



FOR INFORMATIONAL PURPOSES
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Proposed Regulations to Conduct Parole Hearings by Videoconference

Background

In response to the COVID-19 global pandemic and the resulting State of Emergency proclaimed by Governor Newsom on March 4, 2020, the Governor ordered the Board of Parole Hearings (Board) to stop conducting parole hearings in person in order to “protect the health and welfare of inmates, hearing board officers, inmates’ counsel, victims and their representatives, and representatives of the people.”

The Governor also ordered the Board to develop a process for conducting parole hearings by videoconference.¹ Absent the Executive Order, the law had required the Board to conduct all hearings in person at the institution where the incarcerated person is housed and incarcerated persons had a right to be present at their parole hearing, which courts have interpreted to mean they had a right to physically appear in person before the Board.

The Board began conducting parole hearings using videoconferencing on April 1, 2020, and has since conducted 5,136 hearings, resulting in 1,803 grants of parole and 3,333 denials.² As shown below, the outcome of hearings held by videoconference are consistent with those conducted in person prior to the pandemic.

Outcome	Hearings Conducted in Person 2019		Hearings Conducted by Videoconference 4/1/2020-8/6/2021	
	Number	Percentage	Number	Percentage
Grant	1,184	34.4%	1,803	35.1%
Deny	2,257	65.6%	3,333	64.9%
Total	3,441	100.0%	5,136	100.0%

Due to the passage of Assembly Bill (AB) 145, the Board must adopt and implement emergency regulations for conducting parole hearings and consultations by videoconference. On August 6, 2021 the Board issued the first draft of the proposed regulations. Since then, the Board has worked with stakeholders to update and amend the draft regulations. The Board will take public comment and vote on an updated draft at its monthly executive meeting on August 16, 2021. The draft regulations are available on the Board’s website at www.cdcr.ca.gov/bph/.

¹ Executive Order N-36-20, issued on March 24, 2020.

² As of August 6, 2021.

Once implemented, emergency regulations generally remain in effect for 180 days. After that, if the provisions of these regulations are to become permanent, they will go through a separate and lengthier regulatory process. The regulatory process will include a careful review and a chance to adjust the process to address any difficulties that may be experienced upon implementation of the emergency regulations, and the opportunity for additional public comment and input from stakeholders.

Key Provisions of the Proposed Regulations

1. The Board will conduct parole hearings, hearings for individuals with a mental health disorder, and consultations by videoconference, except when an in-person hearing is needed for the Board's hearing officers (commissioners and deputy commissioners) to establish effective communication with the incarcerated person. This includes parole consideration hearings, parole reconsideration hearings, and rescission hearings.
2. For hearings conducted by videoconference, incarcerated persons will attend via videoconference from the prison where they are housed; their attorney and interpreters (if any) will be physically present with them at the institution, unless their physical presence is waived or a specified exception applies. All other persons will attend by videoconference, including the Board's hearing officers.
3. For hearings conducted in-person, incarcerated persons and the Board's hearing officers will attend in person at the prison where the person is housed; their attorney and interpreters (if any) will be physically present at the institution, unless their physical presence is waived or a specified exception applies. All other persons will have the option of attending in person, by videoconference, or by phone.
4. Victims and victims' next of kin who have registered with California Department of Corrections and Rehabilitation's (CDCR or Department) Office of Victim and Survivor Rights and Services (OVSRS) to receive notice of parole hearings will continue to receive notice at least 90 days before the parole hearing as required by Penal Code section 3043(a)(1). Notices will identify whether the hearing is scheduled to be conducted in person or by videoconference.
5. The following persons continue to be entitled to attend parole hearings:
 - a. Victims, appearing personally or by counsel,³ who have registered with OVSRS and informed OVSRS of their intention to attend the hearing at least 15 days prior to the hearing;
 - b. Victim's next of kin, members of the victim's family, and victim representatives designated to attend a hearing by the victim next of kin, appearing personally or by counsel,⁴ who have registered with OVSRS and informed OVSRS of their intention to attend the hearing at least 30 days prior to the hearing;

³ Pursuant to Penal Code section 3043, subdivision (b)(1).

⁴ Pursuant to Penal Code section 3043, subdivisions (a)(2) and (b)(1).

- c. Victim support persons designated in writing⁵ to OVSRS at least 30 days prior to the hearing;
- d. Representatives of the prosecuting agency;⁶
- e. Visitors and observers approved under section 2029.1 of the Board's regulations; and
- f. Representatives of the media approved under section 2029 of the Board's regulations.

