

AMENDED IN SENATE AUGUST 21, 2003  
AMENDED IN SENATE JULY 1, 2003  
AMENDED IN ASSEMBLY MARCH 5, 2003  
AMENDED IN ASSEMBLY JANUARY 29, 2003  
CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2**

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**Introduced by Assembly Member Bogh  
(Coauthors: Assembly Members Bermudez, Cogdill, Koretz, and  
Spitzer)**

December 2, 2002

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An act to amend Sections 1191.15, 3041, and 3043.2 of, and to add Section 3043.6 to, the Penal Code, and to add Section 1767.9 to the Welfare and Institutions Code, relating to victims, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2, as amended, Bogh. Victims: appearances at parole hearings. Existing law authorizes the court to permit the victim of any crime, or his or her parent or guardian if the victim is a minor, or the next of kin of the victim if the victim has died, to file with the court a written, audiotaped, or videotaped statement expressing his or her views concerning the crime, the person responsible, and the need for restitution, in lieu of or in addition to the person personally appearing at the time of judgment and sentence.

This bill would in addition, authorize submission of the statement on a CD Rom, DVD, or any other recording medium acceptable to the court.

Existing law establishes procedures for granting parole. Existing law also provides, on an emergency basis, and only until December 31, 2003, that life parole consideration hearings and life rescission hearings may be conducted by a 2-person panel, and would impose other requirements on the panel in order to eliminate a backlog of inmates awaiting parole consideration, as specified. Existing law also requires the Board of Prison Terms to report monthly on the number of hearings conducted in the previous month, the number scheduled in the current and subsequent months, the backlog of cases awaiting a hearing, and progress toward eliminating the backlog.

This bill would provide that these provisions would be operative until December 31, 2005. The bill would also provide that the described reports would be due on a quarterly basis.

Existing law authorizes the Board of Prison Terms to permit, in lieu of personal appearance at any hearing to review the parole suitability or the setting of a parole date, the victim, his or her next of kin, or immediate family members to file with the board a written, audiotaped, or videotaped statement expressing his or her views concerning the crime and the person responsible.

This bill would in addition, authorize submission of the statement on a CD Rom, DVD, or any other recording medium accepted by the board or by a court pursuant to the provision discussed above. The bill would authorize the hearing officer to ensure that only accurate and relevant statements are considered in determining parole suitability, as specified.

Existing law, added by initiative statute, provides that a victim or certain others may appear at a parole hearing for the prisoner responsible for the crime who is confined in the state prison in order to present his or her views concerning the crime and the person responsible.

Existing law, added by initiative statute, similarly provides that a victim or certain others may appear at the parole hearing for the prisoner responsible for the crime who is under the control of the Youth Authority.

The initiative statute provides that any amendment to its provisions by the Legislature shall require a  $\frac{2}{3}$  vote of the membership of each house.



This bill would authorize the victim or others appearing with or for the victim to request that the victim or others speak last at a parole hearing for the person confined in the state prison or under the control of the Youth Authority.

The bill would require the Board of Prison Terms to report to the Legislature, no later than June 30, 2004, regarding the use of video conferencing to conduct life parole consideration hearings.

Because this bill would amend provisions of the initiative statutes, this bill would require a  $\frac{2}{3}$  vote.

*This bill would declare that it is to take effect immediately as an urgency statute.*

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1191.15 of the Penal Code is amended  
2 to read:

3 1191.15. (a) The court may permit the victim of any crime,  
4 or his or her parent or guardian if the victim is a minor, or the next  
5 of kin of the victim if the victim has died, to file with the court a  
6 written, audiotaped, or videotaped statement, or statement stored  
7 on a CD Rom, DVD, or any other recording medium acceptable  
8 to the court, expressing his or her views concerning the crime, the  
9 person responsible, and the need for restitution, in lieu of or in  
10 addition to the person personally appearing at the time of judgment  
11 and sentence. The court shall consider the statement filed with the  
12 court prior to imposing judgment and sentence.

13 Whenever an audio or video statement or statement stored on a  
14 CD Rom, DVD, or other medium is filed with the court, a written  
15 transcript of the statement shall also be provided by the person  
16 filing the statement, and shall be made available as a public record  
17 of the court after the judgment and sentence have been imposed.

