riverside County District Attorney's Office*, "This measure addresses critical gaps in current procedures governing lifer hearings and SVP referrals that directly impact community protection and confidence in the criminal justice system.

"SB 1446 would require the Board of Parole Hearings to make public the individual votes of commissioners during en banc reviews. Transparency in these proceedings is necessary to maintain public trust and ensure accountability in decisions that may result in the release of individuals convicted of serious and violent offenses. By opening these votes to public scrutiny, SB 1446 strengthens the integrity of the parole process.

"Additionally, the bill corrects longstanding inconsistencies within the SVP referral process. Current law requires the Department of Corrections and Rehabilitation to refer only determinately sentenced inmates for evaluation, leaving indeterminately sentenced sex offenders—often those convicted of more serious conduct—ineligible for assessment. With evolving parole eligibility rules, including elder parole considerations, many such individuals are now approaching release despite never being screened. SB 1446 closes this gap by expanding referral authority to include indeterminately sentenced inmates and permitting referrals even when less than six months remain before a scheduled release.

"These changes restore logical application of the law, align evaluation standards with modern parole realities, and ensure that individuals who pose a significant risk of reoffending are

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[3] Felando (2012) *California's Sexually Violent Predator Act and the Dangerous Patient Exception*, 40 W. St. U. L.Rev. 73, 76; Note (2014) *Examining the Conditions of Confinement for Civil Detainees under California's Sexually Violent Predators Act*, 68 Hastings L.J. 1441, 1444-1446.

properly assessed before returning to the community."

7) **Argument in Opposition**: According to *UnCommon Law*, "For decades, the Legislature has played an important role in strengthening procedural protections within this system in recognition of the significant liberty interests intrinsic to parole. SB 1446 alarmingly departs from that tradition by rolling back established safeguards, contrary to both legislative precedent and more than fifty years of California Supreme Court and Court of Appeal decisions recognizing the due process rights of parole grantees and candidates.

"**SB 1446 is Unconstitutional and Violates Due Process Requirements**

"SB 1446 is unconstitutional because it authorizes the Board to withdraw a parole grant without first conducting a rescission hearing (See SB 1446 (2025–2026 Reg. Sess.), proposed Pen. Code, § 3041, subd. (e)(2)(D).) This change would violate the Due Process Clause and over fifty years of precedent set by the California Supreme Court and Courts of Appeal recognizing that a person who has been granted parole possesses a protected liberty interest such that the parole grant cannot be revoked without a rescission hearing. In *In re Prewitt* (1972) 8 Cal.3d 470, the Supreme Court held that the Board may not rescind a parole grant without first holding a rescission hearing where the parole grantee has, among other rights, the right "to be heard in person and to present witnesses and documentary evidence." (8 Cal.3d at 473, fn. 5.)

"SB 1446 would allow the Board to rescind a parole grant after only *en banc* review, without also holding a rescission hearing. Yet the Board's *en banc* review procedures at Executive Board Meetings do not satisfy the due process rights enumerated by *Prewitt*. Parole grantees are prohibited from attending Executive Board Meetings, so these meetings cannot satisfy the requirement that parole grantees have an "opportunity to be heard in person." (*Prewitt*, *supra*, 8 Cal.3d at 473, fn. 5.) Additionally, parole grantees cannot call or question witnesses at Executive Board Meetings. Although members of the public, including a parole candidate's attorney, may provide brief statements at the meetings, those public comments are not a substitute for a *parole grantee's* right to personally present and question witnesses in defense of their parole grant. Thus, the existence of the Board's Executive Board Meeting and *en banc* process will not remedy the unconstitutionality of SB 1446's amendments.

