



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 yet 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 the inmate’s right to review his or her file 10 days prior to a hearing to apply to written victim impact statements.

DIRECTIVE

Based on the constitutional and statutory protections afforded to victims, written impact statements are not subject to the inmate's right to review materials 10 days 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: <u>12/30/14</u>
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