

BOARD OF PAROLE HEARINGS

2nd READOPTION OF EMERGENCY RULEMAKING ACTION BPH RN 21-05E: PROPOSED REGULATORY TEXT

No changes have been made to the text approved by the Office of Administrative Law on March 28, 2022.

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’s 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’s support person” is a person designated by the victim, victim’s next of kin, or members of the victim’s family to appear and offer support and is identified in advance of the parole hearing to the department’s Office of Victim and Survivor Rights and Services.
- (j) A “parole hearing” refers to parole consideration, parole reconsideration, and rescission hearings conducted pursuant to sections 3000, 3000.1, or 3041.5 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 subdivision (b) of section 2964 or subdivision (a) of section 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, 3043.1, 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 is 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 of this division.

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 available 180 days prior to the date of the hearing including, but 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 been identified by the department as having a learning disability and the disability affects the inmate's ability to effectively communicate through videoconference technology, such as auditory processing disorder; and

(3) 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 scheduled 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 on the earliest practicable date.

(e) This section does not apply to medical parole hearings or hearings for offenders with a mental health disorder.

Note: Authority cited: Section 12838.4, Government Code; and Sections 3052 and 5076.2, Penal Code. Reference: Sections 3041.6, 3042, 3043, 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 or hearings for offenders with a mental health disorder.

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. Special Circumstances.

If an inmate is scheduled for an in-person proceeding, and exigent circumstances, such as natural disasters or a state of emergency, or circumstances beyond the control of the board, such as the inmate's housing location, prevent conducting the proceeding in person, the board shall allow the inmate, upon recommendation from their attorney, to attend the proceeding by videoconference. All other participants may attend the proceeding by videoconference. The panel shall determine whether to continue the proceeding in accordance with paragraph (1) of subsection (e) of section 2253 of this division. Nothing in this section shall prohibit or limit the board's ability to postpone the proceeding under subsection (d) of section 2253 of this division.

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 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;
- (2) The inmate waives their own right to attend the hearing;
- (3) The inmate refuses to attend the hearing;
- (4) The board determines that the interpreter shall attend the hearing by videoconference due to the interpreter's remote location or availability; or
- (5) Circumstances beyond the control of the inmate's attorney or the interpreter, such as the inmate's medical condition or the housing location, prevent the attorney or the 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 of this division, then the inmate, the inmate's attorney, and the interpreter shall be physically present with the inmate during the hearing, unless one of the exceptions in subsection (a) applies. The following individuals may attend in person, by videoconference, or by telephone:

- (1) Any victim appearing personally or by counsel, victim's designated representative appearing personally or by counsel, and victim's support person provided that person has informed the department's Office of Victim and Survivor Rights and Services of their intention to attend the hearing at least 15 days prior to the hearing;
- (2) Any victim's next of kin appearing personally or by counsel, designated representative of a victim's next of kin appearing personally or by counsel, and support person for a victim's next of kin provided that person has informed the department's Office of Victim and Survivor Rights and Services of their intention to attend the hearing at least 30 days prior to the hearing;
- (3) Any victim's family member appearing personally or by counsel and support person for the victim's family member provided that person has informed the department's Office of Victim

and Survivor Rights and Services of their intention to attend the hearing at least 30 days prior to the hearing;

(4) A staff member from the department's Office of Victim and Survivor Rights and Services to act as a support person, if requested by a victim, victim's next of kin, or victim's family member;

(5) A representative of the prosecuting agency;

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

(7) Visitors and observers approved under section 2029.1 of this division.

(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 of this division, then the inmate, the inmate's attorney, and the interpreter shall be physically present with the inmate during the hearing, unless one of the exceptions in subsection (a) applies. The following individuals may attend the hearing by videoconference or by telephone:

(1) Any victim appearing personally or by counsel, victim's designated representative appearing personally or by counsel, and victim's support person provided that person has informed the department's Office of Victim and Survivor Rights and Services of their intention to attend the hearing at least 15 days prior to the hearing;

(2) Any victim's next of kin appearing personally or by counsel, designated representative of a victim's next of kin appearing personally or by counsel, and support person for a victim's next of kin provided that person has informed the department's Office of Victim and Survivor Rights and Services of their intention to attend the hearing at least 30 days prior to the hearing;

(3) Any victim's family member appearing personally or by counsel and support person for the victim's family member provided that person has informed the department's Office of Victim and Survivor Rights and Services at least 30 days prior to the hearing;

(4) A staff member from the department's Office of Victim and Survivor Rights and Services to act as a support person, if requested by a victim, victim's next of kin, or victim's family member;

(5) Representatives of the prosecuting agency;

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

(7) Visitors and observers approved under section 2029.1 of this division.

