

AMENDED IN ASSEMBLY JULY 2, 2004

AMENDED IN SENATE APRIL 29, 2004

AMENDED IN SENATE APRIL 26, 2004

AMENDED IN SENATE APRIL 1, 2004

**SENATE BILL**

**No. 1516**

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**Introduced by Senator Machado**

(Principal coauthor: Assembly Member Matthews)

February 19, 2004

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An act to amend Sections 3043, 3043.2, 3043.25, and 3043.3 of the Penal Code, relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

SB 1516, as amended, Machado. Parole: hearings.

Existing law, added by initiative statute requiring a  $\frac{2}{3}$  vote of each house for amendment, provides that the Board of Prison Terms must give notice of a parole suitability hearing for a prisoner, upon request, to a victim or next of kin if the victim has died. Under existing law, those people, or two members of the victim's immediate family, have the right to appear and express their views for consideration by the board in its decision on parole for the prisoner.

This bill would alternatively provide two representatives designated for a particular hearing by the victim, or *if the victim is deceased or incapacitated, by the next of kin*, in writing prior to the hearing with the right to appear and express their views for consideration by the board in its decision on parole for the prisoner, except that any statement provided by a representative designated by the victim or next of kin would be limited to comments concerning the effect of the crime on the

victim. These designees would be limited to specified categories of persons, and would be permitted to provide testimony only in the absence of the victim, next of kin, or immediate family members, as specified.

Existing law provides that the board may permit the victim, next of kin, or immediate family members, in lieu of appearance, to file with the board a written, audiotaped, videotaped, or similarly documented sentencing or other statement expressing their views of the crime and the person responsible.

This bill would require the board to permit those statements from a victim, next of kin, or immediate family members in lieu of appearance, and would alternatively require the board to permit two representatives designated for a particular hearing by the victim or next of kin in writing prior to the hearing to file written, audiotaped, or videotaped statements. However, the statements of designated representatives would be limited to comments concerning the effect of the crime on the victim and the designees would be limited to specified categories of persons.

Existing law permits a victim, next of kin, or family member authorized to appear at parole suitability hearings in person or through recorded statements, as provided above, to also appear by videoconferencing, where available.

This bill would extend this teleconferencing authorization to representatives designated for a particular hearing by the victim or next of kin in writing prior to the hearing.

Because it would amend the initiative measure, this bill requires a  $\frac{2}{3}$  vote.

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 3043 of the Penal Code is amended to  
 2 read:  
 3 3043. (a) Upon request, notice of any hearing to review or  
 4 consider the parole suitability or the setting of a parole date for any  
 5 prisoner in a state prison shall be sent by the Board of Prison Terms  
 6 at least 30 days before the hearing to any victim of a crime  
 7 committed by the prisoner, or to the next of kin of the victim if the



1 victim has died. The requesting party shall keep the board apprised  
2 of his or her current mailing address.

3 (b) The victim, next of kin, two members of the victim's  
4 immediate family, or two representatives designated for a  
5 particular hearing by the victim or, *in the event the victim is*  
6 *deceased or incapacitated, by the* next of kin in writing prior to the  
7 hearing have the right to appear, personally or by counsel, at the  
8 hearing and to adequately and reasonably express his, her, or their  
9 views concerning the crime and the person responsible, except that  
10 any statement provided by a representative designated by the  
11 victim or next of kin shall be limited to comments concerning the  
12 effect of the crime on the victim.

13 (c) A representative designated by the victim or the victim's  
14 next of kin for purposes of this section must be either ~~that person's~~  
15 ~~legal counsel~~ or a family or household member of the victim. The  
16 board may not permit a representative designated by the victim or  
17 the victim's next of kin to provide testimony at a hearing, or to  
18 submit a statement to be included in the hearing as provided in  
19 Section 3043.2, if the victim, next of kin, or a member of the  
20 victim's immediate family is present at the hearing, or if the  
21 victim, next of kin, or a member of the victim's immediate family  
22 has submitted a statement as described in Section 3043.2.

