

**BPH RN 22-01 Regulations**  
**Proceedings Conducted In Person and by Videoconference**  
**FAQs and Public Comments**

The following is the board's response to the most frequently asked questions and public comments that the board received during the public comment period for BPH RN 22-01, the board's videoconference and in-person hearing regulations.

**1. The risks of COVID-19 have been reduced. Why is the board continuing to hold most parole hearings by videoconference?**

Although the widespread use of videoconferencing hearings arose from the COVID-19 pandemic and Executive Order N-36-20, once the board was able to conduct these hearings by videoconference, it became clear that there were benefits to videoconference hearings. During this time we observed that hearing panels were able to effectively communicate with most incarcerated persons and render decisions by videoconference. Based on this successful transition to videoconference, the legislature independently passed Assembly Bill 145, which permanently authorized the board to conduct parole hearings by videoconference. Soon after the passage of Assembly Bill 145, on July 16, 2021, the board began the emergency rulemaking process to implement the bill, which included a presumption that all board proceedings would be conducted by videoconference. The board provided notice of these emergency regulations to the public on September 9, 2021, and has both invited and sought out comment from the public and stakeholders regarding the process. Based on comprehensive feedback from multiple sources, the board has determined that continuing to exercise its authority to conduct board proceedings by videoconference is reasonable and beneficial, even if the risks of COVID-19 have reduced.

The board considered the many benefits from conducting videoconference hearings. First, the ability to participate by videoconference results in significant reduction in costs and the toll on hearing participants related to travel. This encourages more participation by individuals who previously may not have been able to physically travel to an institution. Additionally, videoconference hearings allows the board to schedule more hearings to replace what would have been reserved as travel time for hearing panels. This mitigates the board's backlog of hearings and increases the board's ability to ensure that incarcerated persons will receive a timely hearing. Furthermore, videoconference hearings allow the board to pivot quickly and move forward with hearings that would have been postponed due to unexpected COVID-19 exposures or other health crises. For a more extensive discussion of the benefits of videoconference hearings, please refer to the board's Initial Statement of Reasons filed with the Office of Administrative Law on June 7, 2022 (also available on the board's regulations website).

**2. The board should allow incarcerated persons to choose the hearing method that best facilitates their unique needs and preferences. Also, the board's criteria for in-person hearings are too narrow and excludes people who need in-person hearings, including individuals protected under the Americans with Disability Act.**

In determining which incarcerated individuals will receive in-person hearings, the board relied on extensive feedback from hearing panels, incarcerated persons, attorneys representing incarcerated persons, *Armstrong* plaintiffs, board clinicians, and other stakeholders. Based on this feedback, the board updated each regulatory package and determined that in-person hearings will be reserved for those incarcerated persons who need, not just prefer, it to establish effective communication with the hearing panel.

The board's reasoning for selecting the criteria for incarcerated persons automatically scheduled to receive in-person hearings can be found in the board's Initial Statement of Reasons. As mentioned, the board established these criteria upon extensive feedback from stakeholders. It is important to highlight that the criteria outlined in California Code of Regulations, title 15, section 2054 for in-person hearings identifies which incarcerated persons will automatically be *scheduled* for an in-person hearing. If additional information demonstrates that an in-person hearing is necessary for effective communication purposes, the board will provide an in-person hearing even though the person does not meet the section 2054 criteria. The following safeguards and processes exist to ensure that incarcerated persons requiring in-person hearings for effective communication with the hearing panel are appropriately accommodated:

- Incarcerated persons are able to contact the board to request an in-person or videoconference hearing and to provide information demonstrating that if an in-person hearing is needed.
- Attorneys representing incarcerated persons meet with their clients in advance of the hearing and are required to provide to the board any information demonstrating their client needs an in-person hearing.
- Board clinicians, after conducting their Comprehensive Risk Assessments, also provide information if the incarcerated person may need a specific mode of hearing.
- Institution staff or board staff, when reviewing the incarcerated person's file, may forward new information regarding the person's effective communication needs.
- The hearing panel, after interacting with the incarcerated person by video, may postpone or continue the hearing if they determine the hearing needs to be held in person.

**3. Videoconference hearings appear to conserve resources and benefit hearing panels, attorneys, and victims. How do they benefit incarcerated persons?**

While some incarcerated persons prefer in-person hearings, the board has learned that many incarcerated persons actually favor videoconference hearings. The parole process can be a daunting and stressful process, and appearing by videoconference alleviates some of these stressors by creating a physical distance between the incarcerated person and the hearing panel. For those who are able to effectively communicate with the hearing panel remotely, videoconference hearings allow incarcerated persons to be more relaxed and encourage open

communication. The board has received positive feedback from incarcerated persons and their attorneys that videoconference is very beneficial.

