



FOR INFORMATIONAL PURPOSES
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Proposed Re-Adoption of Emergency Regulations to Conduct Parole Hearings by Videoconference

The Board will take public comment and vote on a proposal to re-adopt, with amendments, its emergency regulations to conduct parole hearings by videoconference at its monthly executive meeting on February 14, 2022. The proposed regulations are included with the Board's agenda for the February 14, 2022 executive meeting, available on the Board's website at <https://www.cdcr.ca.gov/bph/executive-board-meetings-overview/meeting-agenda/february-2022-executive-board-meeting/>.

Background

In response to the COVID-19 global pandemic, Governor Newsom issued Executive Order N-35-20, which required the Board to stop conducting parole hearings in person to protect the health and welfare of the incarcerated population, prison staff, and all persons who participate in the parole hearing process. The Executive Order directed the Board to begin conducting hearings by videoconference beginning April 1, 2020. Prior to the Executive Order, Penal code section 3041.6 required the Board to conduct all hearings in person at the prison where the incarcerated person was housed.

On July 16, 2021, Governor Newsom signed into law Assembly Bill (AB) 145, which amended Penal Code section 3041.6 to authorize the Board to conduct hearings by videoconference indefinitely.¹

With the passage of AB 145, the provisions of Executive Order N-35-20 requiring the Board to conduct parole hearings by videoconference were no longer necessary. As a result, procedures for permanently conducting hearings by videoconference were urgently needed to implement AB 145 and to establish a transparent process for the Board's videoconference procedures.

In August 2021, the Board voted to approve emergency regulations governing the scheduling and conducting of hearings by videoconference. The regulations took effect on September 27, 2021 and on October 4 2021, Governor Newsom issued Executive Order N-17-21, rescinding provisions of Executive Order N-35-20 concerning hearings conducted by the Board.

Once implemented, emergency regulations generally remain in effect for 180 days, but may be readopted. The 180-day initial timeframe was intended to be a learning period

¹ Chapter 80, Statutes of 2021

where the Board could assess the impact of the emergency regulations on hearing participants, and identify any changes needed before promulgating permanent regulations. Due to new strains of COVID-19, however, in-person hearings and full implementation of the emergency regulations were suspended.

The Board is considering re-adopting the emergency regulations, with some amendments, for a 90-day period. After that, the Board will consider proposed permanent regulations, which will go through a separate and lengthier regulatory process. The regulatory process for permanent regulations includes an expanded opportunity for public input, and will provide the Board an opportunity to make further adjustments to the process, once the Board has had more experience with the emergency regulations fully implemented.

Key Provisions of the Proposed Emergency Regulations, as Amended.

The overwhelming majority of parole hearings will continue to be conducted by videoconference. The only parole hearings to be conducted in person are those where an in-person hearing is needed for the hearing panel to establish effective communication with the incarcerated person.

1. In general, the Board will determine whether an in-person hearing is necessary to establish effective communication with the incarcerated person based on the following:
 - The person is part of the department's Developmental Disability Program;
 - The person is part of the department's Disability Placement Program and has a hearing impairment or speech impairment that affects the person's housing assignment, or the person has a learning disability that affects their ability to communicate through videoconference technology;
 - The person has a medical condition that significantly affects their ability to understand or communicate with others.

The proposed emergency regulations, as amended, remove a person's participation in the department's Mental Health Services Delivery System as a criterion for scheduling a hearing to occur in-person.

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 the physical presence of the attorney or interpreter is waived or a specified exception applies. All other persons will attend by videoconference, including the hearing panel.
3. For hearings conducted in-person, incarcerated persons and the hearing panel 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 a hearing is scheduled to occur in person or by videoconference.
5. The following persons are entitled to attend parole hearings:²
 - Victims, appearing personally or by counsel, who have registered with OVSRS, their representatives designated in writing, and their support persons so long as the victim has informed OVSRS of each person's intent to attend the hearing at least 15 days prior to the hearing;

The proposed emergency regulations, as amended, move the deadline for victims to inform OVSRS of their intent to have a representative or support person attend the hearing from 30 days to 15 days prior to the hearing. In addition, the proposed emergency regulations remove the requirement that support persons be designated in writing.

