
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 89 **Hearing Date:** June 20, 2023
Author: Sanchez
Version: February 15, 2023
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Parole hearings: attorney notice*

HISTORY

Source: Author

Prior Legislation: AB 1846 (Valladares), held in Assembly Appropriations in 2022

Support: California District Attorneys Association; Peace Officers Research Association of California; San Francisco Police Officers Association

Opposition: None known

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to require the district attorney's office that prosecuted a case or the Attorney General's office to provide no less than 45 days' notice to the Board of Parole Hearings (BPH), the crime victim, victim's next of kin, or members of the victim's family if the office will not be sending a representative to a parole hearing.

Existing law authorizes BPH to determine whether people who are serving indeterminate sentences are suitable for release on parole once they reach their minimum eligible parole date. (Pen. Code, § 3041, subd. (a).)

Existing law provides that parole shall be granted unless it is determined that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offenses, is such that consideration of the public safety requires a more lengthy period of incarceration. (Pen. Code, § 3041, subd. (b).)

Existing law requires, upon request to the Department of Corrections and Rehabilitation (CDCR) and verification of the identity of the requester, notice of any parole suitability hearing for any incarcerated individual by BPH at least 90 days before the hearing to any victim of any crime committed by the incarcerated individual, or to the next of kin of the victim if the victim has died. (Pen. Code, § 3043, subd. (a).)

Existing law provides that the victim, next of kin, members of the victim's family and two designated representatives have the right to appear, personally or by counsel, at the hearing and to adequately and reasonably express their views concerning the person and the case. (Pen. Code, § 3043, subd. (b).)

Existing law requires BPH, in deciding whether to release the person on parole, to consider the statements of the victim or victims, next of kin, immediate family members of the victim, and the designated representatives of the victim or next of kin. (Pen. Code, § 3043, subd. (d).)

Existing law allows the prosecutor to represent the views of the victim, their family members, or next of kin to BPH. (Pen. Code, § 3043.2, subd. (c).)

Existing law provides that the victim, their representative or next of kin, or the prosecutor, when representing their views, has the right to speak last before BPH at the parole hearing. (Pen. Code, § 3043.6.)

Existing law entitles victims to be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender. (Cal. Const., art. I, § 28(b)(15).)

This bill requires the district attorney's office that prosecuted the case or the Attorney General's office to provide no less than 45 days' notice to BPH, the crime victim, the victim's next of kin, or members of the victim's family that they will not be sending a representative to a parole suitability hearing.

This bill provides that "parole suitability hearing" includes a youth offender parole hearing, elderly parole hearing, or a non-violent parole hearing.

This bill prohibits a parole suitability hearing from being postponed, canceled, or continued as a result of the district attorney's office or the Attorney General's failure to provide the notice required under the provisions of this bill.

COMMENTS

1. Need For This Bill

According to the author:

AB 89 is a commonsense measure that will ensure that crime victims are aware of whether the district attorney's office prosecuting the crime will be sending a representative to attend a parole hearing. Crime victims deserve to know whether a member of the prosecution will be present to make comments in connection to the crime that impacted them. It is common practice for district attorneys to send representatives to these hearings. But if they choose not to, it should be the responsibility of that office to notify the crime victims.

2. Parole Hearings

Role of the Victim

Marsy's Law entitles victims to be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender. (Cal. Const., art. I, § 28(b)(15).)

Victims, next of kin, members of the victim's family, and their representatives have the right to attend parole hearings and to appear, personally or by counsel, at the hearing and to adequately and reasonably express their views concerning the inmate and the case. (Pen. Code, § 3043.) Victims and victims' next of kin who have registered with CDCR's Office of Victim and Survivor Rights and Services (OVSRS) receive notice of parole hearings at least 90 days before the parole hearing. Notices identify whether the hearing is scheduled to be conducted in person or by videoconference. In deciding whether to release the person on parole, BPH must consider the statements of victims, their next of kin, their immediate family members, and designated representatives. (Pen. Code, § 3043, subd. (d).)

Role of the Prosecutor

The prosecutor or a representative of the county from which the incarcerated individual was committed must be invited to attend the parole hearing to represent the interest of the people. (Pen. Code, § 3041.7.) BPH regulations permit, but do not require prosecutors to appear at the parole hearing. (Cal. Code Regs., tit. 15, § 2030.) Prosecutors who attend parole hearings are authorized to comment on the facts of the case and present an opinion about the appropriate disposition. (*Ibid.*) The prosecutor is allowed, but not required, to represent the views of the victim to BPH. (Pen. Code, § 3043.2, subd. (c).) Prior to the hearing, CDCR will send the incarcerated individual, their counsel, the prosecutor, and BPH a "board packet." The packet should include information from the inmate's central file, including BPH reports, psychological reports, support letters, and records of any prior hearings.

3. Los Angeles County District Attorney's Policy on Attending Parole Hearings

In December of 2020, the Los Angeles County District Attorney announced a default policy that its deputy district attorneys would not attend parole hearings, that the office would support in writing the grant of parole for a person who had served their mandatory minimum period of incarceration with limited exceptions, that the office would continue to notify and advise victims as required under California law, and that the office remained committed to a process of healing and restorative justice for all victims. In doing so, the Los Angeles District Attorney justified the policy as follows:

We are not experts on rehabilitation. While we have information about the crime of conviction, the Board of Parole Hearings already has this information. Further, as the crime of conviction is of limited value in considering parole suitability years or decades later, the value of a prosecutor's input in parole hearings is also limited. Finally, pursuant to Penal Code section 3041, there is a presumption that people shall be released on parole upon reaching the Minimum Eligible Parole

Date (MEPD), their Youth Parole Eligible Date, (YEPD), or their Elderly Parole Date (EPD). Currently, sentences are being served that are much longer than the already lengthy mandatory minimum sentences imposed. Such sentences are constitutionally excessive.

(George Gascón, L.A. Cnty. Dist. Atty's Off., *Special Directive 20-14*, at 8 (2020) <<https://da.lacounty.gov/sites/default/files/pdf/SPECIAL-DIRECTIVE-20-14.pdf>> [as of Jun. 13, 2023].)

4. Argument in Support

The Peace Officers' Research Association of California writes:

Current law requires the Board of Parole Hearings, among other responsibilities, to conduct parole suitability hearings and determine whether an inmate is suitable for parole. Current law authorizes the victim, the victim's next of kin, the victim's family members, or 2 representatives designated by the victim or next of kin, to appear, personally or by counsel, at parole suitability hearings and to express their views concerning the inmate and the case. Typically, district attorneys send a representative to appear at a parole hearing on behalf of crime victims to argue that an inmate is unsuitable for release, emphasize the seriousness of the inmate's crimes, and rebut any inaccurate or misleading arguments made by the inmate or inmate's attorney about the circumstances of the crime, legal issues in the case, or the seriousness of the offense.

This bill would require the district attorney's office or the Attorney General's office that prosecuted the case to provide reasonable notice to the board and to the crime victim, victim's next of kin, or members of the victim's family if they will not be sending a representative to a parole hearing, thereby creating a state-mandated local program.

PORAC is committed to ensuring that existing rights of crime victims are protected. PORAC believes that by providing adequate notice of whether a district attorney's office will be supporting them at a parole hearing, crime victims have the opportunity to better prepare themselves for parole hearings.

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