YOUTHFUL OFFENDER PAROLE BOARD

1029 J STREET, STE. #500
SACRAMENTO, CA 95814
(916) 322-9800
FAX (916) 322-8802

PUBLIC NOTICE
OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Youthful Offender Parole Board ("Board") proposes to amend the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend §§ 4927, 4945.5, 4963, 4978, and 4995 of Title 15, California Code of Regulations (CCR).

PUBLIC HEARING

The Board will hold a public hearing from 9:00 a.m.-12:00 noon on May 14, 2001, at the Youthful Offender Parole Board, 1029 J Street, Suite 500, Sacramento, California.

At the hearing, any person may present oral or written statements or arguments relevant to the proposed action described in the Informative Digest. It is requested, but not required, that persons who make oral comments at the hearing submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his/her duly authorized representative, may submit comments relevant to the proposed regulatory action to the Board. The written comment period closes at 3:00 p.m. on May 14, 2001. All comments must be received by that time.
Submit comments to:

Primary contact person:
Person to ask substance questions:

Connie Erlich
Youthful Offender Parole Board
1029 J Street, Suite 500
Sacramento, CA 95814
Telephone: (916) 322-9800
Fax: (916) 322-8802
E-mail: cerlich@yopb.ca.gov

Alternate contact person:

Shelly Jones
Youthful Offender Parole Board
1029 J Street, Suite 500
Sacramento, CA 95814
Telephone: (916) 322-9800

AUTHORITY AND REFERENCE

Welfare and Institutions Code (WIC) § 1721 authorizes the Board to adopt the proposed regulations which would implement, interpret or make specific numerous sections of the Welfare and Institutions Code, including §§ 1176 through 1766.

INFORMATIVE DIGEST

WIC § 1719 defines the powers and duties of the Board, and § 1721 authorizes the Board to implement regulations carrying out those responsibilities. Proposed regulatory revisions:

(1) make the ward's appearance at hearings mandatory unless ward is absent for medical reasons or the ward is housed outside a Youth Authority facility [§ 4927 (b)];

(2) create a new provision allowing a Full Board Panel to set the confinement interval to the maximum allowed by the court in a § 1800 commitment [§ 4945.5];

(3) add new language changing the format describing the panel level for each type of furlough; describe termination of furloughs; define furloughs, excluding activities involving Youth Authority escorts; make numerous non-substantive changes re-alphabetizing subsections, improving grammar, and deleting repetitive language; delete obsolete language; [§ 4963]

(4) add new language allowing hearings for emergency or medical furloughs to be non-appearance; clarify training furloughs as an extension or continuum of the institutional treatment and training program rather than as incentives; define work furloughs, criteria, and ward's return to the institution after scheduled work, to accommodate the California Youth Authority Institutions and Camps Manual procedures; define transitional program furloughs and criteria, specifying the program shall not exceed 120 days except by specific direction [§ 4963];

(5) change the 30-day time limit to 60 days after CYA-initiated detention [§ 4978], and;

(6) make payment of court-ordered restitution a condition of honorable discharge [§ 4995 (b) (3)].

POLICY STATEMENT OVERVIEW

The proposed actions amend existing regulations to enhance quality management and effectiveness while:

- clarifying and making specific the Board's procedures while adhering to the Administration's philosophy and statutory mandates to ensure public safety;

- striving toward the Administration's goal to develop processes that entail less governmental bureaucracy (resultant reduced workload and expense);

- streamlining and simplifying the process;

- re-engineering procedures for process improvement;

- addressing previous downsizing mandates by reducing the number of hearings while maintaining due process, quality, effectiveness, and accountability, and;

- reducing the error rate created by the complexity of the current system.

Additionally, changes were made for improved clarity, including corrections in spelling and renumbering of sections.

DISCLOSURES REGARDING THE PROPOSED ACTION

Unnecessary Conflict or Duplication of Federal Regulations or Statutes

No federal regulations or statutes apply to this area of regulation. The Federal Bureau of Prisons has jurisdiction over the management and regulation of all federal penal and correctional institutions. Since Bureau of Prison authority does not extend to state penal/correctional institutions, there is no conflict between federal codes or regulations and regulations passed by the Youthful Offender Parole Board.

