



Board of Parole Hearings

INITIAL STATEMENT OF REASONS

BPH RN 23-01: Updated Notice Requirements for In-Person and Videoconference Proceedings

California Code of Regulations Title 15. Crime Prevention and Corrections Division 2. Board of Parole Hearings

PROBLEM STATEMENT AND PURPOSE OF RULEMAKING ACTION

Penal Code section 3040 et seq. provides the Board's authority to conduct parole hearings and the procedures governing these hearings. These statutes also specify deadlines for hearing participants to inform the Board of their intention to attend the hearing. Adherence to these deadlines is necessary for parole hearings to occur timely and to ensure participation by those wishing to attend a hearing.

Existing Penal Code section 3043 specifies that any person, *other than the victim*, who is entitled to attend the hearing shall inform the Board of their intention to attend the hearing no later than 30 days before the date of the hearing. Based on this language, the Board promulgated regulations in 2022 specifying that everyone other than the victim (i.e., victim's next of kin, victim's family members, and their counsel, representatives, and support persons) shall notify the Board of their intention to attend a hearing no later than 30 days before the date of the hearing. Victims were given more time to respond, and the regulations require them to notify the Board no later than 15 days before the date of the hearing.

In October 2023, the Governor signed Assembly Bill 88 and Senate Bill 412, and the bills were chaptered. These bills amended Penal Code section 3043 so that the Board and the California Department of Corrections and Rehabilitation (CDCR) may require no more than 15 days' notice by the victims, victim's next of kin, and victim's family members, and their counsel, representatives, and support persons, of their intention to attend a hearing. These bills created one 15-day notice deadline for all victims, their family members, and their counsel, representatives, and support persons, and eliminated the 30 days' notice requirement for these individuals.

When Assembly Bill 88 and Senate Bill 412 go into effect on January 1, 2024, the Board's regulations will no longer be in line with statutory provisions regarding hearing participants' notification to the Board of their intention to attend a parole hearing. This rulemaking action seeks to bring the Board's existing regulations into compliance with these new statutory provisions

requiring no more than 15 days' notice by victims, their family members, and their counsel, representatives and support persons. Additionally, this rulemaking allows institution victim service representatives to attend parole hearings to provide support services to victims and their families. Lastly, this rulemaking action makes minor technical changes to terminology for consistency and clarity.

SPECIFIC PURPOSE OF, RATIONALE FOR, AND NECESSITY OF EACH PROPOSED AMENDMENT, PER GOVERNMENT CODE SECTIONS 11346.2(b)(1) AND 11349(a)

Section 2056 is amended to replace the reference to “panel” with “hearing officers.” The term “hearing officers” is defined in section 2051, subsection (d), and it is necessary to use this defined term for consistency and to avoid confusion by introducing another term.

Section 2057, subsections (b) and (c), are amended to clarify the notification deadlines and hearing participation for parole hearings. Subsection (b) relates to parole hearings conducted in person, while subsection (c) relates to parole hearings conducted by videoconference. The changes in subsections (b) and (c) mirror each other, and therefore, are addressed together.

The amendments are necessary to bring existing regulations into compliance with Assembly Bill 88 and Senate Bill 412, which prohibit the Board and CDCR from requiring victims, victim's next of kin, victim's family members, and their counsel, representatives, and support persons provide more than 15 days' notice of their intention to attend the hearing. **Existing subsections (b)(2), (b)(3), (c)(2), and (c)(3)**, which require 30 days' notice from victim's next of kin, victim's family members, and their counsel, representatives, and support persons, are removed. Since the 15 days' notice deadline applies to these individuals, it is no longer necessary to have these individuals separated out into separate paragraphs. Instead, they are added to **subsection (b)(1) and (c)(1)**, so it is clear that the 15 days' notice deadline applies to victims, victim's next of kin, victim's family members, and their counsel, representatives, and support persons.

Subsections (b)(3) and (c)(3) are added to clarify that the victim service representative at the institution is allowed to attend a parole hearing. These individuals provide essential support services to victims and their family members, including walking them from the institution's gate to the parole hearing, sitting with them during the parole hearing, and providing them with services after the hearing. Victim service representatives have been an essential part of an institution's support for victims and are mandated by CDCR's Department Operations Manual to be provided for victims and their family members. Thus, it is necessary for this rulemaking action to clarify that victim service representatives are allowed to attend parole hearings.

Subsections (b)(2) through (b)(7) and (c)(2) through (c)(7) are renumbered.

