

BPH RN 21-XX PROPOSED REGULATORY TEXT

Proposed additions are indicated by underline and deletions are indicated by ~~striketrough~~.

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
TITLE 15. CRIME PREVENTION AND CORRECTIONS
DIVISION 2. BOARD OF PAROLE HEARINGS
CHAPTER 1. GENERAL

ARTICLE 6. PROCEEDINGS CONDUCTED IN PERSON AND BY VIDEOCONFERENCE is *added* to read as follows:

§ 2050. Authority. Pursuant to section 3041.6 of the Penal Code, the board shall determine whether a proceeding is conducted in person or by videoconference.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Section 3041.6, Penal Code.

§ 2051. Definitions. The following definitions apply to the regulations contained in this article.

(a) “Videoconference” means the simultaneous or near simultaneous transmission of audio and video signals by any means between one or more physical locations.

(b) “Physical presence” or being “physically present” means specified parties are together at a particular time and place so as to be in view or at hand of each other.

(c) “Effective communication” means communication between parties in which each party is able to understand to the best of their abilities both the content and meaning of the other party’s statements.

(d) “Hearing officer” means a commissioner or deputy commissioner of the board.

(e) A “victim” is a person who has registered as a victim with the department’s Office of Victim and Survivor Rights and Services.

(f) A “victim’s next of kin” is a person who has registered as a victim’s next of kin with the department’s Office of Victim and Survivor Rights and Services.

(g) A “member of the victim’s family” is a person identified in subdivision (e) of section 3043 of the Penal Code who has registered as a member of the victim’s family with the department’s Office of Victim and Survivor Rights and Services.

(h) A “victim representative” is a person designated in writing to the department’s Office of Victim and Survivor Rights and Services by the victim, or the victim’s next of kin if the victim is deceased or incapacitated, to be their representative.

(i) A “victim support person” is a person designated in writing to the department’s Office of Victim and Survivor Rights and Services by the victim, victim’s next of kin, or members of the victim’s family to be their support.

(j) A “parole hearing” refers to parole consideration, parole reconsideration, and rescission hearings conducted pursuant to sections 3000, 3000.1, 3041.5, and 3041.7 of the Penal Code.

(k) A “medical parole hearing” refers to a hearing conducted pursuant to section 3550 of the Penal Code and under *Coleman v. Newsom* (E.D.Cal. Feb. 10, 2014, No. 2:90-cv-00520-LKK

DAD (PC), 2014 WL 2889598, 2014 U.S. Dist. Lexis 17913) and *Plata v. Newsom* (N.D. Cal., No. 3:01-cv-01351-TEH).

(l) A “hearing for an offender with a mental health disorder” refers to a hearing conducted pursuant to sections 2964 and 2966 of the Penal Code.

(m) A “consultation” refers to a meeting conducted pursuant to paragraph (1) of subdivision (a) of section 3041 of the Penal Code.

(n) A “proceeding” includes:

(1) A parole hearing;

(2) A medical parole hearing;

(3) A hearing for an Offender with a Mental Health Disorder; and

(4) A consultation.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Subdivision (e), section 28, article I, California Constitution; Sections 2964, 2966, 3000, 3000.1, 3041, 3041.1, 3041.5, 3041.6, 3041.7, 3043, 3043.25, 3550, and 5076.1, Penal Code; and *In re J.G.* (2008) 159 Cal.App.4th 1056; *Coleman v. Newsom* (E.D.Cal. Feb. 10, 2014, No. 2:90-cv-00520-LKK DAD (PC), 2014 WL 2889598, 2014 U.S. Dist. Lexis 17913); and *Plata v. Newsom* (N.D. Cal., No. 3:01-cv-01351-TEH).

§ 2052. Method of Conducting a Proceeding.

(a) A proceeding is conducted by videoconference if the inmate, or the inmate’s attorney, if the inmate waives participation in the proceeding, communicates by videoconference with all the hearing officers assigned to conduct the proceeding. Neither the inmate nor the inmate’s attorney will be physically present with the hearing officers.

