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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** SB 412                      **Hearing Date:** March 21, 2023  
**Author:** Archuleta  
**Version:** February 9, 2023  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Parole hearings*

## HISTORY

**Source:** California District Attorneys Association

**Prior Legislation:** Proposition 9, as approved by the voters on November 4, 2008  
Proposition 8, as approved by the voters on June 8, 1982

**Support:** California State Sheriffs' Association; San Diego District Attorney's Office

**Opposition:** California Attorneys for Criminal Justice

## PURPOSE

***This bill prohibits the California Department of Corrections and Rehabilitation (CDCR) and the Board of Parole Hearings (BPH) from requiring more than 15 days' notice from a victim's next of kin, members of the victim's family, victim representatives, counsel for any of these persons, and victim support persons, of their intention to attend a parole hearing.***

*Existing law* requires, upon request to CDCR and verification of the identity of the requester, notice of any hearing to review or consider the parole suitability for any incarcerated individual in a state prison to be given by phone, certified mail, regular mail, or e-mail, using the method of communication selected by the requesting party, if that method is available, 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. Requires the requesting party to keep BPH apprised of his or her current contact information in order to receive the notice. (Pen. Code § 3043, subd. (a)(1).)

*Existing law* requires that any person entitled to attend the hearing, other than the victim, inform BPH 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 no later than 30 days before the hearing date. (Pen. Code § 3043, subd. (a)(2).)

*Existing law* requires BPH to notify every person entitled to attend the hearing confirming the date, time, and place of the hearing no later than 14 days before the date selected for the hearing. (Pen. Code § 3043, subd. (a)(3).)

*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 his, her, or their views concerning the incarcerated individual and the case, the effect of the enumerated crimes on the victim and the family of the victim, the person responsible for these enumerated crimes, and the suitability of the incarcerated individual for parole. (Pen. Code § 3043, subd. (b)(1).)

*Existing law* provides that any statement provided by a representative designated by the victim or next of kin may cover any subject about which the victim or next of kin has the right to be heard including any recommendation regarding the granting of parole. Requires that the representatives be designated by the victim or, in the event that the victim is deceased or incapacitated, by the next of kin. Requires the representatives to be designated in writing for the particular hearing before the hearing. (Pen. Code § 3043, subd. (b)(2).)

*Existing law* provides that a representative designated by the victim or the victim's next of kin may be any adult person selected by the victim or the family of the victim. Requires BPH to permit a representative designated by the victim or the victim's next of kin to attend a particular hearing, to provide testimony at a hearing, and to submit a statement to be included in the hearing, even though the victim, next of kin, or a member of the victim's immediate family is present at the hearing, and even though the victim, next of kin, or a member of the victim's immediate family has submitted a statement. (Pen. Code § 3043, subd. (c).)

*Existing law* requires BPH, in deciding whether to release the person on parole, to consider the entire and uninterrupted 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, if applicable, and to include in its report a statement whether the person would pose a threat to public safety if released on parole. (Pen. Code § 3043, subd. (d).)

*Existing law* defines "victim" as a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. Provides that the term "victim" also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. Provides that the term "victim" does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim. (Cal. Const., art. I, § 28, subd. (e).)

*This bill* prohibits CDCR and BPH from requiring more than 15 days' notice by a victim, victim's next of kin, member of the victim's family, victim's representative, counsel representing any of these persons, or victim support persons, of their intention to attend the hearing.

## COMMENTS

### 1. Need for This Bill

According to the author:

Current regulations require "direct" victims like an assault or rape victim to provide 15 days' notice of their intent to attend but require "indirect" victims like the family members of someone murdered to provide 30 days' notice. This unjustified discrepancy creates two classes of victims and this bill would require all victims, direct or indirect, to provide only 15 days of notice.

The two-tiered system makes many harmed people feel like “second class victims.” The parents of a murdered child are not considered actual victims in the BPH regulations even though they are considered a victim pursuant to Marsy’s Law and the California Constitution.

If a victim or family member misses the cutoff date, they are excluded from the hearing. This has happened to multiple family members throughout the state. These people were victimized initially by the crime, then victimized again by being excluded from the parole hearing.

## 2. Parole Hearings

A parole hearing is a hearing to determine whether an incarcerated individual is suitable for release to parole supervision. Incarcerated individuals who are indeterminately sentenced must be granted parole by the BPH in order to be released from prison. Some incarcerated individuals who are serving determinate sentences may become eligible for a parole suitability hearing prior to their release date if they meet criteria through the Youth Offender or Elderly Parole processes.