Other Matters Statutorily Prescribed

The Board and the Director of the Youth Authority are required to cooperate in developing policies to obtain mutual objectives (Welfare and Institutions Code § 1714). Board proposed regulations are thoroughly discussed and approved at joint meetings.

The Board must submit proposed regulations to the Board of Corrections for information purposes or review and advice (Penal Code § 6025.5).

These are the only other matters prescribed, pursuant to 11346.1 (b) or 11346.5 (a)(4) of the Government Code, pertaining to the proposed regulations of the Board.

Mandates to Local Agencies or School Districts

The proposed regulations do not impose mandates upon local agencies or school districts (Government Code § 11346.5 (a)(5)).

Costs or Savings to State Agencies or in Federal Funding to the State, and Costs to Local Agencies and School Districts

The proposed regulations result in no increased costs or savings to any State agencies; involve no cost to any local agency or school district; involve no other non-discretionary costs or savings to local agencies; and will not involve any costs or savings in federal funding to the State (Government Code § 11346.5 (a)(6)).

Initial Determination of Effect on Housing Costs

Proposed regulations have no effect upon housing costs (Government Code § 11346.5 (a)(12)).

Declaration of Initial Determination Regarding Economic Impact on Business

The Board declares adoption of the proposed regulation will not have a significant, statewide, adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, because California businesses are not required to comply with any of the proposed regulations. Regulations passed by the Board govern only the functions of the Board in carrying out its responsibilities (Government Code § 11346.5 (a)(8)).

Results of Assessment Required by 11346.3 (b) of Government Code

Proposed regulations will not create nor eliminate jobs within California; will not create new businesses nor eliminate existing businesses within California, and; will not affect the expansion of businesses currently doing business within California. (Government Code § 11346.5 (a)(10)).

Finding Prescribed by 11346.3 (c) of Government Code

Proposed regulations make no reporting requirements upon businesses (Government Code § 11346.5 (a)(11)).

Costs Incurred by Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action (Government Code § 11346.5 (a)(9)).

Determination of Effect on Small Business

The proposed regulations relate to the powers and duties of the Board and have no impact upon small businesses. Such powers and duties, set by statute, may not be contracted to private industry. Additionally, the proposed regulations require no small businesses to comply with, enforce, derive a benefit from, or incur a detriment from their enforcement (California Code of Regulations, Title 1 § 4).

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the regulatory action is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

The Board invites interested persons to submit written statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the above-listed address pursuant to Government Code § 11346.5 (b). As of the date this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Connie Erlich or Shelly Jones at the address or telephone number listed above. The notice, initial statement of reasons and text may be viewed on the Board's web site at http:/www.yopb.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing, the Board may adopt the proposed regulation substantially as described in this Notice. If the Board makes modifications which are sufficiently related to the proposed text, it will make the modified text, with changes clearly indicated, available to the public for at least 15 days before the Board adopts the regulations as advised pursuant to Government Code § 11346.8(c). Requests for copies of any modified regulations should be addressed to the above-listed contact person.

AVAILABILITY OF FINAL STATEMENT OF REASONS

After the close of the public comment period, a final statement of reasons will be prepared and made available to the public. A business or person submitting a comment to a proposed regulatory action has the right to request a copy of the final statement of reasons. Requests for copies of the final statement of reasons should be addressed to the above-listed contact persons. The final statement of reasons may also be viewed at http://www.yopb.ca.gov.

INITIAL STATEMENT OF REASONS

The Specific Purpose of Each Proposed Regulatory Change

The proposed amendments relate primarily to the Board's procedures and rules for appearance at hearings, confinement interval for § 1800 commitments, furloughs, hearing timelines, and conditions for honorable discharge.

§ 4927(b) makes a ward's appearance at hearings mandatory with certain exceptions. The ward's treatment and training goals are met through attending Board hearings.

