

Assembly Bill No. 152

Passed the Assembly September 12, 1997

Chief Clerk of the Assembly

Passed the Senate September 9, 1997

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 1997, at ____ o'clock __M.

Private Secretary of the Governor



CHAPTER ____

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, 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.

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

SECTION 1. Section 679.02 of the Penal Code is amended to read:

679.02. (a) The following are hereby established as the statutory rights of victims and witnesses of crimes:

(1) To be notified as soon as feasible that a court proceeding to which he or she has been subpoenaed as a witness will not proceed as scheduled, provided the prosecuting attorney determines that the witness' attendance is not required.

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

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

(4) For the victim, the victim's parents or guardian if the victim is a minor, or the next of kin of the victim if the victim has died, to be notified of all juvenile disposition



hearings in which the alleged act would have been a felony if committed by an adult, and of the right to attend and to express his or her views, as provided by Section 656.2 of the Welfare and Institutions Code.

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

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

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

(8) For the victim, to be provided with information concerning the victim's right to civil recovery and the opportunity to be compensated from the Restitution Fund pursuant to Chapter 5 (commencing with Section 13959) of Part 4 of Division 3 of Title 2 of the Government Code and Section 1191.2 of this code.

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

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

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

(12) To be notified by the district attorney's office where the case involves a violent felony, as defined in subdivision (c) of Section 667.5, or in the event of a homicide, the victim's next of kin, of a pending pretrial



disposition before a change of plea is entered before a judge.

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

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

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

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

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

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

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

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

1191.16. The victim of any crime, or the parents or guardians of the victim if the victim is a minor, or the next of kin of the victim if the victim has died, who choose to exercise their rights with respect to sentencing proceedings as described in Section 1191.1 may, in any case where the defendant is subject to an indeterminate term of imprisonment, have their statements simultaneously recorded and preserved by means of videotape, videodisc, or any other means of preserving audio and video, if they notify the prosecutor in advance of the sentencing hearing and the prosecutor reasonably



is able to provide the means to record and preserve the statement. If a video and audio record is developed, that record shall be maintained and preserved by the prosecution and used in accordance with the regulations of the Board of Prison Terms at any hearing to review parole suitability or the setting of a parole date.

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

3043.2. (a) 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 may permit 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. 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. 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 is filed with the board, a written transcript of the tape 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 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. 4. Section 3043.25 is added to the Penal Code, to read:

3043.25. Any victim, next of kin, or members of the victim's immediate family 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. 5. Funding for implementation of this act shall be contingent upon the appropriation of funds for this purpose in the Budget Act.



Approved _____, 1997

Governor