23 (d) Nothing in this section is intended to allow the board to  
24 permit a victim's representative to attend a particular hearing if the  
25 victim, next of kin, or a member of the victim's immediate family  
26 is present at any hearing covered in this section, or if the victim,  
27 next of kin, or member of the victim's immediate family has  
28 submitted a written, audiotaped, or videotaped statement.

29 (e) The board, in deciding whether to release the person on  
30 parole, shall consider the statements of the victim or victims, next  
31 of kin, immediate family members of the victim, and the  
32 designated representatives of the victim or next of kin, if  
33 applicable, made pursuant to this section and shall include in its  
34 report a statement of whether the person would pose a threat to  
35 public safety if released on parole.

36 In those cases where there are more than two immediate family  
37 members of the victim who wish to attend any hearing covered in  
38 this section, the board may, in its discretion, allow attendance of  
39 additional immediate family members or limit attendance to the



1 following order of preference: spouse, children, parents, siblings,  
2 grandchildren, and grandparents.

3 The provisions of this section shall not be amended by the  
4 Legislature except by statute passed in each house by rollcall vote  
5 entered in the journal, two-thirds of the membership concurring,  
6 or by a statute that becomes effective only when approved by the  
7 electors.

8 SEC. 2. Section 3043.2 of the Penal Code is amended to read:

9 3043.2. (a) (1) In lieu of personal appearance at any hearing  
10 to review the parole suitability or the setting of a parole date, the  
11 Board of Prison Terms shall permit the victim, his or her next of  
12 kin, immediate family members, or two representatives  
13 designated for a particular hearing by the victim or next of kin in  
14 writing prior to the hearing to file with the board a written,  
15 audiotaped, or videotaped statement, or statement stored on a CD  
16 Rom, DVD, or any other recording medium accepted by a court  
17 pursuant to Section 1191.15 or by the board, expressing his or her  
18 views concerning the crime and the person responsible. The  
19 statement may be personal messages from the person to the board  
20 made at any time or may be a statement made pursuant to Section  
21 1191.16, or a combination of both, except that any statement  
22 provided by a representative designated by the victim or next of  
23 kin shall be limited to comments concerning the effect of the crime  
24 on the victim.

25 (2) A representative designated by the victim or the victim's  
26 next of kin for purposes of this section must be either ~~that person's~~  
27 ~~legal counsel~~ or a family or household member of the victim.

28 (3) The board shall consider any statement filed prior to  
29 reaching a decision, and shall include in its report a statement of  
30 whether the person would pose a threat to public safety if released  
31 on parole.

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

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

39 (d) In the event the board permits an audio or video statement  
40 or statement stored on a CD Rom, DVD, or other medium to be



1 filed, the board shall not be responsible for providing any  
2 equipment or resources needed to assist the victim in preparing the  
3 statement.

4 SEC. 3. Section 3043.25 of the Penal Code is amended to  
5 read:

6 3043.25. Any victim, next of kin, members of the victim's  
7 immediate family, or representatives designated for a particular  
8 hearing by the victim or next of kin in writing prior to the hearing  
9 who have the right to appear at a hearing to review parole  
10 suitability or the setting of a parole date, either personally as  
11 provided in Section 3043, or by a written, audiotaped, or  
12 videotaped statement as provided in Section 3043.2, and any  
13 prosecutor who has the right to appear pursuant to Section 3041.7,  
14 shall also have the right to appear by means of videoconferencing,  
15 if videoconferencing is available at the hearing site. For the  
16 purposes of this section, "videoconferencing" means the live  
17 transmission of audio and video signals by any means from one  
18 physical location to another.

19 SEC. 4. Section 3043.3 of the Penal Code is amended to read:

20 3043.3. As used in Sections 3043, 3043.1, ~~and 3043.2~~ 3043.2,  
21 *and* 3043.25, the term "immediate family" shall include the  
22 victim's spouse, parent, grandparent, brother, sister, and children  
23 or grandchildren who are related by blood, marriage, or adoption.  
24 As used in Sections 3043 and 3043.2, the term "household  
25 member of the victim" means a person who lives, or was living at  
26 the time of the crime, in the victim's household, and who has, or  
27 for a deceased victim had at the time of the crime, an intimate or  
28 close relationship with the victim.

