

# Memorandum

Date : December 24, 2012

To : Christopher Vance, Manager II, Decision Processing and Scheduling Unit  
Linn Austen, Staff Services, Manager I, Decision Processing and Scheduling Unit  
Sylvia LaBare, Manager II, Decision Processing and Scheduling Unit

Subject : **DIRECTION FOR RESCHEDULING OF HEARINGS after GOVERNOR REVERSES BPH GRANT OF PAROLE TO LIFE INMATES CONVICTED OF MURDER WITH THE POSSIBILITY OF PAROLE**

This memorandum supersedes the December 12, 2008, memorandum entitled "Direction for Rescheduling of Hearings Where Governor Reverses BPH Grant of Parole to Life Inmates Convicted of Murder with the Possibility of Parole."

The Governor can review and affirm, reverse, or modify decisions made by the Board of Parole Hearings (BPH) related to granting, denying, revoking or suspending the parole of persons convicted to an indeterminate term for murder. (See, Art. V, Cal. Const. § 8; Pen. Code § 3041.2). The BPH has the authority to set parole dates for murderers sentenced to indeterminate sentences with the possibility of parole. (See, Pen. Code § 3041(a)). In cases where the BPH finds an inmate is not suitable for parole, the BPH schedules the date of the next hearing based on the criteria set forth in subsection (b) of Penal Code section 3041.5. Unlike cases where BPH finds the inmate is unsuitable for release to the community, there is no authority, statutory or otherwise, that provides direction as to when the BPH should schedule the inmate's next parole suitability hearing once the Governor reverses a BPH's grant of parole.

The scheduling of an inmate's next parole suitability hearing after the Governor reverses a BPH grant will occur at the convenience of the BPH, and will not displace the scheduling of any other inmates due for hearing. The Governor's review period, coupled with BPH's scheduling operations, in most cases, will result in scheduling the subsequent parole suitability hearing approximately eighteen (18) months from the date of the inmate's prior parole suitability hearing.

**JENNIFER P. SHAFFER**  
Executive Officer  
Board of Parole Hearings

cc: BPH Commissioners  
Howard Moseley, Chief Legal Counsel, BPH  
Sandra Maciel, Chief Deputy, BPH

**Assembly Bill No. 1593**

CHAPTER 809

An act to amend Section 4801 of the Penal Code, relating to parole.

[ Approved by Governor September 30, 2012. Filed Secretary of State September 30, 2012. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1593, Ma. Parole: intimate partner battering.

Existing law requires the Board of Parole Hearings, one year prior to an inmate's minimum eligible parole release date, to meet with the inmate to review his or her suitability for parole. As part of this review, existing law requires the board to consider information or evidence that, at the time of the crime, the person had experienced intimate partner battering, if that person was convicted of the offense prior to the enactment of a specified provision of law. Under existing law, the board is required to annually report to the Legislature and the Governor on cases that the board considered for parole, including the board's decisions and the findings of its investigations in these cases. Existing case law supports the denial of parole on the ground that the prisoner lacks insight into his or her crimes and its causes.

This bill would instead require the board to consider the information or evidence described above if the person was convicted of an offense that occurred prior to August 29, 1996. The bill would require the board to give great weight to information or evidence of intimate partner battering at the time of the crime. Additionally, the bill would require specific and detailed findings of the board's investigations to be included in the annual report. The bill would also provide that the fact that a prisoner has presented evidence of intimate partner battering cannot be used to support a finding that the prisoner lacks insight into his or her crime.

**DIGEST KEY**

Vote: MAJORITY Appropriation: NO Fiscal Committee: YES Local Program: NO

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**BILL TEXT**

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.**

Section 4801 of the Penal Code is amended to read:

**4801.**

(a) The Board of Parole Hearings may report to the Governor, from time to time, the names of any and all persons imprisoned in any state prison who, in its judgment, ought to have a commutation of sentence or be pardoned and set at liberty on account of good conduct, or unusual term of sentence, or any other cause, including evidence of intimate partner battering and its effects.

For purposes of this section, "intimate partner battering and its effects" may include evidence of the nature and effects of physical, emotional, or mental abuse upon the beliefs, perceptions, or behavior of victims of domestic violence where it appears the criminal behavior was the result of that victimization.

(b) (1) The Board of Parole Hearings, in reviewing a prisoner's suitability for parole pursuant to Section 3041.5, shall give great weight to any information or evidence that, at the time of the commission of the crime, the prisoner had experienced intimate partner battering, but was convicted of an offense that occurred prior to August 29, 1996. The board shall state on the record the information or evidence that it considered pursuant to this subdivision, and the reasons for the parole decision. The board shall annually report to the Legislature and the Governor on the cases the board considered pursuant to this subdivision during the previous year, including the board's decisions and the specific and detailed findings of its investigations of these cases.

(2) The report for the Legislature to be submitted pursuant to paragraph (1) shall be submitted pursuant to Section 9795 of the Government Code.

(3) The fact that a prisoner has presented evidence of intimate partner battering cannot be used to support a finding that the prisoner lacks insight into his or her crime and its causes.