Section 2058, subsection (b), is amended to eliminate the reference to “inmate” and replace it with “parolee.” This change is necessary to ensure proper terminology is used when referencing the population subject to hearings for offenders with mental health disorders. The rest of section 2058 uses the term “parolee,” and this change is necessary to correct the erroneous reference to “inmate.”

Section 2063 is amended to replace the reference to “panel” with “hearing officers.” The term “hearing officers” is defined in section 2051, subsection (d), and it is necessary to use this defined term for consistency and to avoid confusion by introducing another term.

CONSIDERATION OF ALTERNATIVES

The Board has determined that there is no other reasonable alternative. The amendments proposed in this rulemaking action seek to bring the Board’s regulations into compliance with statutory provisions without imposing any fiscal costs.

ECONOMIC IMPACT ASSESSMENT

Pursuant to Government Code section 11346.3, subdivision (b), the Board has determined there will be no economic impact in implementing the changes proposed in this rulemaking action.

Creation of New Jobs or the Elimination of Existing Jobs Within the State of California

The Board has determined that the proposed regulations will have almost no impact on the creation of new jobs or elimination of existing jobs within California. The proposed regulations do not modify the number of hearings the Board conducts; rather, they clarify the deadline by which certain hearing participants must inform the Board of their intention to attend parole hearings. Thus, there will be no significant impact on the workload for the Board’s staff.

The proposed regulations may result in more participation by victim’s next of kin and victim’s family members, and their representatives and support persons, since they have more time to notify the California Department of Corrections and Rehabilitation’s Office of Victim & Survivor Rights & Services (OVSRS) of their intention to attend the hearing. This may potentially impact OVSRS’s workload if they need to process more hearing participants. However, the potential impact is too nebulous and tangential to speculate at this time. Thus, the Board has determined the proposed regulations will have little to no impact on the creation or elimination of jobs within the State of California.

Creation of New Businesses or Elimination or Expansion of Existing Businesses Within the State of California

The Board has determined that the proposed regulations will not create new businesses or eliminate or expand existing businesses within the State of California. Businesses are not directly affected by the change in deadline for hearing participants to notify OVSRS of their intention to attend a parole hearing. Thus, the proposed regulations will not have an effect on businesses in California.

Benefits to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment

The Board anticipates the proposed regulations will benefit the health and welfare of California residents by allowing victim’s next of kin, victim’s family members, and their representatives and support person additional time to determine if they will participate in a parole hearing, and by making the timelines for hearings easier to understand. Specifically, the Board is tasked with conducting parole hearings to determine whether an incarcerated person poses a current unreasonable risk of danger to the public. Part of the hearing involves the hearing officers considering all relevant and reliable evidence, while also honoring the rights of victim’s next of kin and victim’s family members to participate in the process. The proposed regulations further

this goal by creating one 15-day deadline for all victims and their family members to notify OVSRS of their intention to attend a parole hearing, which may lead to more participation at the hearing. Promoting such participation ultimately benefits the safety and welfare of all residents in California by ensuring relevant and reliable information is considered. Further, these regulations may benefit the welfare of California residents by eliminating potential confusion from multiple deadlines by which victims and their family members must notify the Board of their intention to attend a parole hearing.

Significant Adverse Economic Impact on Business

The Board has determined that the proposed regulations will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulations simplify internal processes for the Board and allows more victims and their family members to participate at parole hearings, which has no direct impact on California businesses or their ability to compete with businesses in other states.

ANTICIPATED BENEFITS OF THE REGULATIONS

The proposed rulemaking will bring the Board's regulations into compliance with Penal Code section 3043, as amended by Senate Bill 412 and Assembly Bill 88. Under existing regulations, living victims must give 15 days' notice of their intention to attend a parole hearing, and victim's next of kin, victim's family members, and their representatives and support persons must give 30 days' notice. The proposed regulations will create a single 15-day deadline for the aforementioned people, which reduces confusion as to who is subject to the 15 days' or 30 days' notice deadline. It will also provide victim's next of kin and their family members more time to decide whether to attend a parole hearing and to notify the California Department of Corrections and Rehabilitation's Office of Victim & Survivor Rights & Services (OVSRS) of their intention to attend the hearing. Additionally, having one deadline will simplify administrative procedures for the Board and OVSRS.

DOCUMENTS RELIED UPON

The Board has not relied on any studies, reports or documents in the proposed regulations.

CONSIDERATION OF ALTERNATIVES

The Board has determined that no alternative considered would be (1) more effective in carrying out the purpose of this action, (2) as effective and less burdensome to affected private persons than the action proposed, or (3) more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board has also determined that there are no reasonable alternatives that would lessen the impact on small businesses.

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