Videoconference hearings also benefit incarcerated persons by providing timely hearings while minimizing postponements due to unforeseen circumstances, such as COVID-19. The reduced travel for hearing panels allow more hearings to be scheduled, which decreases the board's current backlog of 531 cases (as of September 2022).

**4. Videoconference hearings are subject to technological difficulties that may severely disrupt or delay parole proceedings, leading to postponements or continuances. This results in unjust delay of parole consideration.**

Like any technology, videoconferencing is not immune to its own set of challenges. Videoconference equipment or internet connectivity may fail, and in some cases, this may unfortunately lead to a postponement or continuance. However, these circumstances are the exception, not the norm. Even when hearing officers encounter technological difficulties, they do their best to resolve the issue expeditiously.

In-person hearings likewise have their own set of challenges, such as delays in all parties arriving at the institution in a timely manner, gate clearance issues, or more recently, issues with COVID-19 clearance. Any of these issues could result in a delayed start of the hearing, resulting in one or more hearings having to be postponed that day, both of which can be avoided with videoconference hearings.

Ultimately, both videoconference and in-person hearings have their challenges, but the board experienced that the technological difficulties at videoconference hearings occur infrequently and can be resolved with some patience by all parties. The board is also continuously assessing how to streamline processes and believes that processes and equipment will improve over time.

**5. Videoconference hearings are at risk of unauthorized recordings and access to materials that are not available to the hearing panel, which harms the incarcerated person.**

Prior to the board's use of videoconferencing to conduct parole hearings, certain parties, such as the prosecutor and victims, always had the option to appear by videoconference or telephone. Additionally, because they appeared remotely, they could access the internet or other materials unavailable to the hearing panel. Therefore, the use of videoconferencing to conduct parole hearings, does not introduce a new concern.

Moreover, the board's videoconference regulations introduce, for the first time, new protections against these concerns, which function to reduce instances when unauthorized recordings may occur. Section 2062 of the regulations specifies that participants shall not record or transmit any portion of the parole proceeding. Failure to comply with this section will result in the participant's removal from the hearing. While the board cannot guarantee that participants will follow this rule, participants are put on notice that they are expressly prohibited from recording or transmitting any portion of the hearing, and are informed of the consequences that will be imposed for any participant found to have violated these rules.

**6. How do incarcerated persons submit documents to the hearing panel at a videoconference hearing?**

The board acknowledges that it is easier to slide documents across the table to the hearing panel. However, incarcerated persons submitting documents on the day of the hearing may provide the documents to institution staff, who will scan and send the documents to the board's headquarters. Board staff will then e-mail these documents to the appropriate hearing participants so that they are available for consideration during the hearing.

**7. Hearing officers are demonstrating a lack of attention and professionalism when appearing by videoconference due to distractions in their home environments.**

The board requires all hearing officers to maintain professionalism and judicial decorum whether a hearing is conducted in person or by videoconference. The board will continue to promote appropriate behavior by all participants at board proceedings. Hearing participants are encouraged to inform the board of any inappropriate behavior by hearing officers or other attendees.

**8. Videoconference hearings may lead to negative outcomes that are not present at in-person hearings, such as negative impact on the panel's assessment of an incarcerated person's credibility, insight, remorse, etc. This is reflected by the board's grant rate, which has declined since videoconference hearings went into effect.**

Hearing panels are extensively trained to apply the law when determining whether an incarcerated person is suitable for parole. The application of this law should not vary because a hearing is conducted in person or by videoconference. Under Penal Code section 3041, subdivision (b) and the board's regulations, individuals may request the board to conduct a review of the panel's decision within 120 days of the hearing. The board will review the requestor's concerns and determine whether the case should go before all the commissioners for consideration.

The board's grant has held steady based on data from the past three annual significant event reports. For 2019, which is prior to COVID-19 and the implementation of videoconference hearings, the grant rate for hearings held was 34 percent. For 2020, which started out as in-person hearings only and then moved completely to videoconference following Executive Order N-36-20 on March 24, 2020, the grant rate for hearings held was 36 percent. For 2021, which was primarily conducted by videoconference until the board's emergency regulations went into effect September 27, 2021, and allowed for a hybrid approach the rest of the year, the grant rate for hearings held was 34 percent. Based on this data, there is not support for the position that videoconference hearings lead to a lower grant rate.