18 (b) Whenever a written, audio, or video statement or statement  
19 stored on a CD Rom, DVD, or other medium is filed with the court,  
20 it shall remain sealed until the time set for imposition of judgment  
21 and sentence except that the court, the probation officer, and  
22 counsel for the parties may view and listen to the statement not  
23 more than two court days prior to the date set for imposition of  
24 judgment and sentence.



1 (c) No person may, and no court shall, permit any person to  
2 duplicate, copy, or reproduce by any audio or visual means any  
3 statement submitted to the court under the provisions of this  
4 section.

5 (d) Nothing in this section shall be construed to prohibit the  
6 prosecutor from representing to the court the views of the victim  
7 or his or her parent or guardian or the next of kin.

8 (e) In the event the court permits an audio or video statement  
9 or statement stored on a CD Rom, DVD, or other medium to be  
10 filed, the court shall not be responsible for providing any  
11 equipment or resources needed to assist the victim in preparing the  
12 statement.

13 SEC. 2. Section 3041 of the Penal Code is amended to read:

14 3041. (a) In the case of any prisoner sentenced pursuant to  
15 any provision of law, other than Chapter 4.5 (commencing with  
16 Section 1170) of Title 7 of Part 2, the Board of Prison Terms shall  
17 meet with each inmate during the third year of incarceration for the  
18 purposes of reviewing the inmate's file, making  
19 recommendations, and documenting activities and conduct  
20 pertinent to granting or withholding postconviction credit. One  
21 year prior to the inmate's minimum eligible parole release date a  
22 panel consisting of at least two commissioners of the Board of  
23 Prison Terms shall again meet with the inmate and shall normally  
24 set a parole release date as provided in Section 3041.5. The panel  
25 shall consist solely of commissioners or deputy commissioners  
26 from the Board of Prison Terms. The release date shall be set in a  
27 manner that will provide uniform terms for offenses of similar  
28 gravity and magnitude in respect to their threat to the public, and  
29 that will comply with the sentencing rules that the Judicial Council  
30 may issue and any sentencing information relevant to the setting  
31 of parole release dates. The board shall establish criteria for the  
32 setting of parole release dates and in doing so shall consider the  
33 number of victims of the crime for which the prisoner was  
34 sentenced and other factors in mitigation or aggravation of the  
35 crime. At least one commissioner of the panel shall have been  
36 present at the last preceding meeting, unless it is not feasible to do  
37 so or where the last preceding meeting was the initial meeting. Any  
38 person on the hearing panel may request review of any decision  
39 regarding parole to the full board for an en banc hearing. In case



1 of a review, a majority vote of the full Board of Prison Terms in  
2 favor of parole is required to grant parole to any prisoner.

3 (b) The panel or board shall set a release date unless it  
4 determines that the gravity of the current convicted offense or  
5 offenses, or the timing and gravity of current or past convicted  
6 offense or offenses, is such that consideration of the public safety  
7 requires a more lengthy period of incarceration for this individual,  
8 and that a parole date, therefore, cannot be fixed at this meeting.  
9 After the effective date of this subdivision, any decision of the  
10 parole panel finding an inmate suitable for parole shall become  
11 final within 120 days of the date of the hearing. During that period,  
12 the board may review the panel's decision. The panel's decision  
13 shall become final pursuant to this subdivision unless the board  
14 finds that the panel made an error of law, or that the panel's  
15 decision was based on an error of fact, or that new information  
16 should be presented to the board, any of which when corrected or  
17 considered by the board has a substantial likelihood of resulting in  
18 a substantially different decision upon a rehearing. In making this  
19 determination, the board shall consult with the commissioners  
20 who conducted the parole consideration hearing. No decision of  
21 the parole panel shall be disapproved and referred for rehearing  
22 except by a majority vote of the board following a public hearing.

23 (c) For the purpose of reviewing the suitability for parole of  
24 those prisoners eligible for parole under prior law at a date earlier  
25 than that calculated under Section 1170.2, the board shall appoint  
26 panels of at least two persons to meet annually with each prisoner  
27 until the time the person is released pursuant to proceedings or  
28 reaches the expiration of his or her term as calculated under  
29 Section 1170.2.