- Victim's next of kin, members of the victim's family, appearing personally or by counsel, who have registered with OVSRS, their representatives designated in writing, and their support persons so long as the victim's next of kin or member of the victim's family has informed OVSRS of each person's intent to attend the hearing at least 30 days prior to the hearing;

The proposed emergency regulations, as amended, remove the requirement that support persons be designated in writing.

- Representatives of the prosecuting agency;³
- Visitors and observers approved under section 2029.1 of the Board's regulations; and

² Penal Code section 3043 as amended by Proposition 9 (Marsy's Law) states in relevant part: (a) (1) Upon request to the Department of Corrections and Rehabilitation and verification of the identity of the requester, notice of any hearing to review or consider the parole suitability for any inmate in a state prison shall be given . . . by the Board of Parole Hearings at least 90 days before the hearing to any victim of any crime committed by the inmate, or to the next of kin of the victim if the victim has died . . . The requesting party shall keep the board apprised of his or her current contact information in order to receive the notice. (2) No later than 30 days before the date selected for the hearing, any person, other than the victim, entitled to attend the hearing shall inform the board of his or her intention to attend the hearing and the name and identifying information of any other person entitled to attend the hearing who will accompany him or her. (3) No later than 14 days before the date selected for the hearing, the board shall notify every person entitled to attend the hearing confirming the date, time, and place of the hearing."

Penal Code section 3043.1 states in relevant part: "Notwithstanding any other law, a victim, his or her next of kin, or any immediate family member of the victim who appears at any hearing to review or consider the parole suitability of any inmate pursuant to Section 3043 shall be entitled to the attendance of one person of his or her own choosing at the hearing for support. The person so chosen shall not participate in the hearing nor make comments while in attendance."

³ See Penal Code section 3041.7.

- Representatives of the media approved under section 2029 of the Board’s regulations.
6. Consultations will be held by videoconference unless an in-person consultation is necessary for the hearing officer to effectively communicate with the incarcerated person, based on the same criteria used to determine whether parole hearings need to be conducted in person.
 7. Medical parole hearings will be conducted by videoconference, unless directly following an in-person parole hearing for the person, in which case it will be in person.
 8. All hearings for “Offenders with a Mental Health Disorder (OMHD)” under Penal Code section 2960 *et seq.* will be held in person

The proposed emergency regulations, as amended, require all OMHD hearings to be conducted in person rather than just those where an in-person hearing is necessary to establish effective communication.

Frequently Asked Questions

What parole proceedings will be held by videoconference?

All parole consideration hearings, parole reconsideration hearings, rescission hearings, 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.

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;
- a medical condition that significantly affects 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.

Why was a person’s participation in the department’s Mental Health Delivery System removed as a criterion for determining when a parole hearing will be held in person?

During the short time the Board was able to schedule hearings to occur in-person under the emergency regulations, the Board found that a person’s status in the department’s Mental Health Delivery System did not affect the hearing panel’s ability to establish effective communication.

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?

Victims’ next of kin and victims’ family members are expressly required to provide notice of their intent to attend a hearing at least 30 days in advance of the hearing under provisions of Penal Code section 3043 enacted by Proposition 9 (Marsy’s Law).

Penal Code section 3043 also contemplates, albeit more indirectly, that a victim provide notice of their intent to attend a hearing at least 15 days in advance of the hearing. Specifically, Penal Code section 3043, subdivision (3) states, “No later than 14 days before the date selected for the hearing, the board shall notify *every person* entitled to attend the hearing confirming the date, time, and place of the hearing.” (Emphasis added). The Board interprets this section as requiring all persons, including victims, to indicate their intent to attend the hearing at least 15 days in advance of the hearing.

Advanced 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 2021-22 State Budget, OVSRS received an additional ten victim advocate 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.

The existing emergency regulations that took effect in September 2021 included a clause delaying the implementation of the requirement that victims and their family members provide advance notice of their intent to participate in a parole hearing. The requirement was applied to parole hearings scheduled on or after February 1, 2022.

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 was 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 continue working with stakeholders to further expand 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 when a person is expected to be scheduled for their first parole hearing at any time after the person is admitted to state prison. The website is updated with the specific date of a person's parole hearing once the hearing is 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 parole hearing 90 days before the hearing. The instructions are included in the hearing notice they receive from the Board.

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.

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.