"In addition to being facially unconstitutional, this bill is particularly problematic because it codifies a two-track system of due process based on the reason one's parole grant was referred for *en banc* review, without any legal basis for creating this distinction. Under SB 1446, parole grantees whose grants were referred for *en banc* review based on "new information" would be afforded rescission hearings, while parole grantees referred for *en banc* review for any other reason—such as a potentially improvident parole grant—would not. The latter group could have their parole grants reversed without the constitutionally required due process safeguards. The courts have never made such a distinction about who is entitled to a rescission hearing. They have been clear that all parole grantees, regardless of the reason one's grant is referred for additional review, possess the same due process rights. (See, e.g., *In re Caswell* (2001) 92 Cal.App.4th 1017, 1025–26 [rescission hearing required despite no new information]; *In re Johnson* (1995) 35 Cal.App.4th 160, 171–72 [claim of no new information did not relieve Board of its duty to hold full rescission hearing].) SB 1446 creates an unconstitutional, unjust, and arbitrary two-track system of due process that unjustifiably provides required due process procedures to one group while denying them to

another.

"As a result of depriving parole candidates of the aforementioned due process rights, SB 1446's passage would invite significant litigation challenging its constitutionality and create uncertainty regarding the validity of rescission decisions made pursuant to its provisions. The roughly 1,000 parole candidates who are granted parole each year would all be in jeopardy of having their grants unconstitutionally withdrawn under SB 1446. UnCommon Law has filed multiple habeas petitions challenging both the Board's failure to provide rescission hearings and its specific rescission hearing procedures. (See e.g., *In re Dewberry*, Case No. HC71769A-1, Alameda County Superior Court [failure to provide rescission hearings]; *In re Hoover*, Case No. A173677, First District Court of Appeal [failure to provide rescission hearings]; *In re Osborne*, Case No. 24CJHC00132-01, Los Angeles County Superior Court [failure to allow parole grantees to testify at rescission hearings].) SB 1446 would undoubtedly increase litigation by adding facially unconstitutional changes to Penal Code section 3041. Additionally, allowing the Board to rescind parole grants without holding a rescission hearing raises ex post facto concerns because it creates a significant risk that the elimination of due process rights will retroactively prolong a parole candidate's incarceration.

"**SB 1446 Creates a Confusing and Unfair New Standard for En Banc Review**

"SB 1446 also creates confusion and inconsistency by requiring the Board, during *en banc* review, to determine whether a hearing panel's decision is "supported by substantial evidence." This standard does not govern parole suitability decisions and is not otherwise used in the parole hearing process. Adding this new "substantial evidence" standard fundamentally changes the scope of *en banc* review from focusing on ensuring factual and legal integrity free from errors, to making a new evidentiary determination that risks duplicating and potentially contradicting a suitability analysis already conducted in the original hearing.

"The introduction of this new standard also raises serious ex post facto concerns. By creating a more onerous review standard than existed at the time of the underlying offense, SB 1446 risks prolonging incarceration based on retroactive changes that increase the likelihood a parole grant will be withdrawn.

"SB 1446 also simultaneously requires the Board during *en banc* review to defer to the original panel's factual and credibility determinations. These two directives—one to defer to the hearing panel's findings and the other to make a new evidentiary determination—are confusing and difficult to reconcile. This would encourage reweighing of evidence that has already been thoroughly considered, create inconsistent and conflicting decisions by hearing and *en banc* panels, and generate uncertainty about the appropriate scope of *en banc* review. If aiming to strengthen oversight in the *en banc* process, an "abuse of discretion" standard would achieve this goal more clearly while focusing review appropriately on whether the hearing panel acted reasonably in regards to public safety and within its lawful authority. As the Board's regulations state, "The purpose of the decision review process is to assure complete, accurate, consistent and uniform decisions and the furtherance of public safety." (Cal. Code Regs., tit. 15, § 2042.) An "abuse of discretion" standard best adheres to this purpose.

