

Senate Bill No. 1516

CHAPTER 289

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

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1516, 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 $2/3$ vote.

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

SECTION 1. Section 3043 of the Penal Code is amended to read:

3043. (a) Upon request, notice of any hearing to review or consider the parole suitability or the setting of a parole date for any prisoner in a state prison shall be sent by the Board of Prison Terms at least 30 days before the hearing to any victim of a crime committed by the prisoner, or to the next of kin of the victim if the victim has died. The requesting party shall keep the board apprised of his or her current mailing address.

(b) The victim, next of kin, two members of the victim's immediate family, or two representatives designated for a particular hearing by the victim or, in the event the victim is deceased or incapacitated, by the next of kin in writing prior to the hearing 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 crime and the person responsible, except that any statement provided by a representative designated by the victim or next of kin shall be limited to comments concerning the effect of the crime on the victim.

(c) A representative designated by the victim or the victim's next of kin for purposes of this section must be either a family or household member of the victim. The board may not permit a representative designated by the victim or the victim's next of kin to provide testimony at a hearing, or to submit a statement to be included in the hearing as provided in Section 3043.2, if the victim, next of kin, or a member of the victim's immediate family is present at the hearing, or if the victim, next of kin, or a member of the victim's immediate family has submitted a statement as described in Section 3043.2.

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



(e) The board, in deciding whether to release the person on parole, shall 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, if applicable, made pursuant to this section and shall include in its report a statement of whether the person would pose a threat to public safety if released on parole.

In those cases where there are more than two immediate family members of the victim who wish to attend any hearing covered in this section, the board may, in its discretion, allow attendance of additional immediate family members or limit attendance to the following order of preference: spouse, children, parents, siblings, grandchildren, and grandparents.

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

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

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

(2) A representative designated by the victim or the victim's next of kin for purposes of this section must be either a family or household member of the victim.

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

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



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

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

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

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

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

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