The requirement for victims, victim's next of kin, members of the victim's family, victim representatives, and victim support persons to notify OVSRS of their intention to attend a hearing 15 or 30 days in advance of the hearing will apply to hearings scheduled to occur on or after February 1, 2022.

- 6. Medical parole hearings will generally be conducted by videoconference, as incarcerated persons do not have a right to be present at medical parole hearings.

Why are regulations governing videoconference procedures for parole hearings urgently needed?

Although the State of Emergency proclaimed on March 4, 2020, remains in effect, Governor Newsom rescinded or modified many of the Executive Orders issued as a result of the COVID-19 pandemic. Additional Executive Orders will be rescinded when possible, leaving only those whose termination would "compound the effects of the emergency and impede the State's recovery by disrupting important governmental and social functions."

On July 16, 2021, Governor Newsom signed AB 145, which amended Penal Code section 3041.6 to permanently authorize the Board to conduct parole hearings by videoconference. With the passage of AB 145, the provisions of Executive Order N-36-20 requiring the Board to conduct parole hearings by videoconference will no longer be needed. As a result, the procedures for permanently conducting hearings by videoconference as outlined in these regulations are necessary to implement Penal Code section 3041.6 and establish a transparent process for the Board's videoconference procedures.

What parole proceedings will be held by videoconference?

All parole consideration hearings, parole reconsideration hearings, rescission hearings, hearings for persons with a mental health disorder, and consultations will be held by videoconference unless the board determines an in-person proceeding is necessary to establish effective communication between the hearing panel and the incarcerated person. In addition, medical parole hearings will generally be conducted by videoconference, as incarcerated persons do not have the right to attend medical parole hearings.

⁵ Pursuant to Penal Code section 3043, subdivisions (a)(2) and 3043.1.

⁶ Pursuant to Penal Code sections 3041.7.

How will the board determine when an in-person hearing is necessary to establish effective communication with the incarcerated person?

Board staff will consider a variety of information concerning the incarcerated person, including documentation of the following:

- participation in CDCR's Developmental Disability Program;
- participation in CDCR's Disability Placement Program with an identified disability such as a hearing or speech impairment or a learning disability, as specified;
- participation in CDCR's mental health services delivery system at the enhanced outpatient program, mental health crisis bed, intermediate care facility, or acute care facility level of care;
- treatment at the California Department of State Hospitals or the California Department of Developmental Services under Penal Code section 2684; and
- a medical condition that significantly impacts the person's ability to understand or communicate.

In addition, an incarcerated person's attorney is required to tell the Board as soon as possible any information demonstrating that their client, who is scheduled for a videoconference hearing, needs an in-person hearing in order for the hearing panel to establish effective communication with their client.

Lastly, if the hearing panel is unable to establish effective communication with an incarcerated person via videoconference, the presiding hearing officer may determine an in-person proceeding is necessary, and the proceeding will be rescheduled to occur in-person.

It is anticipated that the majority of the Board's hearings will be conducted by videoconference.

If a hearing is scheduled to be conducted in-person, may the incarcerated person or their attorney request that it be conducted by videoconference?

Yes. An incarcerated person or their attorney may request in writing, at least 100 days prior to the hearing, that the hearing being conducted by videoconference. The request must include the reason for the request and affirm that, to the best knowledge of the requestor, an in-person hearing is not necessary for the Board to establish effective communication with the incarcerated person. The Board will review the request and schedule a videoconference hearing if it determines that an in-person proceeding is likely not necessary for the hearing panel to establish effective communication with the incarcerated person.

Why are victims, victims' next of kin, and victims' family members required to provide advanced notice of their intent to attend a parole hearing?

It is required under Marsy's Law (Penal Code section 3043). Notice of participation will also further the goal of the Board and OVSRS to improve the parole process for all participants. Thanks to additional funds approved by Governor Newsom and the Legislature in the most recent state budget, OVSRS has received an additional ten victim advocate support positions and \$1.3 million to increase support and services to victims and their families throughout the parole hearing process.

These additional victim advocates will support and enforce victims' rights by proactively reaching out to victims and their families early in the process to provide support, explain the parole process, and help them prepare for the hearing. They will also attend the hearing with victims and their families, support them after the hearing, and connect them to services they may need. Provisions of these regulations requiring victims and their family members to provide advance notice of their participation in a hearing will be delayed until February 2022 in order to allow these resources and services to be in place.

The ability to communicate with victims and their families in advance of a parole hearing is more critical than ever in light of the many recent changes in the law governing resentencing, expanded opportunities for parole consideration, and the significant increase in hearing participation as a result of videoconferencing.