(b) A proceeding is conducted in person if the inmate, or the inmate’s attorney if the inmate waives participation in the proceeding, communicates with all the hearing officers assigned to conduct the proceeding while physically present with the hearing officers.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Section 3041.6, Penal Code.

§ 2053. Videoconference Presumption

Proceedings shall be conducted by videoconference unless otherwise specified in this article.

This presumption applies to multi-jurisdiction inmates located outside of California under section 2367.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Section 3041.6, Penal Code.

§ 2054. Exceptions to Videoconference Presumption for Proceedings.

(a) Board staff shall schedule an inmate for an in-person proceeding if the board determines that an in-person proceeding is necessary for the hearing officers to establish effective communication with the inmate.

(b) When determining whether an in-person proceeding is necessary pursuant to subsection (a), board staff shall consider information made available to the board that includes, but is not limited to, the following:

(1) The inmate has been identified by the department as part of the department's Developmental Disability Program;

(2) The inmate has been identified by the department as part of the department's Disability Placement Program, and the department has determined and documented at least one of the following:

(A) The inmate has a hearing impairment that affects the department's housing of the individual, such as deafness or severe hearing impairment;

(B) The inmate's primary method of communication is sign language;

(C) The inmate has a speech impairment that affects the department's housing of the individual, such as aphasia or severe speech impediment; or

(D) The inmate has a learning disability that affects the inmate's ability to effectively communicate through videoconference technology, such as auditory processing disorder;

(3) The inmate has been identified by the department as part of the department's Mental Health Services Delivery System

at the Enhanced Outpatient Program, Mental Health Crisis Bed, Intermediate Care Facility, or Acute Care Facility levels of care;

(4) The inmate is receiving treatment at the California Department of State Hospitals or the California Department of Developmental Services pursuant to Penal Code section 2684; and

(5) The inmate has been documented by the department as having a medical condition that significantly impacts their ability to understand or communicate with others.

(c) If board staff schedules a proceeding by videoconference and subsequently receives information demonstrating that an in-person proceeding is necessary for the hearing officers to establish effective communication with the inmate, board staff shall reschedule the proceeding to be conducted in person. An inmate's attorney shall inform the board as soon as possible of any information that may demonstrate an in-person proceeding is necessary for the hearing officers to establish effective communication with the inmate.

(d) If an inmate appears by videoconference and the presiding hearing officer determines that an in-person proceeding is necessary to establish effective communication with the inmate, the presiding hearing officer shall postpone the proceeding and order that an in-person proceeding be scheduled.

(e) This section does not apply to medical parole hearings.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Sections 3041.6 and 3550, Penal Code; and *Clark v. California* (N.D. Cal. 2010) 739 F.Supp.2d 1168; *Coleman v. Schwarzenegger* (E.D. Cal. 2009) 922 F.Supp.2d 882; and *Armstrong v. Wilson* (9th Cir. 1997) 124 F.3d 1019.

§ 2055. Requesting Proceedings by Videoconference.

(a) If an inmate is scheduled for an in-person proceeding, the inmate or the inmate's attorney may submit a written request to the board at least 100 days prior to the proceeding requesting that the proceeding be conducted by videoconference. The request shall state the reason for the request and affirm that, to the best knowledge of the requestor, an in-person proceeding is not necessary for the hearing officers to establish effective communication with the inmate. The board will review the request and schedule a videoconference proceeding if it determines that an in-person proceeding is likely not necessary for the hearing officers to establish effective communication with the inmate.

(b) This section does not apply to medical parole hearings.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Sections 3041.6 and 3550, Penal Code.

§ 2056. Exigent Circumstances.

If an inmate is scheduled for an in-person proceeding, and exigent circumstances, such as natural disasters or a state of emergency, prevent conducting the proceeding in person, the board may allow the inmate, upon recommendation from their attorney, to attend the proceeding by videoconference. All other participants may attend the proceeding by videoconference.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Section 3041.6, Penal Code.

§ 2057. Participation at Parole Hearings and Medical Parole Hearings.