"Finally, SB 1446 would create an unfair and illogical disparity between review of parole denials and review of parole grants. Courts reviewing parole denials apply the highly deferential "some evidence" standard, under which a parole denial will generally be upheld if the court finds even a small modicum of evidence supporting the Board's finding of current dangerousness. Because *en banc* review is used primarily to review parole grants, while parole denials are generally reviewed through habeas petitions in court, SB 1446 would subject parole grants to a substantially more searching level of review than parole denials. The practical effect is an asymmetrical review system in which denials are rarely overturned, while parole grants face heightened scrutiny and a significantly higher likelihood of reversal. This asymmetry is unfair, lacks principled rationale, and appears to be designed primarily to advance the political objective of more easily reversing controversial parole grants.

"**Making Individual Commissioner *En Banc* Votes Public Would Compromise the Independence of the Board**

"The *en banc* process is intended as a safeguard to ensure parole decisions are legally and factually sound. When the Board or the Governor identify an error or significant new information that could materially impact a parole decision, they refer the case for an "en banc" review, which is a second look by the full Board to determine whether the hearing decision holds up against those identified issues. This process works best when commissioners are given the independence to review parole decisions without fear of political backlash.

"Making individual commissioner votes in *en banc* review public, particularly in highprofile cases, exposes them to public scrutiny and targeted pressure from elected officials, media, and advocacy groups with interests that extend beyond the public safety risk of the incarcerated person being considered. Public disclosure of individual votes risks placing pressure on commissioners to vote defensively in controversial matters rather than according to the evidence and governing law, shifting focus from the legal and public safety merits of a parole decision to the political consequences of voting to uphold it.

"Courts have long recognized the danger of allowing public opinion to influence parole decisions. In *In re Fain*, the court emphasized that "'[i]t is undeniable that public outrage over an imminent parole determination ... has no place in a parole proceeding and is to be given no weight in a parole decision.'" (*In re Fain* (1983) 139 Cal.App.3d 295, 307–308, quoting *In re Trantino Parole Application* (1982) 89 N.J. 347, 446 A.2d 104, 119.) The court further warned that "*[j]ust as the decision-making process of judges must be kept free from fear, so must that of parole board officials*" because "[w]ithout this protection, there is the same danger that the decision-maker might not impartially adjudicate the often difficult cases that come before them," (*Id.* at p. 309, quoting *Sellars v. Procunier* (9th Cir.1981) 641 F.2d 1295, 1303, emphasis added in *Fain*.)

"We have already seen this very danger play out in a recent Senate hearing to confirm Governor appointees to the parole board, where individual parole commissioners were asked to disclose their *en banc* votes in a specific high-profile case. This exchange clearly conveyed the message that an unpopular vote—even if it has legal integrity and upholds public safety—could cost commissioners their appointments and careers.

"**Expanding the SVP Program for People with Indeterminate Sentences is Duplicative,**

Costly, and Will Not Improve Public Safety

"SB 1446's expansion of the Sexually Violent Predator (SVP) program to apply to people with indeterminate sentences is unnecessary and counterproductive. The parole board already conducts thorough, structured assessments of risk before granting parole, rendering parallel SVP referrals duplicative. For people with sexual convictions, both the parole suitability and supervision processes additionally require the administration of research-validated, actuarial risk instruments specifically for assessing sexual re-offense risk, including the Static-99R and the STABLE 2007. These redundancies are why the SVP program has never thus far applied to people with indeterminate sentences.

"The SVP program is among the most inefficient and costly public safety systems in the state, as SVP proceedings are notoriously resource-intensive, often involving years of litigation, multiple expert evaluations, and extended detention. The Senate estimates this bill will add at least an additional $14 million to $25 million in already exorbitant annual costs, a resource strain that is unjustifiable without any demonstrated public safety benefit."

