



BOARD OF PAROLE HEARINGS



ADMINISTRATIVE DIRECTIVE NO: 2014-03A

SUBJECT: THE OFFICIAL WRITTEN RECORD AT PAROLE HEARINGS

INTRODUCTION

The purpose of this Administrative Directive is to identify which documents constitute the official record at parole hearings and may be considered by the panel if deemed relevant and reliable.

LEGAL AUTHORITY

California Code of Regulations, title 15, section 2281, subdivision (b), provides that “all relevant, reliable information available to the panel shall be considered in determining suitability for parole. Such information shall include the circumstances of the prisoner’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 prisoner may safely be released to the community; and any other information which bears on the prisoner’s suitability for release.”

California Code of Regulations, title 15, section 2030, subdivision (c), provides that “the prosecutor may review the prisoner’s central file and submit any relevant documents... Any information which is not already available in the central file shall be submitted in writing to department staff not later than ten days before the hearing. Failure to submit new information as provided in this section may result in exclusion of the information at the hearing. As soon as administratively feasible department staff shall forward to the prisoner or his attorney copies of any documents submitted by the prosecutor. Department staff shall forward to the prosecutor copies of all documents provided to the prisoner or his attorney.”

California Code of Regulations, title 15, section 2030, subdivision (d)(2), provides that “the role of the prosecutor is to comment on the facts of the case and present an

opinion about the appropriate disposition. In making comments, supporting documentation in the file should be cited. The prosecutor may be permitted to ask clarifying questions of the hearing panel, but may not render legal advice.”

California Code of Regulations, title 15, section 2247, provides that “a prisoner is entitled to review nonconfidential documents in the department central file. A prisoner is responsible for complying with department procedures for review of the documents and for making his request sufficiently early to permit his review of the documents at least 10 days before the week of the hearing. A prisoner shall have the opportunity to enter a written response to any material in the file.” Furthermore, “a prisoner has the right to be present at the hearing, to speak on his own behalf, and to ask and answer questions.”

California Code of Regulations, title 15, section 2249, provides that “a prisoner shall have the right to present relevant documents to the hearing panel. The documents should be brief, pertinent, and clearly written. They may cover any relevant matters...A copy of the documents may be placed in the prisoner’s central file.”

DIRECTIVE

1. Inmate’s Central File

All documents located in the inmate’s central file shall be incorporated into the official record of the hearing and may be relied on by the panel when reaching its decision, except those documents deemed irrelevant or unreliable by the presiding hearing officer.

2. Hearing Packet

All documents located in the hearing packet provided in advance of the hearing shall be incorporated into the official record of the hearing and may be relied on by the panel when reaching its decision, except those documents deemed irrelevant or unreliable by the presiding hearing officer.

3. Documents Submitted by Inmates

All documents submitted by an inmate or inmate counsel in advance of the hearing shall be incorporated into the official record of the hearing and may be relied on by the panel when reaching its decision, except those documents deemed irrelevant or unreliable by the presiding hearing officer. All documents submitted by an inmate or inmate counsel on the day of the hearing shall be incorporated into the official record

of the hearing and may be relied on by the panel when reaching its decision, subject to the procedures and limitations found in Administrative Directive No: 2013-06.

4. Documents Submitted by Prosecutors

All documents submitted by a prosecutor not later than 10 days before the hearing shall be incorporated into the official record of the hearing and may be relied on by the panel when reaching its decision, except those documents deemed irrelevant or unreliable by the presiding hearing officer.

5. Written Victim Impact Statements

All written victim impact statements, whether submitted in writing or read aloud at the hearing by a victim, their representative, or a prosecutor, shall be incorporated into the official record of the hearing and may be considered by the panel when reaching its decision.

This Administrative Directive shall take effect immediately. If you have any questions concerning the contents of this Administrative Directive please contact the BPH Legal Division at (916) 324-7604.

