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AB-1308 Youth offender parole hearings. (2017-2018)

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Date Published: 10/12/2017 02:00 PM

Assembly Bill No. 1308

CHAPTER 675

An act to amend Sections 3051 and 4801 of the Penal Code, relating to parole.

[Approved by Governor October 11, 2017. Filed with Secretary of State October 11, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1308, Mark Stone. Youth offender parole hearings.

Existing law generally requires the Board of Parole Hearings to conduct youth offender parole hearings to consider the release of offenders who committed specified crimes when they were under 23 years of age and who were sentenced to state prison.

This bill would instead require the Board of Parole Hearings to conduct youth offender parole hearings for offenders sentenced to state prison who committed those specified crimes when they were 25 years of age or younger. The bill would require the board to complete, by January 1, 2020, all youth offender parole hearings for individuals who were sentenced to indeterminate life terms who become entitled to have their parole suitability considered at a youth offender parole hearing on the effective date of the bill. The bill would require the board to complete all youth offender parole hearings for individuals who were sentenced to determinate terms who become entitled to have their parole suitability considered at a youth offender parole hearing on the effective date of the bill by January 1, 2022, and would require the board, for these individuals, to conduct a specified consultation before January 1, 2019.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3051 of the Penal Code is amended to read:

3051. (a) (1) A youth offender parole hearing is a hearing by the Board of Parole Hearings for the purpose of reviewing the parole suitability of any prisoner who was 25 years of age or younger at the time of his or her controlling offense.

(2) For the purposes of this section, the following definitions shall apply:

(A) "Incarceration" means detention in a city or county jail, a local juvenile facility, a mental health facility, a Division of Juvenile Justice facility, or a Department of Corrections and Rehabilitation facility.

(B) "Controlling offense" means the offense or enhancement for which any sentencing court imposed the longest term of imprisonment.

(b) (1) A person who was convicted of a controlling offense that was committed when the person was 25 years of age or younger and for which the sentence is a determinate sentence shall be eligible for release on parole at a youth offender parole hearing by

the board during his or her 15th year of incarceration, unless previously released pursuant to other statutory provisions.

(2) A person who was convicted of a controlling offense that was committed when the person was 25 years of age or younger and for which the sentence is a life term of less than 25 years to life shall be eligible for release on parole by the board during his or her 20th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions.

(3) A person who was convicted of a controlling offense that was committed when the person was 25 years of age or younger and for which the sentence is a life term of 25 years to life shall be eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions.

(c) An individual subject to this section shall meet with the board pursuant to subdivision (a) of Section 3041.

(d) The board shall conduct a youth offender parole hearing to consider release. At the youth offender parole hearing, the board shall release the individual on parole as provided in Section 3041, except that the board shall act in accordance with subdivision (c) of Section 4801.

(e) The youth offender parole hearing to consider release shall provide for a meaningful opportunity to obtain release. The board shall review and, as necessary, revise existing regulations and adopt new regulations regarding determinations of suitability made pursuant to this section, subdivision (c) of Section 4801, and other related topics, consistent with relevant case law, in order to provide that meaningful opportunity for release.

(f) (1) In assessing growth and maturity, psychological evaluations and risk assessment instruments, if used by the board, shall be administered by licensed psychologists employed by the board and shall take into consideration the diminished culpability of juveniles as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual.

(2) Family members, friends, school personnel, faith leaders, and representatives from community-based organizations with knowledge about the individual before the crime or his or her growth and maturity since the time of the crime may submit statements for review by the board.

(3) This section is not intended to alter the rights of victims at parole hearings.

(g) If parole is not granted, the board shall set the time for a subsequent youth offender parole hearing in accordance with paragraph (3) of subdivision (b) of Section 3041.5. In exercising its discretion pursuant to paragraph (4) of subdivision (b) and subdivision (d) of Section 3041.5, the board shall consider the factors in subdivision (c) of Section 4801. No subsequent youth offender parole hearing shall be necessary if the offender is released pursuant to other statutory provisions prior to the date of the subsequent hearing.

(h) This section shall not apply to cases in which sentencing occurs pursuant to Section 1170.12, subdivisions (b) to (i), inclusive, of Section 667, or Section 667.61, or in which an individual was sentenced to life in prison without the possibility of parole. This section shall not apply to an individual to whom this section would otherwise apply, but who, subsequent to attaining 26 years of age, commits an additional crime for which malice aforethought is a necessary element of the crime or for which the individual is sentenced to life in prison.

(i) (1) The board shall complete all youth offender parole hearings for individuals who became entitled to have their parole suitability considered at a youth offender parole hearing prior to the effective date of the act that added paragraph (2) by July 1, 2015.

(2) (A) The board shall complete all youth offender parole hearings for individuals who were sentenced to indeterminate life terms and who become entitled to have their parole suitability considered at a youth offender parole hearing on the effective date of the act that added this paragraph by July 1, 2017.

(B) The board shall complete all youth offender parole hearings for individuals who were sentenced to determinate terms and who become entitled to have their parole suitability considered at a youth offender parole hearing on the effective date of the act that added this paragraph by July 1, 2021. The board shall, for all individuals described in this subparagraph, conduct the consultation described in subdivision (a) of Section 3041 before July 1, 2017.

(3) (A) The board shall complete all youth offender parole hearings for individuals who were sentenced to indeterminate life terms and who become entitled to have their parole suitability considered at a youth offender parole hearing on the effective date of the act that added this paragraph by January 1, 2020.

(B) The board shall complete all youth offender parole hearings for individuals who were sentenced to determinate terms and who become entitled to have their parole suitability considered at a youth offender parole hearing on the effective date of the act that added this paragraph by January 1, 2022. The board shall, for all individuals described in this subparagraph, conduct the consultation described in subdivision (a) of Section 3041 before January 1, 2019.

SEC. 2. Section 4801 of the Penal Code is amended to read:

4801. (a) The Board of Parole Hearings may report to the Governor, from time to time, the names of any and all persons imprisoned in any state prison who, in its judgment, ought to have a commutation of sentence or be pardoned and set at liberty on account of good conduct, or unusual term of sentence, or any other cause, including evidence of intimate partner battering and its effects. For purposes of this section, "intimate partner battering and its effects" may include evidence of the nature and effects of physical, emotional, or mental abuse upon the beliefs, perceptions, or behavior of victims of domestic violence if it appears the criminal behavior was the result of that victimization.

(b) (1) The board, in reviewing a prisoner's suitability for parole pursuant to Section 3041.5, shall give great weight to any information or evidence that, at the time of the commission of the crime, the prisoner had experienced intimate partner battering, but was convicted of an offense that occurred prior to August 29, 1996. The board shall state on the record the information or evidence that it considered pursuant to this subdivision, and the reasons for the parole decision. The board shall annually report to the Legislature and the Governor on the cases the board considered pursuant to this subdivision during the previous year, including the board's decisions and the specific and detailed findings of its investigations of these cases.

(2) The report for the Legislature to be submitted pursuant to paragraph (1) shall be submitted pursuant to Section 9795 of the Government Code.

(3) The fact that a prisoner has presented evidence of intimate partner battering cannot be used to support a finding that the prisoner lacks insight into his or her crime and its causes.

(c) When a prisoner committed his or her controlling offense, as defined in subdivision (a) of Section 3051, when he or she was 25 years of age or younger, the board, in reviewing a prisoner's suitability for parole pursuant to Section 3041.5, shall give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law.