8) **Related Legislation**:

a) AB 2727 (Nguyen) would change the threshold eligibility for the Elderly Parole Program for specified sex crimes. AB 2727 is pending a hearing in the Senate Public Safety Committee.

b) AB 2232 (Patterson) would require BPH to publish an annual report on the advance parole consideration hearing process. AB 2232 is pending a hearing in the Senate Committee on Public Safety.

c) AB 2342 (Hoover) would have authorized the Governor, subject to a constitutional amendment approved by the voters, to reverse or modify a BPH decision to grant parole to an incarcerated person convicted of a violent felony, as specified, if the inmate is serving an indeterminate term for an offense other than murder or the inmate is serving a determinate term and has not completed that term, but only if the board's decision was the result of Youth Offender Parole or Elderly Parole Program proceedings. The hearing on AB 2342 was canceled at the request of the author.

d) AB 2570 (Lackey) would increase the age at which an incarcerated person becomes eligible for the Elderly Parole Program from 50- to 65-years-old. AB 2570 is pending a hearing in this committee.

e) SB 356 (Jones) would provide that a person sentenced for a one-strike sex offense, as a habitual sex offender, for aggravated sexual assault of a child, or for specified sex acts on a child 10 years of age or younger, is ineligible for elderly parole until the person is 65 years old or older and has served a minimum of 25 years of continuous incarceration on their current sentence. SB 356 is pending hearing in this committee.

f) SB 1278 (Niello) would exclude persons sentenced for a one-strike sex offense, as a habitual sex offender, or for specified sex offenses classified as a "violent" and/or "serious" felony. SB 1278 is pending referral in the Senate Rules Committee.

9) **Prior Legislation**:

a) AB 47 (Nguyen), of the 2025-2026 Legislative Session, would have provided that a person sentenced for a one-strike sex offense or as a habitual sex offender is ineligible for elderly parole until the person is 60 years old or older and has served a minimum of 25 years of continuous incarceration on their current sentence. AB 47 was held in suspense in the Assembly Appropriations Committee.

b) SB 286 (Jones), of the 2025-2026 Legislative Session, would have excluded from Elderly Parole eligibility individuals convicted of murder or specified felony sex offenses, or sentenced as a habitual sex offender or under the One Strike Sex Offense statute. SB 286 was held in suspense in the Senate Appropriations Committee.

c) SB 81 (Skinner), of the 2023-2024 Legislative Session, would have required BPH to notify a parole candidate, upon denial their parole, of their right to petition the court for habeas relief. SB 81 was vetoed by the Governor.

d) SB 445 (Jones), of the 2021-2022 Legislative Session, would have excluded "One Strike" sex offenses from the Elderly Parole Program. SB 445 failed passage in the Senate Public Safety Committee.

e) SB 875 (Skinner), of the 2021-2022 Legislative Session, would have prohibited BPH from considering specified factors when reaching a finding of unsuitability for parole, including, the person's race, ethnicity, national origin, gender, sexual orientation, gender identity, disability, cultural or religious affiliation, and cognitive, speech, or physical impairment. SB 875 was never heard by Senate Public Safety Committee.

f) AB 3234 (Ting), Chapter 334, Statutes of 2020, lowered the minimum age limitation for the Elderly Parole Program to inmates who are 50 years of age and who have served a minimum of 20 years.

g) SB 411 (Jones), of the 2019-2020 Legislative Session, was nearly identical to SB 445 above. SB 411 did not receive a hearing in the Senate Public Safety Committee.

h) AB 1448 (Weber), Chapter 676, Statutes of 2017, codified the Elderly Parole Program, to be administered by the Board of Parole Hearings.

i) SB 224 (Liu), of the 2015-2016 Legislative Session, was substantially similar to AB 1448 above. SB 224 was ordered to the Inactive File on the Senate Floor.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
Los Angeles County District Attorney's Office
Riverside County District Attorney

Opposition

ACLU California Action
A New Way of Life Re-entry Project
California Public Defenders Association
Californians United for a Responsible Budget
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
From Bars to Brilliance: the Healing Collective
Justice2jobs Coalition
LA Defensa
Legal Services for Prisoners With Children
San Francisco Public Defender
Uncommon Law

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