

AMENDED IN SENATE JULY 18, 1997

AMENDED IN ASSEMBLY JUNE 3, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 152

Introduced by Assembly Member Morrow

January 22, 1997

An act to amend Sections 679.02 and 3043.2 of, and to add Sections 1191.16 and 3043.25 to, the Penal Code, relating to victim's rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 152, as amended, Morrow. Victim's rights: notification.

(1) Existing law, as amended by initiative statute, provides that the victim of any crime, or his or her parents or guardians if the victim is a minor, or the next of kin if the victim has died, has the right to attend all sentencing proceedings and shall be given adequate notice by the probation officer of all sentencing proceedings concerning the defendant. This existing law also provides that the victim, or up to 2 of the victim's parents or guardians if the victim is a minor, or the next of kin of the victim if the victim has died, has the right to appear, personally or by counsel, at the sentencing proceeding and to reasonably express his or her views, as specified. The initiative statute provides that any amendment of its provisions by the Legislature shall require a $\frac{2}{3}$ vote of the membership of each house.

This bill additionally would provide that, where the defendant is subject to an indeterminate sentence, the victim or other persons to whom these provisions apply may have their statements simultaneously recorded and preserved by means of videotape, videodisc, or any other means of preserving the statement. Because it would amend the initiative measure, the bill would require a $\frac{2}{3}$ vote.

(2) Existing law requires that the Board of Prison Terms give at least 30 days' notice of any hearing to set, postpone, or rescind a parole release date of a prisoner under a life sentence to the prosecutor of the county from which the prisoner was committed.

Existing law, amended by initiative statute, sets forth certain enumerated rights of victims of crimes, including the right of members of the victim's immediate family to appear at any parole eligibility hearing subject to the discretion of the board in a specified order of preference. The initiative statute provides that any amendment of its provisions by the Legislature shall require a $\frac{2}{3}$ vote of the membership of each house.

This bill would require the board to consider statements from members of the victim's immediate family in deciding whether to release the prisoner on parole. This bill also would provide to the prosecutor, victim, and other persons covered by these provisions the right to appear before the board by means of videoconferencing, as defined, *if videoconferencing is available at the hearing site*. Because it would amend the initiative measure, this bill would require 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 679.02 of the Penal Code is
- 2 amended to read:
- 3 679.02. (a) The following are hereby established as
- 4 the statutory rights of victims and witnesses of crimes:
- 5 (1) To be notified as soon as feasible that a court
- 6 proceeding to which he or she has been subpoenaed as a
- 7 witness will not proceed as scheduled, provided the



1 prosecuting attorney determines that the witness'
2 attendance is not required.

3 (2) Upon request of the victim or a witness, to be
4 informed by the prosecuting attorney of the final
5 disposition of the case, as provided by Section 11116.10.

6 (3) For the victim, the victim's parents or guardian if
7 the victim is a minor, or the next of kin of the victim if the
8 victim has died, to be notified of all sentencing
9 proceedings, and of the right to appear, to reasonably
10 express his or her views, have those views preserved by
11 audio or video means as provided in Section 1191.16, and
12 to have the court consider his or her statements, as
13 provided by Sections 1191.1 and 1191.15.

14 (4) For the victim, the victim's parents or guardian if
15 the victim is a minor, or the next of kin of the victim if the
16 victim has died, to be notified of all juvenile disposition
17 hearings in which the alleged act would have been a
18 felony if committed by an adult, and of the right to attend
19 and to express his or her views, as provided by Section
20 656.2 of the Welfare and Institutions Code.

21 (5) Upon request by the victim or the next of kin of the
22 victim if the victim has died, to be notified of any parole
23 eligibility hearing and of the right to appear, either
24 personally as provided by Section 3043 of this code, or by
25 other means as provided by Sections 3043.2 and 3043.25 of
26 this code, to reasonably express his or her views, and to
27 have his or her statements considered, as provided by
28 Section 3043 of this code and by Section 1767 of the
29 Welfare and Institutions Code.

30 (6) Upon request by the victim or the next of kin of the
31 victim if the crime was a homicide, to be notified of an
32 inmate's placement in a reentry or work furlough
33 program, or notified of the inmate's escape as provided
34 by Section 11155.

35 (7) To be notified that he or she may be entitled to
36 witness fees and mileage, as provided by Section 1329.1.

37 (8) For the victim, to be provided with information
38 concerning the victim's right to civil recovery and the
39 opportunity to be compensated from the Restitution
40 Fund pursuant to Chapter 5 (commencing with Section



1 13959) of Part 4 of Division 3 of Title 2 of the Government
2 Code and Section 1191.2 of this code.

3 (9) To the expeditious return of his or her property
4 which has allegedly been stolen or embezzled, when it is
5 no longer needed as evidence, as provided by Chapter 12
6 (commencing with Section 1407) and Chapter 13
7 (commencing with Section 1417) of Title 10 of Part 2.