(d) 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 of this division to be considered by the hearing officers.

(e) Media representatives approved under sections 2031 and 2032 of this division 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 Hearings for Offenders with Mental Health Disorders.

(a) Hearings for offenders with mental health disorders shall be conducted in person unless circumstances in subsection (b) apply.

(b) If a parolee is scheduled for an in-person hearing and exigent circumstances, such as natural disasters or a state of emergency, or circumstances beyond the control of the board, such as the inmate's housing location, prevent conducting the proceeding in person, the board shall conduct

the hearing by videoconference, if available. If videoconference is not available, the board shall conduct the hearing by telephone.

(c) The parolee's attorney and the interpreter shall be physically present with the parolee during the hearing unless any of the following applies:

(1) The parolee waives their own right to attend the proceeding, upon consulting with their attorney;

(2) The parolee refuses to attend the proceeding;

(3) The board determines that the interpreter shall attend by videoconference due to the interpreter's remote location or availability; or

(4) Exigent circumstances or circumstances beyond the control of the parolee's attorney or the interpreter as outlined in subsection (b) prevent the attorney or the interpreter from being physically present with the parolee during the proceeding.

(d) Hearing participants other than the hearing officer, the parolee, the parolee's attorney, and the interpreter may attend the hearing in the following manner:

(1) For hearings conducted in person, they may attend in person, by videoconference if available, or by telephone if available;

(2) For hearings conducted by videoconference, they may attend by videoconference or by telephone;

(3) For hearings conducted by telephone, they may attend by telephone.

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. Participation at Consultations.

(a) Consultations shall be conducted by videoconference unless an in-person consultation is necessary for the hearing officer to establish effective communication with the inmate. If the hearing officer determines that an in-person consultation is necessary, the hearing officer shall postpone the consultation so that an in-person consultation can be scheduled.

(b) Any interpreter shall appear by videoconference or by telephone, unless the hearing officer determines that it is necessary for the interpreter to appear in person for the hearing officer to establish effective communication with the inmate. If the hearing officer determines that an in-person interpreter is necessary, the hearing officer shall postpone the consultation so that an interpreter can be scheduled to appear in person.

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

§ 2060. 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.

§ 2061. Participant Availability.

Victims, victim's next of kin, members of the victim's family, victim's representatives, victim's support persons, representatives of the prosecuting agency, visitors, observers, and media representatives shall be available at the start time of the proceeding. Failure to do so shall result in loss of the opportunity to participate in the proceeding if the hearing officer determines it would significantly delay the proceeding or the remaining hearing calendar for the day. The hearing officers shall review any statements submitted under section 2029 of this division and sections 3041.7 and 3043.2 of the Penal Code in accordance with paragraph (1) of subdivision (a) of section 3041.5 of the Penal Code.

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

§ 2062. Participant Restrictions.

(a) Unless approved by the board in advance of the hearing under sections 2031, 2032, or 2254 of this division, 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 shall 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 displaying inappropriate gestures or repeatedly interrupting the proceeding. The presiding hearing officer shall 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: Sections 3041.5 and 3041.6, Penal Code.

§ 2063. Equipment and Connectivity Issues.

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

(b) Panels are not required to continue or postpone a hearing due to a participant's equipment or connectivity issue but may continue or postpone a hearing in accordance with subsections (d) and (e) of section 2253 of this division. The hearing officers shall review any statements submitted under section 2029 of this division and sections 3041.7 and 3043.2 of the Penal Code in accordance with paragraph (1) of subdivision (a) of section 3041.5 of the Penal Code.

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

§ 2064. 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.