

SENATE THIRD READING
SB 1446 (Committee on Public Safety)
As Amended July 2, 2026
Majority vote

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.

Major Provisions

- 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 an 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.

COMMENTS

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."

Arguments 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 properly assessed before returning to the community."

Arguments 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, Section 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 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, Section 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 high-profile 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. Procnier* (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."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Ongoing costs of approximately \$15.1 million to \$25.8 million annually (General Fund) to the Department of State Hospitals (DSH) for additional SVP evaluations and treatment of additional committed patients.

For individuals serving indeterminate sentences, DSH assumes BPH would refer at the same rate CDCR currently refers individuals already granted parole, producing approximately 250 additional referrals and 500 evaluations annually. DSH estimates \$3.87 million annually for that workload, reflecting ten SVP evaluators, one chief psychologist, one supervisor, two analysts, and 50 additional independent evaluations where the initial evaluators disagree. Assuming 10% to 20% of evaluations result in positive determinations, commitments would increase by approximately 25 to 50 patients annually, for treatment costs of approximately \$10.23 million to \$20.46 million at an average inpatient cost of \$1,121 per day.

DSH identifies a second affected population. Because the bill permits referral in advance of a parole hearing rather than only following a grant of parole, determinately sentenced individuals eligible for the Elderly Parole Program with qualifying offenses would be evaluated earlier in the process. DSH estimates approximately 10 additional referrals annually at a cost of approximately \$307,000, with treatment costs of approximately \$409,000 to \$818,000 for one to two additional patients. DSH states that available units at DSH-Coalinga, where SVPs are held, are fully activated, that accommodating additional SVP patients may require relocating other patient populations, and that contracting for additional bed capacity would carry costs of an unknown amount. As of March 2026, DSH had a population of 954 SVP patients, and average length of stay is approximately 12 years, so commitments added in the budget year carry forward for more than a decade. Notably, DSH assumes referrals will occur at current rates even though referral of indeterminately sentenced individuals is permissive rather than mandatory under this bill. Actual costs will depend on how BPH exercises that discretion.

- 2) Potential court cost pressures of an unknown, but potentially significant amount (Trial Court Trust Fund, General Fund), to the extent additional referrals result in additional SVP commitment petitions, probable cause hearings, and commitment trials in superior court. SVP proceedings are resource-intensive and frequently involve protracted litigation and multiple expert evaluations, and a commitment trial may occur well after the petition is filed.
- 3) Costs of an unknown amount to counties (county General Fund) for district attorneys or county counsel to file and handle additional SVP petitions, and for indigent defense in those

proceedings. Counties designate either the district attorney or county counsel to assume responsibility for SVP proceedings. The bill contains a provision directing reimbursement if the Commission on State Mandates determines that the bill contains costs mandated by the state.

VOTES

SENATE FLOOR: 33-0-7

YES: Archuleta, Arreguín, Ashby, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Dahle, Durazo, Gonzalez, Grayson, Grove, Jones, Laird, Limón, McGuire, McNerney, Menjivar, Ochoa Bogh, Pérez, Reyes, Richardson, Rubio, Seyarto, Smallwood-Cuevas, Strickland, Umberg, Valladares, Wahab, Weber Pierson, Wiener

ABS, ABST OR NV: Allen, Alvarado-Gil, Becker, Hurtado, Niello, Padilla, Stern

ASM PUBLIC SAFETY: 9-0-0

YES: Schultz, Alanis, Mark González, Haney, Harabedian, Lackey, Nguyen, Ramos, Sharp-Collins

ASM APPROPRIATIONS: 15-0-0

YES: Wicks, Hoover, Arambula, Calderon, Caloza, Dixon, Fong, Mark González, Krell, Pacheco, Pellerin, Sharp-Collins, Solache, Ta, Tangipa

UPDATED

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