



Board of Parole Hearings

NOTICE OF PROPOSED RULEMAKING ACTION

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

NOTICE IS HEREBY GIVEN that the Executive Officer of the Board of Parole Hearings (Board), under the authority granted by Government Code section 12838.4 and Penal Code sections 3052 and 5076.2, authorizes the Board to amend sections 2056, 2057, 2058, and 2063 of the California Code of Regulations, Title 15, Division 2, concerning notice requirements for in-person and videoconference proceedings.

PUBLIC COMMENT PERIOD

The public comment period begins **December 1, 2023**, and closes on **January 16, 2024**. Any person may submit written comments relevant to the proposed regulations to the Board by mail or email to the contact person listed below. For comments to be considered by the Board, they must be submitted in writing before the close of the comment period. When submitting a comment or inquiry, please identify the action by using the Board's regulation rulemaking number **BPH RN 23-01**.

CONTACT PERSON:

Mina Y. Choi, Senior Staff Attorney
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NO PUBLIC HEARING SCHEDULED

The Board has not scheduled a public hearing on this proposed rulemaking action. The Board, however, will hold a hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days before the close of the written

comment period. Written comments submitted during the prescribed comment period have the same significance and influence as written or oral comments presented at a public hearing. If scheduled, the purpose of a public hearing would be to receive written or oral comments about the proposed regulations. It would not be a forum to debate the proposed regulations, and no decision regarding the permanent adoption of the proposed regulations would be rendered at a public hearing. The members of the Board would not necessarily be present at a public hearing.

AUTHORITY AND REFERENCE

Government Code section 12838.4 vests the Board with all the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the Board of Prison Terms and Narcotic Addict Evaluation Authority, which no longer exist.

Penal Code section 3052 generally vests the Board with the authority to establish and enforce rules and regulations under which incarcerated persons committed to state prisons may be allowed to go upon parole outside of prison when eligible for parole.

Penal Code section 5076.2 requires the Board to promulgate, maintain, publish, and make available to the general public a compendium of its rules and regulations.

Penal Code section 3041.6 authorizes the Board to conduct parole hearings by videoconference.

Penal Code section 3043 provides that any person entitled to attend a parole hearing other than the victim shall inform the Board of their intention to attend a parole hearing no later than 30 days before the date of the hearing. Effective January 1, 2024, victims, victim's next of kin, members of the victim's family, victim's representative, counsel representing any of these persons, and victim's support persons may inform the Board of their intention to attend a parole hearing no later than 15 days before the date of the hearing.

SPECIFIC AGENCY STATUTORY REQUIREMENTS

There are no other statutory requirements specific to the Board or to any specific regulation or class of regulations promulgated by the Board.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Penal Code section 3043 currently requires any person entitled to attend a parole hearing *other than the living victim* to inform the Board of their intention to attend the hearing at least 30 days before the date of the hearing. This means victim's next of kin, victim's family members, victim's representatives, counsel representing any of these persons, and victim's support persons shall inform the Board of their intention to attend the hearing at least 30 days before the hearing. The living victim, according to existing regulations, shall inform the Board at least 15 days before the hearing.

Assembly Bill 88, which was chaptered on October 13, 2023, and Senate Bill 412, which was chaptered on October 10, 2023, limit the amount of notice the Board may require from a victim's next of kin, victim's family members, victim's representatives, counsel representing any of these persons, and victim's support persons to no more than 15 days before the date of the hearing.

Assembly Bill 88 and Senate Bill 412 will go into effect on January 1, 2024. This proposed rulemaking action seeks to bring the Board's existing regulations regarding notice for hearing participation in line with Assembly Bill 88 and Senate Bill 412. Specifically, this rulemaking action provides one uniform 15-day deadline for all victims, victim's next of kin, and victim's family members, and their counsel, representatives, and support persons. This rulemaking action also 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.

DOCUMENTS INCORPORATED BY REFERENCE

None.

ANTICIPATED BENEFITS OF THE PROPOSED 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.

EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS, STATE STATUTES, OR FEDERAL STATUTES

Pursuant to Government Code section 11346.5, subdivision (a)(3)(D), the Board has determined the proposed regulations are not inconsistent or incompatible with existing state regulations, state statutes, or federal statutes.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

This rulemaking action does not impose a mandate on local agencies or school districts, or a mandate requiring reimbursement of costs or savings pursuant to Government Code sections 17500 through 17630.

FISCAL IMPACT STATEMENT

- Cost or savings to any state agency: NONE.
- Cost to any local agency or school district that is required to be reimbursed: NONE.
- Other nondiscretionary cost or savings imposed on local agencies: NONE.
- Cost or savings in federal funding to the state: NONE.

EFFECT ON HOUSING COSTS

The Board has determined that the proposed action will have no effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Board has determined the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed regulations do not have a significant adverse economic impact on small businesses because this action places no obligations or requirements on any business.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

The Board has determined that the proposed regulations do not have a significant impact on the following: (1) elimination of any jobs, (2) creation of any jobs, (3) creation of any new businesses, (4) elimination of any existing businesses, or (5) expansion of businesses currently doing business within California. The Board has also determined that the proposed regulations will have no effect on worker safety or the state's environment. 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.

CONSIDERATION OF ALTERNATIVES

Government Code section 11346.5, subdivision (a)(13), requires the Board to determine that no reasonable alternative it considered, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written public comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The Board will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all the information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Board's contact person identified in this Notice. The proposed text, ISOR, and this Notice will be made available on the Board's website at <https://www.cdcr.ca.gov/bph/statutes/reg-revisions/>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting the Board's contact person identified in this Notice or by visiting the Board's website at <https://www.cdcr.ca.gov/bph/statutes/reg-revisions/>.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this Notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts, amends, or repeals the regulations as revised. Please send requests for copies of any modified regulation text to the attention of the contact person identified in this Notice. The modified text will also be made available on the Board's website at <https://www.cdcr.ca.gov/bph/statutes/reg-revisions/>. If the Board makes modifications, the Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

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