§ 4945.5 is a new provision allowing a Full Board Panel to set the confinement interval to the maximum allowed by the court in a § 1800 commitment.

§ 4963 contains new language defining furloughs, specifically excluding activities involving Youth Authority escorts. Wards having emergency visits or needing outside medical services are under escort and do not need a furlough.

§ 4963 (a) is alphabetically changed to § 4963 (c). The revisions simplify the text. Although rarely used, staff recommended retaining flexibility to grant emergency furloughs, should the circumstances be warranted. New language allows hearings for emergency furloughs to be non-appearance.

§ 4963 (a) currently describes the panel level for each type of furlough. New language changes the format and provides a more consistent approach. Furloughs are defined and repetition eliminated in each section.

§ 4963 (b) Court Furlough. Deleted as unnecessary language. The Court assumes jurisdiction when a court furlough order is issued. Section (b) now describes termination of furloughs. The Youth Authority Institutions and Camps Manual provides furlough termination for Disciplinary Decision Making System infractions in some instances. This change allows immediate termination by Youth Authority or the Board as circumstances dictate.

§ 4963 (c) Medical Furlough. Alphabetically designated as 4963 (d). Language revised to improve readability. Medical furloughs are extremely rare. Occasionally a ward may no longer need custody supervision due to being medically incapacitated or immobilized. The Board may not wish to discharge a ward who may recover and need training and treatment. New language allows non-appearance hearings since they are more practical under the circumstances.

§ 4963 (c) (1) (A), (B) deletes unnecessary language discussing Categories 1-3 and designating the level of hearing authority.

§ 4963 (d) Training Furlough. Alphabetical (d) designation is changed to (e). Traditional training furloughs typically involve wards with unusual placement issues and were initiated twice in a recent year. Training furloughs should be considered an extension or continuum of the institutional treatment and training program. Revised language reflects the current situation.

§ 4963 (d) (1) (A) deletes outdated language describing the training furlough as an incentive. At one time furloughs were used as a "reward." This is no longer the practice.

§ 4963 (d) (1) (B) The alphabetical designation (B) now becomes (A). Language revised to improve readability and provide consistency.

§ 4963 (d) (1) (C) deletes language describing use of the training furlough as an opportunity for the parole agent to get to know the ward better. The primary purpose of the training furlough is to enhance public safety and benefit the ward, enabling him/her to work toward treatment and training goals.

§ 4963 (d) (2) (A) and (B) were deleted because a previous section contains language discussing Categories 1-3.

§ 4963 (d) (2) (C) is re-alphabetized to Section 4963 (d) (2) (A). Non-substantial changes were made to improve readability.

§ 4963 (d) (2) (D) is re-alphabetized to Section 4963 (d) (2) (B). Language remains the same.

§ 4963 (d) (2) (E) is deleted. A previous section discusses Categories 1, 2, or 3. The Board usually outlines specific requirements for each furlough on a case-by-case basis. Current text is unnecessary.

§ 4963 (e) is deleted as unnecessary language. Board practice is to conduct a parole hearing for ALL parolees.

§ 4963 (f) (1) (A) and (B) Work furlough. Defines work furloughs, criteria, and the ward's return to the institution after scheduled work. Existing regulations do not address work furloughs. New language conforms to the Youth Authority Institutions and Camps Manual procedures.

§ 4963 (g) Transitional Program furlough. Defines transitional program furlough criteria as supervised programs providing intensive services directed toward community reintegration. Specifies the program shall not exceed 120 days except by specific direction. Existing regulations do not address transitional programs. New language conforms to the CYA program description.

§ 4978 changes the 30-day time limit to 60 days after CYA-initiated detention. The 30-day time limit is not long enough and in most cases is not being met.

§ 4995 (b) (3) adds a new section making payment of court-ordered restitution a condition of honorable discharge.