30 (d) Notwithstanding subdivision (a) and Section 5076.1, on an  
31 emergency basis, and only until December 31, 2005, life parole  
32 consideration hearings or life rescission hearings may be  
33 conducted by two-person panels consisting of at least one  
34 commissioner. In the event of a tie vote, the matter shall be referred  
35 to the full board for a decision. It is the intent of the Legislature in  
36 enacting this subdivision to allow the board to increase the number  
37 of hearings conducted each month to eliminate the backlog of  
38 inmates awaiting a parole consideration hearing. The board shall  
39 report monthly on the number of hearings conducted in the  
40 previous month, the number scheduled in the current and



1 subsequent months, the backlog of cases awaiting a hearing, and  
2 progress toward eliminating the backlog, if any. The report shall  
3 be made public at a regularly scheduled meeting of the board and  
4 a written report shall be made available to the public and  
5 transmitted to the Legislature quarterly.

6 SEC. 3. Section 3043.2 of the Penal Code is amended to read:

7 3043.2. (a) In lieu of personal appearance at any hearing to  
8 review the parole suitability or the setting of a parole date, the  
9 Board of Prison Terms may permit the victim, his or her next of  
10 kin, or immediate family members to file with the board a written,  
11 audiotaped, or videotaped statement, or statement stored on a CD  
12 Rom, DVD, or any other recording medium accepted by a court  
13 pursuant to Section 1191.15 or by the board, expressing his or her  
14 views concerning the crime and the person responsible. The  
15 statement may be personal messages from the person to the board  
16 made at any time or may be a statement made pursuant to Section  
17 1191.16, or a combination of both. The board shall consider any  
18 statement filed prior to reaching a decision, and shall include in its  
19 report a statement of whether the person would pose a threat to  
20 public safety if released on parole.

21 (b) Whenever an audio or video statement or a statement stored  
22 on a CD Rom, DVD, or other medium is filed with the board, a  
23 written transcript of the statement shall also be provided by the  
24 person filing the statement.

25 (c) Nothing in this section shall be construed to prohibit the  
26 prosecutor from representing to the board the views of the victim,  
27 his or her immediate family members, or next of kin.

28 (d) In the event the board permits an audio or video statement  
29 or statement stored on a CD Rom, DVD, or other medium to be  
30 filed, the board shall not be responsible for providing any  
31 equipment or resources needed to assist the victim in preparing the  
32 statement.

33 SEC. 4. Section 3043.6 is added to the Penal Code, to read:

34 3043.6. Any person authorized to appear at a parole hearing  
35 pursuant to Section 3043, or a prosecutor authorized to represent  
36 the views of the victim, his or her immediate family, or next of kin,  
37 pursuant to Section 3043.2, shall have the right to speak last before  
38 the board in regard to those persons appearing and speaking before  
39 the board at a parole hearing. Nothing in this section shall prohibit  
40 the person presiding at the hearing from taking any steps he or she



1 deems appropriate to ensure that only accurate and relevant  
2 statements are considered in determining parole suitability as  
3 provided in law, including, but not limited to, the rebuttal of  
4 inaccurate statements made by any party.

5 SEC. 5. Section 1767.9 is added to the Welfare and  
6 Institutions Code, to read:

7 1767.9. Any person authorized to appear at a parole hearing  
8 pursuant to Section 1767 shall have the right to speak last before  
9 the board in regard to those persons appearing and speaking before  
10 the board at a parole hearing. Nothing in this section shall prohibit  
11 the person presiding at the hearing from taking any steps he or she  
12 deems appropriate to ensure that only accurate and relevant  
13 statements are considered in determining parole suitability as  
14 provided in law, including, but not limited to, the rebuttal of  
15 inaccurate statements made by any party.

16 SEC. 6. The board shall report to the Legislature no later than  
17 June 30, 2004, on the use of video conferencing to conduct life  
18 parole consideration hearings.

19 *SEC. 7. This act is an urgency statute necessary for the*  
20 *immediate preservation of the public peace, health, or safety*  
21 *within the meaning of Article IV of the Constitution and shall go*  
22 *into immediate effect. The facts constituting the necessity are:*

23 *Because the appearance of victims at parole hearings is*  
24 *important to the operation of the criminal justice system, in order*  
25 *to facilitate the appearance of victims, it is necessary that this bill*  
26 *take effect immediately.*