APPROVED BY: _____

JENNIFER P. SHAFFER
Executive Officer, BPH

DATE: _____



BOARD OF PAROLE HEARINGS



ADMINISTRATIVE DIRECTIVE NO: 2014-04

SUBJECT: THE RIGHT OF VICTIMS TO SUBMIT WRITTEN IMPACT STATEMENTS AND THE RIGHT OF INMATES TO REVIEW WRITTEN RECORDS 10 DAYS PRIOR TO A HEARING

INTRODUCTION

This Administrative Directive discusses the right of victims to submit written impact statements at a parole hearing and explains why an inmate's right to review written records 10 days prior to a hearing does not apply to these statements.

LEGAL AUTHORITY

Victim Impact Statements

The California Constitution and the Penal Code provide extensive protection to the "legitimate rights of victims of crime," to include the right "[t]o be heard, upon request, at any proceeding, including any . . . post-conviction release decision, or any proceeding in which a right of the victim is at issue." (**Cal. Const., Article I, section 28, subdivision (b)(8).**)

Penal Code section 3043(b)(1) provides that, "The victim, next of kin, members of the victim's family, and two representatives . . . have the right to appear, personally or by counsel, at the hearing and to adequately and reasonably express his, her, or their views concerning the prisoner and the case"

Penal Code section 3043.2(a)(1) further allows that, "In lieu of personal appearance at any hearing to review the parole suitability or the setting of a parole date, the Board of Prison Terms shall permit the victim, his or her next of kin, immediate family members, or two representatives designated . . . to file with the board a written, audiotaped, or videotaped statement, or statement stored on a CD Rom, DVD, or any other recording medium accepted by a court pursuant to Section 1191.15 or by the board, expressing his or her views concerning the crime and the person responsible."

Penal Code section 3043.6 requires that, “Any person authorized to appear at a parole hearing pursuant to Section 3043, or a prosecutor authorized to represent the views of the victim, his or her immediate family, or next of kin, pursuant to Section 3043.2, shall *have the right to speak last before the board* in regard to those persons appearing and speaking before the board at a parole hearing [emphasis added].”

Penal Code section 3041.5(a)(2) dictates that, “Neither the prisoner nor the attorney for the prisoner shall be entitled to ask questions of any person appearing at the hearing pursuant to subdivision (b) of Section 3043.”

10 Day Rule Regarding File Review

Penal Code section 3041.5(a)(1) provides that, “At least 10 days prior to any hearing by the Board of Parole Hearings, the prisoner shall be permitted to review his or her file which will be examined by the board and shall have the opportunity to enter a written response to any material contained in the file.”

California Code of Regulations, title 15, division 2, section 2247 expands on Penal Code section 3041.5, subdivision (a)(1), by adding that “[a] prisoner is entitled to review nonconfidential documents in the department central file [and] [n]o panel shall consider information not available to the prisoner unless the information is designated confidential under § 2235.”

DISCUSSION

Penal Code section 3041.5, subdivision (a)(1), provides inmates the right to review and respond to materials found in his or her file at least 10 days prior to a hearing. However, because Penal Code section 3043.6 grants victims the right to provide impact statements at the conclusion of a hearing, these statements are not available as part of the inmate’s file 10 days prior to the hearing. If the Legislature intended victim impact statements to be reviewed by the inmate with the rest of the file for a response, it would not have specifically granted victims the “right to speak last before the board.” (Pen. Code, § 3043.6.) Additionally, Penal Code section 3041.5, subdivision (a)(2), prohibits inmates and their attorneys from questioning the victims at the hearing, further demonstrating that the Legislature did not intend to give inmates the right to review or respond to victim impact statements. Therefore, given the victim’s right to speak last and the prohibition against inmates questioning victims, it is reasonable to conclude that the Legislature did not intend to give inmates the right to review written victim impact statements prior to a hearing.

DIRECTIVE

Based on the constitutional and statutory protections afforded to victims, written impact statements are not subject to the inmate's right to review prior to a hearing, regardless of whether the victim, a designated representative, or a prosecutor submits the statement.

This Administrative Directive shall take effect immediately. If you have any questions concerning the contents of this Administrative Directive please contact the BPH Legal Division at (916) 324-7604.

APPROVED BY: _____

JENNIFER P. SHAFFER
Executive Officer, BPH

DATE: _____

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