The Penal Code provides that the parole board “shall grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual.” (Pen. Code, § 3041, subd. (b).) The fundamental consideration when making a determination about an inmate’s suitability for parole is whether the inmate currently poses an unreasonable risk of danger to society if released from prison. (*In re Shaputis* (2008) 44 Cal.4th 1241.) In deciding whether to grant parole, the BPH must consider all relevant and reliable information available. (Cal. Code Regs., tit. 15, § 2402, subd. (b).) The factors BPH must consider are outlined in department regulations.

An incarcerated individual is entitled to legal counsel at the individual’s parole hearing, which may be a private attorney or one appointed by BPH. The District Attorney from the prosecuting county may make a presentation regarding the office’s position on the individual’s suitability for parole.

## 3. BPH Notice Requirements to Victims and Victims’ Right to Appear

Existing law requires, upon request to CDCR, notice of any hearing to review or consider the parole suitability for any incarcerated individual in a state prison to be given by phone, certified mail, regular mail, or e-mail, using the method of communication selected by the requesting party, if that method is available, 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)(1).) 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 his, her, or their views concerning the incarcerated individual and the case, the effect of the enumerated crimes on the victim and the family of the victim, the person responsible for these enumerated crimes, and the suitability of the incarcerated individual for parole. (Pen. Code § 3043, subd. (b)(1).)

Victims or, if the victim has died, the next of kin or immediate family members may, upon request to BPH, receive notification of any parole hearing, to review or consider the parole suitability for any incarcerated person in a state prison, so that an opportunity to make a statement is afforded them. (Cal. Code Regs., tit. 15, § 2029, subd. (a).) BPH is required to notify each person who has informed it of their address at least 30 days prior to the hearing date. (*Id.*)

The next of kin is entitled to notification and to appear in the following order: spouse, children, parents, siblings, grandchildren, and grandparents. (Cal. Code Regs., tit. 15, § 2029, subd. (b).) If there is no next of kin, immediate family members are entitled to notification and to appear, as specified. (Cal. Code Regs., tit. 15, § 2029, subd. (c).) Up to two persons of the categories in descending order are entitled to notice and to appear; more than two persons may appear with the prior approval of a panel member, the chairman, or the executive officer. (*Id.*) The victim, next of kin, or immediate family members may appear personally or be represented by counsel. (Cal. Code Regs., tit. 15, § 2029, subd. (d).) However, if counsel and client both attend the hearing, only one may appear by making a statement or addressing the panel. (*Id.*)

Finally, victims, next of kin, or immediate family members attending hearings may be accompanied by one support person of his or her own choosing. (Cal. Code Regs., tit. 15, § 2029, subd. (e).) The support person is prohibited from participating in the hearing or making comments while in attendance, and the person requesting support must advise BPH of the name of the support person at the time he or she informs BPH of his or her intention to attend. (*Id.*)

#### **4. Victims' Notice to BPH of Intention to Attend Hearing**

Existing law requires that any person entitled to attend the hearing, other than the victim, inform BPH 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 no later than 30 days before the hearing date. (Pen. Code § 3043, subd. (a)(2).)

Department regulations provide that parole hearings may take place in person or via videoconference and include a videoconference presumption. (Cal. Code Regs., tit. 15, § 2053.) If BPH determines that the hearing is to be conducted in person, then the incarcerated person, the incarcerated person's attorney, and the interpreter, if the incarcerated person has one, must be physically present with the incarcerated person during the hearing, unless an exception applies. (Cal. Code Regs., tit. 15, § 2057, subd. (b).) The following individuals may attend in person, by videoconference, or by phone:

- Every victim appearing personally or by counsel, victim's designated representative appearing personally or by counsel, and victim's support person provided that person has informed CDCR's Office of Victim and Survivor Rights and Services (OVSRS) of their intention to attend the hearing at least 15 days prior to the hearing;
- Every victim's next of kin appearing personally or by counsel, designated representative of a victim's next of kin appearing personally or by counsel, and support person for a victim's next of kin provided that person has informed OVSRS of their intention to attend the hearing at least 30 days prior to the hearing;
- Every victim's family member appearing personally or by counsel and support person for the victim's family member provided that person has informed OVSRS of their intention to attend the hearing at least 30 days prior to the hearing;

- A staff member from OVSRS to act as a support person, if requested by a victim, victim's next of kin, or victim's family member; and,
  - A representative of the prosecuting agency.
- (*Id.*)

The same rules generally apply when the hearing is conducted by videoconference. The above listed individuals may attend the hearing by videoconference or by phone. (Cal. Code Regs., tit. 15, § 2057, subd. (c).) In lieu of attending the hearing, victims, victim's next of kin, members of the victim's family, and victim representatives may submit a written or electronically recorded statement to be considered by the hearing officers. (Cal. Code Regs., tit. 15, § 2057, subd. (d).)