(a) Whether a hearing is conducted in person or by videoconference, the inmate's attorney and the scheduled interpreter shall be physically present with the inmate during the hearing unless any of the following applies:

- (1) The inmate waives the physical presence of their attorney or the scheduled interpreter;
- (2) The inmate waives their own right to attend the hearing;
- (3) The inmate refuses to attend the hearing; or
- (4) Circumstances beyond the control of the inmate's attorney or the scheduled interpreter, such as the inmate's medical condition or the housing location, prevent the attorney or the scheduled interpreter from being physically present with the inmate during the hearing.

(b) Hearings Conducted In Person. If the board determines that the hearing shall be conducted in person, as determined in section 2054, then the inmate, the inmate's attorney, and the scheduled interpreter shall attend the hearing in person. The following individuals may attend in person, by videoconference, or by telephone:

- (1) Victims, appearing personally or by counsel, who have informed the department's Office of Victim and Survivor Rights Services of their intention to attend the hearing at least 15 days prior to the hearing;
- (2) Victim's next of kin, members of the victim's family, and victim representatives, appearing personally or by counsel, who have informed the department's Office of Victim and Survivor Rights Services of their intention to attend the hearing at least 30 days prior to the hearing;
- (3) Victim support persons designated in writing to the department's Office of Victim and Survivor Rights Services at least 30 days prior to the hearing;
- (4) Representatives of the prosecuting agency;
- (5) Witnesses called to testify at rescission hearings; and
- (6) Visitors and observers approved under section 2029.1.

(c) Hearings Conducted by Videoconference. If the board determines that the hearing shall be conducted by videoconference, as determined in sections 2053, 2054, 2055, and 2056, then the inmate, the inmate's attorney, and the scheduled interpreter shall attend the hearing by videoconference in accordance with subsection (a). The following individuals may attend the hearing by videoconference or by telephone:

(1) Victims, appearing personally or by counsel, who have informed the department's Office of Victim and Survivor Rights Services of their intention to attend the hearing at least 15 days prior to the hearing;

(2) Victim's next of kin, members of the victim's family, and victim representatives, appearing personally or by counsel, who have informed the department's Office of Victim and Survivor Rights Services of their intention to attend the hearing at least 30 days prior to the hearing;

(3) Victim support persons designated in writing to the department's Office of Victim and Survivor Rights Services at least 30 days prior to the hearing;

(4) Representatives of the prosecuting agency;

(5) Witnesses called to testify at rescission hearings; and

(6) Visitors and observers approved under section 2029.1.

(d) The requirement in subsections (b)(1) and (c)(1) that victims notify the department's Office of Victim and Survivor Rights and Services of their intention to attend the hearing or be designated as a support person at least 15 days prior to the hearing shall apply to hearings scheduled to occur on or after February 1, 2022.

(e) The requirement in subsections (b)(2) through (b)(3) and (c)(2) through (c)(3) that a victim's next of kin, members of the victim's family, victim representatives, and victim support persons notify the department's Office of Victim and Survivor Rights and Services of their intention to attend the hearing or be designated as a support person at least 30 days prior to the hearing shall apply to hearings scheduled to occur on or after February 1, 2022.

(f) In lieu of attending the hearing, victims, victim's next of kin, members of the victim's family, and victim representatives may submit a written or electronically recorded statement in accordance with section 2029 to be considered by the hearing officers.

(g) Media representatives approved under sections 2031 and 2032 shall attend the hearing in a manner approved by the board, which may include in person, by videoconference, or by telephone. Media representatives shall only attend in person if the hearing is conducted in person.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Sections 3000, 3000.1, 3041.1, 3041.5, 3041.6, 3041.7, 3043, 3043.2, and 3043.25, Penal Code.

§ 2058. Participation at Consultations and Hearings for Offenders with Mental Health Disorders.