Prior to COVID-19, all hearings were held in person at the prison where the incarcerated person is housed, and victims and their family had the option of attending hearings in person at the prison if they were screened and authorized in advance by the institution. They could also appear by video from a district attorney's office, which required coordination in advance of the hearing, or they could attend by phone. Now everyone can attend by videoconference via the Internet. As a result, more victims and their families are choosing to attend parole hearings. As an example, in February 2020, prior to hearings being conducted by videoconference, 127 victims and victim family members attended parole hearings. One year later, when hearings were conducted by videoconference, the number of victims and victim family members attending parole hearings more than doubled to 343 in February 2021.

When victims and their families provide advance notice of their intent to attend a hearing, it gives OVSRS the opportunity to provide critical services and support. It also gives the Board the opportunity to schedule hearings in a way that affords victims and their families the time they need to give their statements at the hearing without causing delays for the other victims and their families who are waiting to attend later hearings.

The Board and OVSRS will also continue working with stakeholders to further maximize opportunities for victims and their families to learn about upcoming parole hearings. The Board and OVSRS already have significantly increased information available to victims and their families by expanding the "Locate Inmate" web-based search engine on CDCR's website (<https://inmatelocator.cdcr.ca.gov/>) to display each incarcerated person's earliest parole eligible date and to provide a list of past, pending, and future Board actions associated with each person. As a result, victims and their families, as well as any member of the public can look up critical information about the parole process for an

incarcerated person at any time. The website includes information about parole hearings once they are scheduled, which is usually 180 days in advance of the hearing.

The Board also routinely provides prosecutors with notice of parole hearings 90 days in advance rather than the 30 days required by Penal Code section 3041.7 so they receive notice at the same time victims and their families receive notice. The Board and OVSRS have also made notification of parole hearings available by email in addition to U.S. mail and certified mail. Many victims and their family members maintain the same email address over time, even as their physical mailing address changes; consequently, enabling notification to occur by email has reduced the need for victims and their families to update mailing addresses as they move.

How do victims and their families register with OVSRS to receive notice of a hearing and how do they notify OVSRS of their intent to attend a hearing?

Victims and their family members can register to receive notice of parole hearings, as well as several other services, by submitting an application online or downloading an application for mailing from the OVSRS website at <https://www.cdcr.ca.gov/victim-services/application/>.

Victims and their family members can indicate their intent to attend a hearing by contacting OVSRS by phone at **1-877-256-6877**, email at victimservices@cdcr.ca.gov, or by mail at:

**California Department of Corrections and Rehabilitation
Office of Victim & Survivor Rights & Services
P.O. Box 942883
Sacramento, CA 94283-0001**

Victims and their families who are registered with OVSRS also receive instructions about how to notify OVSRS of their intent to attend a hearing when they receive notice of the hearing 90 days before the parole hearing. The instructions are included in the hearing notice they receive from the Board.

Under Executive Order N-36-20, incarcerated persons were not required to show good cause to waive or postpone their hearing. Will that continue under the proposed regulations?

No. Once the proposed regulations are implemented and the Executive Order is no longer in effect, the provisions of section 2253 of Title 15 of the California Code of Regulations governing requests to waive or postpone a hearing will be reinstated. Requests to waive a hearing less than 45 days prior to the hearing and all requests to postpone a hearing will require a showing of good cause as specified in section 2253.

What is the timeline for promulgating these regulations?

If the Board votes to approve the proposed regulations, they will be submitted to the Office of Administrative Law, which will have 10 days to review them and make a decision. The public will have an opportunity to submit comments to the Office of Administrative Law

during the 10-day review period. If the regulations are approved, they will take effect upon filing with the Secretary of State. Some provisions of the regulations, such as the requirement that victims and their family members provide advance notice of their intent to attend a hearing will apply to hearings scheduled to occur on or after February 1, 2022 to allow time for OVSRS to hire and train staff and for all affected entities to conduct outreach and modify processes as necessary.

Additional Resources

As mentioned above, victims and their family members who would like to request notice of, and an opportunity to attend, a parole hearing or who would like to request notice of an incarcerated person's release must register with CDCR's Office of Victim and Survivor Rights and Services. For further information, or to inquire about court-ordered restitution, please visit CDCR's Office of Victim and Survivor Rights and Services website at www.cdcr.ca.gov/victim-services/ or call toll-free 1-877-256-6877.

For additional information concerning the parole hearing process, please visit the Board of Parole Hearings' website at <https://www.cdcr.ca.gov/bph/parole-suitability-hearings-overview/> or call (916) 445-4072.