## 5. Proposition 9

The current definition of victim in the state constitution was enacted via Proposition 9, passed by California voters on November 4, 2008. A "victim" is defined as "a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act." (Cal. Const., art. I, § 28, subd. (e).) Section 28 also provides that the term "victim" includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated.

Proposition 9 additionally amended several Penal Code sections to add to or bolster the rights of victims in parole hearings. Specifically, Proposition 9 amended Penal Code section 3043 to add paragraph (2) to subdivision (a) and read:

No later than 30 days prior to 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. (Ballot Pamp., Gen. Elec. (Nov. 4, 2008) text of Prop. 9, p. 128 et seq., available at <<https://vig.cdn.sos.ca.gov/2008/general/text-proposed-laws/text-of-proposed-laws.pdf#prop9>>)

## 6. Effect of This Bill

Under current law, a direct victim of a crime must notify CDCR at least 15 days prior to a hearing of the person's intention to attend the hearing. Anyone else entitled to attend a parole hearing under existing law must provide the department with at least 30 days' notice. This bill would prohibit CDCR and BPH from requiring more than 15 days' notice by a victim, victim's next of kin, member of the victim's family, victim's representative, counsel representing any of these persons, or victim support persons, of their intention to attend the hearing.

## 7. Argument in Support

The San Diego County District Attorney's Office writes:

Current law requires any person, except the victim, who is entitled to attend a parole hearing and intends to do so, to provide at least 30 days' notice to the Board of Parole Hearings. Current regulations of the Department of Corrections and Rehabilitation require victims, the victim's next of kin, members of the

victim's family, victim representatives, counsel for any of these persons, and victim support persons to give notice of their intention to attend, to the department, as specified. This bill would limit the amount of notice that the department and board may require from any of these persons to no more than 15 days.

Marsy's Law and the California Constitution define a "victim" as "[a] person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term "victim" also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated."

The BPH regulations and section 3043(a)(2) place the victim's family members into the 30-day notice requirement, ignoring the definition of "victim" in Marsy's Law and the California Constitution. These victims should not be required to give 30-days' notice to attend a parole hearing. This two-tiered system is also confusing to victims and their families as to who needs to register and when. The two-tiered system makes many harmed people feel like "second class victims." ...

BPH and OVSRS are extremely strict with the notice requirements. If a victim or family member misses the cutoff date, they are excluded from the hearing. ...

... SB 412 will increase the number of victims and their family members who can attend parole hearings. It would also level the playing field so that all victims and their families would be treated equally and would ensure that there are no more "second class victims."

## 8. Argument in Opposition

According to California Attorneys for Criminal Justice:

SB 412...would provide an exception for victims, next of kin, victims' family members, counsel and support people, to the statutory requirement that persons wishing to appear at parole board hearings provide 30 days' notice. The [bill] would shorten the time for these individuals to inform the Parole Board of their intention to attend Board hearings from 30 to 15 days. CACJ opposes this bill because 15 days' notice provides insufficient notice to the prospective parolee and his or her counsel to guarantee a fair hearing.

A parole hearing is a significant legal proceeding with profound consequences for the incarcerated person seeking parole. Appointed parole attorneys, whose pay is currently \$900 per case, must expend significant time to prepare for such hearings. The 30-day requirement provides reasonable notice to the incarcerated person seeking parole and his or her attorney of the evidence to be presented at a parole hearing. The shorter notice period proposed of fifteen days is unreasonably short and threatens the incarcerated person's rights to due process at the hearing.

In light of the existing requirement that the Board notify victims 90 days prior to the hearing, the current time period of 30 days for the victim to provide notice that

he or she will appear is reasonable and fair to all parties involved. It further lessens the likelihood of a need to postpone the parole hearing.

**-- END --**