



BOARD OF PAROLE HEARINGS



ADMINISTRATIVE DIRECTIVE NO: 2013-08

SUBJECT: VICTIM IMPACT STATEMENTS

INTRODUCTION

This Administrative Directive clarifies the governing law and procedures for consideration of victim impact statements, the parties authorized to provide impact statements, and the manner and method of providing impact statements at parole suitability hearings.

LEGAL AUTHORITY

Governing Law

Article I, section 28, subdivision (b)(8), of the California Constitution provides victims with the right "[t]o be heard, upon request, at any proceeding, including any ... post-conviction release decision, ... in which a right of the victim is at issue." The California Supreme Court recently affirmed this right by noting the Board's receipt of such impact statements serves an important purpose – "to provide victims due process by affording them an opportunity to be heard in proceedings concerning the ... release of those who victimized them." (*In re Vicks* (2 013) 56 Cal.4th 274.) As the court explained, regardless of legal relevance the purpose of a procedural right such as the right to be heard is to "ensure that crime victims are treated with respect and dignity." (Cal. Const., art I, § 28, subd. (a)(2).) Thus, it can be said that a crime victim has a constitutional due process right to provide an impact statement at all proceedings related to post-conviction release decisions.

Parties Authorized to Provide Impact Statements

Penal Code section 3043, subdivision (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"

Page 1 of 3

For disability related accommodations, please contact the BPH Americans with Disabilities Act Coordinator at (916) 445-4072, at least five (5) working days prior to the scheduled meeting. All persons and property entering into this facility may be subject to search. No unauthorized weapons are allowed pursuant to Penal Code Section 171b.

Manner and Method of Providing Impact Statements

Penal Code section 3043.2, subdivision (a)(1), provides that, "In lieu of personal appearance ... the Board of Prison Terms shall permit the victim, his or her next of kin, immediate family members, or two representatives ... 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 [A]ny statement provided by a representative designated by the victim or next of kin shall be limited to comments concerning the effect of the crime on the victim."

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. Nothing in this section shall prohibit the person presiding at the hearing from taking any steps he or she deems appropriate to ensure that only accurate and relevant statements are considered in determining parole suitability as provided in law, including, but not limited to, the rebuttal of inaccurate statements made by any party." (Emphasis added.)

Penal Code section 3043, subdivision (d), requires that, "The board, in deciding whether to release the person on parole, shall consider *the entire and uninterrupted statements* of the victim or victims, next of kin, immediate family members of the victim, and the designated representatives of the victim or next of kin, if applicable, made pursuant to this section" (Emphasis added.)

Penal Code section 3041.5, subdivision (a)(2), mandates 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."

DISCUSSION

Victims, their next-of-kin, members of the victims' families, and two designated representatives have a constitutionally protected right to provide impact statements at all parole suitability hearings. Generally speaking, impact statements should address the speaker's views concerning the prisoner and the case, especially the prisoner's suitability and the effect of the crime on the victim. It should be noted that impact statements by representatives are statutorily limited to the effects of the crime on the

victim. It should also be noted that impact statements may be made in person, via audio or video conference, or submitted to the board as a written, audiotaped, or videotaped statement.

DIRECTIVE

The Board shall ensure that all victims and other statutorily authorized parties are afforded an opportunity to provide an uninterrupted impact statement at any proceeding related to a prisoner's potential release. The Board shall also ensure that all impact statements, including written and recorded statements received at or before the start of the proceeding, are considered in their entirety prior to rendering a decision; that questions are not put to victims or other authorized parties by the prisoner or the prisoner's attorney during the proceedings; and that victims and other authorized parties are heard last, except in rare instances when the presiding hearing officer determines additional information must be considered to rebut potentially inaccurate information.

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

APPROVED BY:	<u>JENNIFER P. SHAFFER</u> Executive Officer, BPH	DATE:	_____
---------------------	--	--------------	-------

For disability related accommodations, please contact the BPH Americans with Disabilities Act Coordinator at (916) 445-4072, at least five (5) working days prior to the scheduled meeting. All persons and property entering into this facility may be subject to search. No unauthorized weapons are allowed pursuant to Penal Code Section 171b.



BOARD OF PAROLE HEARINGS



ADMINISTRATIVE DIRECTIVE NO: 2013-04

**SUBJECT: GUIDANCE ON HANDLING INTIMATE PARTNER BATTERING
INFORMATION AT PAROLE SUITABILITY HEARINGS**

INTRODUCTION

Penal Code section 4801, which addresses how the Board should handle intimate partner battering (IPB) information at parole suitability hearings, was amended effective January 1, 2013. This directive highlights the changes to section 4801 and provides guidance on handling IPB information.

LEGAL AUTHORITY

Penal Code section 4801(a) defines "intimate partner battering and its effects" to 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."

Penal Code section 4801(b) provides that "in reviewing a prisoner's parole suitability, the Board 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."

Penal Code section 4801(b)(3) further directs the Board, "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."

California Code of Regulations (CCR), Title 15, section 2281(b) requires the panel to consider "all relevant, reliable information available to the panel" in determining suitability for parole.

Page 1 of 2

For disability related accommodations, please contact the BPH Americans with Disabilities Act Coordinator at (916) 445-4072, at least five (5) working days prior to the scheduled meeting. All persons and property entering into this facility may be subject to search. No unauthorized weapons are allowed pursuant to Penal Code Section 171b.

DIRECTIVE

If the prisoner's controlling offense occurred prior to August 29, 1996, and the prisoner presents IPB information, all of the following shall occur:

- (1) The hearing panel shall determine if the IPB information is relevant. For example, IPB information is always relevant if the panel finds the criminal behavior was the result of that victimization.
- (2) The hearing panel shall determine if the IPB information is reliable.
- (3) Having established relevance and reliability, the hearing panel shall give great weight to the IPB information. This means that the panel shall not merely consider, but shall give *more* weight to IPB information than it would to other information available to the panel. However, the ultimate issue that the panel must decide – whether or not an inmate will pose an unreasonable risk of danger to society if released – remains the same.
- (4) The hearing panel shall not find a lack of insight based solely on the presentation of IPB information. However, other information may demonstrate a lack of insight, such as substance abuse, gang affiliation, and failure to address and correct harmful behavioral patterns.
- (5) The hearing panel shall state on the record the IPB information considered.

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

APPROVED BY: _____ JENNIFER P. SHAFFER Executive Officer, BPH	DATE: _____
---	-------------

For disability related accommodations, please contact the BPH Americans with Disabilities Act Coordinator at (916) 445-4072, at least five (5) working days prior to the scheduled meeting. All persons and property entering into this facility may be subject to search. No unauthorized weapons are allowed pursuant to Penal Code Section 171b.