Technical, Theoretical, Empirical Study, Report or Document Relied Upon

The Youthful Offender Parole Board (Board) has relied upon expert opinion pursuant to Government Code § 11346.2(b)(2) and California Code of Regulations Title 1 § 10(b)(2).

The scope of authority for Board regulations encompasses only those regulations governing the performance of the Board's functions set forth in Welfare and Institutions Code (WIC) § 1719: return of persons to the court of commitment for redisposition by the court; discharge of commitment; orders to parole and conditions thereof; revocation or suspension of parole; recommendation for treatment program; determination of the date of next appearance and; return of nonresident persons to the jurisdiction of the state of legal residence.

Board Members have a broad background in and ability for appraisal of youthful law offenders and delinquents, the circumstances of delinquency for which committed, and the evaluation of the individual's progress toward reformation (WIC § 1717(a)). Special skill and knowledge by reason of study and experience make them qualified experts in this field.

Additionally, the Board consults and relies upon the expertise of the California Youth Authority (CYA) Director and staff recommendations regarding the Board's proposed rules. Board Members' premise regulatory proposals (WIC § 1721(a)) upon qualifying experience and expert opinion.

Less Restrictive Reasonable Alternatives

No less restrictive reasonable alternatives have been brought to the Board's attention. The proposed regulatory changes represent the most effective, least restrictive reasonable alternatives currently known to the Board.

Alternatives Lessening Adverse Impact on Small Business

The proposed regulations impose no adverse impacts upon small business, because small businesses are not required to comply with these regulations. Regulations passed by the Board govern only the functions of the Board.

Initial Determination of No Adverse Economic Impact Upon Business

The proposed regulations relate to the powers and duties of the Board, which are set by statute and may not be contracted to private industry. Businesses do not comply with, enforce, derive a benefit or incur a detriment from these regulations.

TEXT & AUTHORITY

§4927. Ward Appearance and Voice Recording of Hearings.

(a) Hearings shall be voice recorded on tape when the ward is present. Annual reviews for wards on parole, annual and/or progress reviews for Youth Authority wards housed at or committed to any non-Youth Authority facility need not be appearance hearings. The ward who is the subject of the hearing, and with the ward's consent, anyone who is eligible to appeal a Board order, shall be permitted to listen to the recording. Recordings shall be retained for a period of 15 months from the date of the hearing.

(b) ~~A ward may waive his right to appear at a hearing.~~ A ward shall attend all Youth Authority institutional hearings, except for those wards:
   1) Unable to attend due to medical reasons as determined by Youth Authority medical staff.
   2) Housed at or committed to any non-Youth Authority facility.

Authority cited: Section 1721 and 1722, Welfare and Institutions Code. Reference: Sections 1721 and 1723, Welfare and Institutions Code.

§4945.5. Confinement Time Interval.

The Full Board panel shall be unlimited in their authority to set the confinement time interval for up to a maximum of two years in those cases where continued confinement has been extended per W&I Code Section 1800. In these cases, the committing court has granted an order directing that the ward remain subject to the control of the Youth Authority beyond the time originally scheduled and determined that the discharge of a person from the control of the Youth Authority would be physically dangerous to the public because of the person's mental or physical deficiency, disorder or abnormality.

Authority cited: Section 1800 and 1802, Welfare and Institutions Code. Reference: Sections 1721, 1723, 1769, 1770 and 1771, Welfare and Institutions Code.

§4963. Furloughs.

A furlough is a temporary release from an institution or camp ~~which is~~ granted by the Board. Properly authorized and escorted activities, as defined in Youth Authority regulations and procedures, are not furloughs.

(a) Criteria. Except where specifically indicated otherwise:
  (1) Furlough hearings are appearance hearings.
  (2) A Full Board panel may approve furloughs for Category 1, 2 and 3 cases, and those cases specifically designated to be heard by a three-person panel.
  (3) A Board panel may approve Category 4 and 5 cases.
  (4) A Referee may approve Category 6 and 7 cases.

~~(b)Court Furlough. A furlough to court is activated by an order of a court and does not require Board action.~~

(b) Termination of furlough. DDMS action may be used for any infraction during the furlough and may result in termination of the furlough privilege.