(a) Whether a hearing for an offender with a mental health disorder is conducted in person or by videoconference, the inmate's attorney and the scheduled interpreter shall be physically present with the inmate during the hearing unless any of the following applies:

(1) The inmate waives the physical presence of their attorney or the scheduled interpreter;

(2) The inmate waives their own right to attend the proceeding;

(3) The inmate refuses to attend the proceeding; or

(4) Circumstances beyond the control of the inmate's attorney or the scheduled interpreter, such as the inmate's medical condition or the housing location, prevent the attorney or the scheduled interpreter from being physically present with the inmate during the proceeding.

(b) For consultations, interpreters may communicate with the inmate by videoconference and are not required to be physically present with the inmate.

(c) Proceedings Conducted In Person. If the board determines that the proceeding shall be conducted in person, as determined in sections 2054, then the inmate, the inmate's attorney, if there is one, and the scheduled interpreter shall attend the proceeding in person. Visitors and observers approved under section 2029.1 and witnesses may attend in person, by videoconference, or by telephone.

(d) Proceedings Conducted by Videoconference. If the board determines that the proceeding shall be conducted by videoconference, as determined in sections 2053, 2054, 2055, and 2056, then the inmate, the inmate's attorney, if there is one, and the scheduled interpreter shall attend the proceeding by videoconference in accordance with subsection (a). Visitors and observers approved under section 2029.1 and witnesses may attend the proceeding by videoconference or by telephone.

(e) Media representatives approved under sections 2031 and 2032 shall attend the hearing in a manner approved by the board, which may include in person, by videoconference, or by telephone. Media representatives shall only attend in person if the hearing is conducted in person.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Sections 2964, 2966, and 3041, Penal Code.

§ 2059. Notification of Proceedings.

When notifying victims and victim's next of kin under subdivision (a) of section 3043 of the Penal Code and representatives of the prosecuting agency under section 3041.7 of the Penal Code of an upcoming proceeding, the board shall identify the manner in which they may attend the proceeding.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Sections 3041.7 and 3043, Penal Code.

§ 2060. Participant Availability.

Victims, victim's next of kin, members of the victim's family, victim representatives, victim support persons, representatives of the prosecuting agency, visitors, observers, and media representatives shall be available at the scheduled start time of the proceeding. Failure to do so may result in loss of the opportunity to participate in the proceeding.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Section 3041.6, Penal Code.

§ 2061. Participant Restrictions.

(a) Unless approved by the board in advance of the hearing, participants shall not record or transmit by any means any portion of the proceeding. Participants shall not allow any unauthorized individual to hear, view, record, or transmit any portion of a hearing. The presiding hearing officer may remove the participant from the proceeding for failure to comply with this section.

(b) Participants shall not engage in disruptive behavior during the proceeding including, but not limited to, having excessive background noise or displaying inappropriate gestures. The

presiding hearing officer may remove the participant from the proceeding for failure to comply with this section.

(c) All participants are subject to institution and facility procedures if they are attending a proceeding in person.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Section 3041.6, Penal Code.

§ 2062. Equipment and Connectivity Issues.

(a) Participants are responsible for ensuring that they have the proper equipment and internet connection to ensure their successful attendance and participation at the proceeding.

(b) The presiding hearing officer may postpone or continue a proceeding conducted by videoconference if a hearing officer, inmate, or the inmate's attorney cannot meaningfully participate in the proceeding due to equipment or connectivity issues. The presiding hearing officer shall give other hearing officers, the inmate, or the inmate's attorney a reasonable amount of time to resolve equipment or connectivity issues before postponing or continuing the proceeding. The presiding hearing officer may give other participants a reasonable amount of time to resolve equipment or connectivity issues, but is not required to postpone or continue a proceeding due to unresolved issues.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Section 3041.6, Penal Code.

§ 2063. Exception to Videoconference Presumption for Medical Parole Hearings.

Board staff shall schedule an inmate for an in-person medical parole hearing if the inmate's medical parole hearing is scheduled to immediately follow the inmate's in-person parole consideration hearing. If a medical parole hearing is conducted in person, all hearing participants may be physically present with the hearing officers.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Sections 3041.6 and 3550, Penal Code.