

Association of Deputy District Attorneys



555 W. 5th St. • Ste. 31101
Los Angeles, CA 90013
213-533-4227

Via Email and United States Mail

April 18, 2017

Steven J. Escobar, Attorney,
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814-4339

Re: California Department of Corrections and Rehabilitation
OAL Matter Number: 2017-0324-01

Dear Mr. Escobar:

This letter is to inform you of the Association of Deputy District Attorneys' objection to proposed changes to California Code of Regulations, Title 15, Division 2, Board of Parole Hearings, sections 2449.2, 2449.3, 2449.4, and 2449.5. These emergency provisions, as currently written, violate California Constitution, Article 1, Sections (b) (7) and (8) which allow a victim to be heard at any parole or other post-conviction review proceeding.

In 2008, California voters enacted Proposition 9 (Marsy's Law) which amended the California Constitution and expanded the rights of victims of crime. The purpose of that initiative was to protect a victim's right to justice and due process. The California Constitution enforces those rights in two important ways.

First, a victim is to be provided "reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings." (Article 1, section (b)(7))

Next, a victim has the right to "be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue." (Article 1, section (b)(8))

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As presently formulated, the emergency changes in sections 2249.2-5 eviscerate these rights limiting a victim's participation to a written statement rather than a right to be heard by the parole board.

Nothing in the language of Proposition 57 eliminates or conflicts with these provisions of the California Constitution. Therefore, CDCR has no legal authority to eliminate the victims' rights provided for in Article 1, Sections (b)(7) and (8).

CDDR was directed to adopt regulations "in furtherance" of Proposition 57. Such regulations should continue to enforce the rights of victims.

If CDCR will not preserve these Constitutional Rights, it will be necessary for a court to do so.

Sincerely,



Michele Hanisee

President

cc: California Department of Corrections Secretary Scott Kernan