~~(a)~~(c) Emergency Furlough. An emergency furlough ~~is the release of a ward for the purpose of permitting him to temporarily be with his family because of death or serious illness within his family.~~ is the temporary release of a ward to allow him/her to be with family because of death or serious family illness. The Director or a director's representative may grant emergency furloughs for ~~regular board~~ category 4-7 cases. Two Members shall approve emergency furloughs for category 1, 2 or 3 cases and those cases specifically designated to be heard by a three-person panel. ~~except that~~ Outside of normal working hours, one Member may grant approval of an emergency furlough. Hearings for emergency furloughs may be non-appearance.

~~(c)~~(d) Medical Furlough. A medical furlough is a temporary ~~conditional~~ release of a ward from an institution or camp for the purpose of medical or dental treatment, ~~documented by professional staff, when the ward will be out of custody~~. when professional staff has documented a compelling need for out-of-custody treatment. Medical furlough hearings may be non-appearance.
  ~~(1) Criteria for approval:~~
    ~~(A) Category 1, 2 or 3 cases and those cases specifically designated to be heard by a three-person panel require full board approval.~~
    ~~(B) All other cases may be approved by a case hearing representative.~~

~~(d)~~(e) Training Furlough. A training furlough is the temporary release by the Board of a ward to ~~his home or foster home~~ an identified parole placement as a part of the institutional training program. ~~This furlough is usually initiated by staff, but may be initiated by the Board.~~
  (1) Criteria.
    ~~(A) A training furlough may be used as an incentive for the constructive use of the institution program.~~

~~(B)~~(A) A training furlough is used to supplement institutional experiences ~~in terms of~~ by preparing a ward for parole through visitation in ~~a home environment~~ an identified parole placement. Tentative school, employment, and activity planning may be an integral part of such a furlough.

~~(C) A training furlough is used to provide an additional opportunity for a parole agent to become acquainted with a ward prior to release on parole.~~

(2) Granting training furloughs.

~~(A) Category 1, 2 or 3 cases and those cases specifically designated to be heard by a three-person panel shall be granted training furloughs only on an appearance basis. A full board panel may authorize additional training furloughs and if so, shall specify what panel level has the authority to act.~~

~~(B) Regular board cases may be granted training furloughs by a board panel or referee on an appearance basis or non-appearance basis.~~

~~(C)~~(A) Training furloughs ~~shall not~~ usually ~~exceed~~ last seven days or less. The Board may, ~~however, on its own initiative and~~ on an individual case basis, grant furloughs of any length. An order granting a training furlough shall include specific dates.

~~(D)~~(B) Training furloughs shall not begin earlier than five working days from the date of Board approval except with prior concurrence by appropriate parole branch personnel.

~~(E) Provisions shall be made for supervision by parole staff of category 1, 2 or 3 cases and those cases specifically designated to be heard by a three-person panel while on furlough. Parole supervision of regular board cases shall be provided on furloughs exceeding seven days.~~

~~(e) The transfer of a ward from furlough to parole status shall be made only under unusual circumstances and prior to the expiration of the furlough.~~

(f) Work furlough. A work furlough is the temporary release of a ward to engage in daily community employment.

(1) Criteria.

(A) A work furlough is used to improve a ward's readiness for parole.

(B) After daily scheduled work, the ward shall return to the institution where he/she is housed

(g) Transitional Program furlough. A Transitional Program furlough is the temporary release of a ward to a pre-release community residential center. These centers supplement institutional training and treatment in preparation for parole.

(1) Criteria.

(A) Transitional Programs are supervised programs which provide intensive services directed toward community reintegration.

(B) Programs shall not exceed 120 days, except by specific directions of the Board.

Authority cited: Section 1721 and 1722, Welfare and Institutions Code. Reference: Section ~~1178~~ 1766, Welfare and Institutions Code.

§4978. Detention.