8 (10) To an expeditious disposition of the criminal
9 action.

10 (11) To be notified, if applicable, in accordance with
11 Sections 679.03 and 3058.8 if the defendant is to be placed
12 on parole.

13 (12) To be notified by the district attorney’s office
14 where the case involves a violent felony, as defined in
15 subdivision (c) of Section 667.5, or in the event of a
16 homicide, the victim’s next of kin, of a pending pretrial
17 disposition before a change of plea is entered before a
18 judge.

19 (A) A victim of any felony may request to be notified,
20 by the district attorney’s office, of a pretrial disposition.

21 (B) If it is not possible to notify the victim of the
22 pretrial disposition before the change of plea is entered,
23 the district attorney’s office or the county probation
24 department shall notify the victim as soon as possible.

25 (C) The victim may be notified by any reasonable
26 means available.

27 Nothing in this paragraph is intended to affect the right
28 of the people and the defendant to an expeditious
29 disposition as provided in Section 1050.

30 (b) The rights set forth in subdivision (a) shall be set
31 forth in the information and educational materials
32 prepared pursuant to Section 13897.1. The information
33 and educational materials shall be distributed to local law
34 enforcement agencies and local victims’ programs by the
35 Victims’ Legal Resource Center established pursuant to
36 Chapter 11 (commencing with Section 13897) of Title 6
37 of Part 4.

38 (c) Local law enforcement agencies shall make
39 available copies of the materials described in subdivision
40 (b) to victims and witnesses.



1 (d) Nothing in this section is intended to affect the
2 rights and services provided to victims and witnesses by
3 the local assistance centers for victims and witnesses.

4 SEC. 2. Section 1191.16 is added to the Penal Code, to
5 read:

6 1191.16. The victim of any crime, or the parents or
7 guardians of the victim if the victim is a minor, or the next
8 of kin of the victim if the victim has died, who choose to
9 exercise their rights with respect to sentencing
10 proceedings as described in Section 1191.1 may, in any
11 case where the defendant is subject to an indeterminate
12 term of imprisonment, have their statements
13 simultaneously recorded and preserved by means of
14 videotape, videodisc, or any other means of preserving
15 audio and video, if they notify the prosecutor in advance
16 of the sentencing hearing and the prosecutor reasonably
17 is able to provide the means to record and preserve the
18 statement. If a video and audio record is developed, that
19 record shall be maintained and preserved by the
20 prosecution and used in accordance with the regulations
21 of the Board of Prison Terms at any hearing to review
22 parole suitability or the setting of a parole date.

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

25 3043.2. (a) In lieu of personal appearance at any
26 hearing to review the parole suitability or the setting of
27 a parole date, the Board of Prison Terms may permit the
28 victim, his or her next of kin, or immediate family
29 members to file with the board a written, audiotaped, or
30 videotaped statement expressing his or her views
31 concerning the crime and the person responsible. The
32 statement may be personal messages from the person to
33 the board made at any time or may be a statement made
34 pursuant to Section 1191.16, or a combination of both. The
35 board shall consider any statement filed prior to reaching
36 a decision, and shall include in its report a statement of
37 whether the person would pose a threat to public safety
38 if released on parole.



1 (b) Whenever an audio or video statement is filed with
2 the board, a written transcript of the tape shall also be
3 provided by the person filing the statement.

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

8 (d) In the event the board permits an audio or video
9 statement to be filed, the board shall not be responsible
10 for providing any equipment or resources needed to assist
11 the victim in preparing the statement.

12 SEC. 4. Section 3043.25 is added to the Penal Code, to
13 read:

14 3043.25. Any victim, next of kin, or members of the
15 victim’s immediate family who have the right to appear
16 at a hearing to review parole suitability or the setting of
17 a parole date, either personally as provided in Section
18 3043, or by a written, audiotaped, or videotaped
19 statement as provided in Section 3043.2, and any
20 prosecutor who has the right to appear pursuant to
21 Section 3041.7, shall also have the right to appear by
22 means of videoconferencing, *if videoconferencing is*
23 *available at the hearing site.* For the purposes of this
24 section, “videoconferencing” means the live transmission
25 of audio and video signals by any means from one physical
26 location to another.

27 The Board of Prison Terms shall take reasonable steps
28 to ensure the exercise of these rights ~~by implementing~~
29 ~~videoconferencing or other means of facilitating the~~
30 ~~appearance of any victim, next of kin, or members of the~~
31 ~~victim’s immediate family at hearings to review parole~~
32 ~~suitability or for the setting of a parole date from other~~
33 ~~locations.~~

34 SEC. 5. Funding for implementation of this act shall
35 be contingent upon the appropriation of funds for this
36 purpose in the Budget Act.

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