(a) Criteria for Detention. A parolee shall be detained when it is determined it is more likely than not there is a substantial risk that unless he/she is detained he/she will be:
  (1) An immediate and significant danger to the person or property of another.
  (2) An immediate and significant danger to himself/herself.
  (3) In immediate danger of leaving the jurisdiction of the Youth Authority.

(b) Authority to Detain.
  (1) The Board may detain a parolee when it determines there is probable cause to believe a parolee has violated parole or when a violation of parole has been established.

(c) Time Limits on Detention Prior to Board Hearing.
  (1) A parolee has a right to a hearing before the Board within ~~30~~ 60 days of Youth Authority initiated detention:
    (A) To determine whether he/she has violated a condition of parole.
    (B) To determine whether there is probable cause to believe he/she has violated parole when court action is pending.
  (2) When hearings occur more than ~~30~~ 60 days after a Youth Authority initiated detention, a written justification shall be presented to the hearing officer. The justification shall document the reasons for the delay and may be distributed to the parolee, his/her attorney, the parole agent and the board hearing coordinator.
  (3) The hearing officer may determine a delay has resulted in substantial prejudice to the parolee. Substantial prejudice is a handicap suffered by the parolee and caused by a delay which could reasonably influence the outcome of the hearing.
    (A) A hearing officer will use the preponderance standard of proof in determining the existence of substantial prejudice.
    (B) A hearing officer must be convinced beyond a reasonable doubt that the parolee has not been prejudiced when the violation or probable cause hearing has been delayed for two months or longer.
    (C) When a hearing officer determines there is substantial prejudice he/she shall either dismiss all actions before him/her or those allegations wherein substantial prejudice is found.
      (1) A parole agent shall ensure that a detained parolee may communicate with him/her at any reasonable time when the parolee has new information which might possibly change a detention decision.
      (2) When a hearing officer has ordered a parolee detained, release from detention requires approval by a Member or Board representative. Parole staff shall contact the hearing officer making the original order, or in his/her absence, another Member or Board representative when new information indicates detention is no longer required. The hearing officer may give verbal approval for withdrawal of the detention order with the stipulation that a written report will be presented at a non-appearance parole calendar explaining the action.
      (3) When court action is extended and the parolee is detained the Youth Authority may consider placing the parolee in a Youth Authority institution. This may occur when it is deemed to be in the best interests of the parolee, and providing it does not interfere with the court process.

(g) Parolees undergoing court action in other states and/or being held by the Youth Authority in other states, will be handled in the same manner as other parolees in the violation process except as follows:
   (1) Detention of parolees in other states by the Youth Authority will be reported to the Board at a parole calendar within ~~thirty (30)~~ sixty (60) days of such detention.
   (2) Time limits for hearings for parolees being detained out of state will be suspended until the date the parolee is returned to California.

Authority cited: Section 1721, 1722, and 1767.3, Welfare and Institutions Code. Reference: Section 1766, Welfare and Institutions Code.

§4995. Honorable Discharge.

(a) A ward may be discharged honorably when he/she has performed satisfactorily for a sufficient period of time to give reasonable assurance that he/she will continue as a law-abiding citizen.

(b) A ward shall have met at least one of the following criteria before receiving an honorable discharge.
   (1) Have a minimum of one year of satisfactory behavior as reflected in parole summary reports, except those cases in Sections 4951, 4952, and 4953 (Board Hearing Categories 1, 2, and 3) must have a minimum of eighteen months satisfactory behavior as reflected in parole summary reports which shall be referred to in the discharge report.
   (2) Have demonstrated a pattern of behavior reflecting personal, social and economic growth with a satisfactory plan for continued positive growth in the future. (The above criteria applies to wards who are eligible for discharge from either the institution or parole.)
   (3) Have paid all court-ordered restitution, demonstrates satisfactory compliance with all laws, and confirms a pattern of responsibility to victims of their previous crime involvement.

Authority cited: Section 1721 and 1722, Welfare and Institutions Code. Reference: Sections 1177, 1178 and 1772, Welfare and Institutions Code.