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AB-1448 Elderly Parole Program. (2017-2018)

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Assembly Bill No. 1448

CHAPTER 676

An act to amend Sections 3041 and 3046 of, and to add Section 3055 to, 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 1448, Weber. Elderly Parole Program.

Existing law requires the Board of Parole Hearings to meet with an inmate during the 6th year prior to the inmate's minimum eligible parole release date to document the inmate's activities and conduct pertinent to parole eligibility. Existing law, the Victims' Bill of Rights Act of 2008: Marsy's Law, as added by Proposition 9 at the November 4, 2008, statewide general election, requires the panel, or the board if sitting en banc, to set a release date at the meeting, unless it determines that consideration of the public and victim's safety requires a more lengthy period of incarceration, and that a parole date cannot be fixed at the meeting. Existing law requires the board to schedule the next parole consideration hearing 15, 10, 7, 5, or 3 years after any hearing at which parole is denied. Existing law allows the board to advance a hearing set pursuant to these provisions to an earlier date when a change in circumstances or new information establishes a reasonable likelihood that consideration of the public and victim's safety does not require an additional period of incarceration.

This bill would establish the Elderly Parole Program, for the purpose of reviewing the parole suitability of inmates who are 60 years of age or older and who have served a minimum of 25 years of continuous incarceration, as defined, on their sentence. When considering the release of an inmate who meets this criteria, the bill would require the board to consider whether age, time served, and diminished physical condition, if any, have reduced the elderly inmate's risk for future violence. The bill would also require the Board of Parole Hearings to consider whether an inmate will qualify for the program when determining the prisoner's next parole suitability hearing. If the inmate is found suitable for parole under the Elderly Parole Program, the bill would require the board to release the individual on parole, as specified. The bill would exempt from Elderly Parole Program eligibility a person who was sentenced pursuant to the Three Strikes Law, a person who was sentenced to life in prison without the possibility of parole or death, and a person who was convicted of the first-degree murder of a peace officer or a person who had been a peace officer, as provided. The bill would make conforming changes.

This bill would incorporate additional changes to Section 3041 of the Penal Code proposed by AB 1408 to be operative only if this bill and AB 1408 are enacted and this bill is enacted last.

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

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

SECTION 1. Section 3041 of the Penal Code is amended to read:

3041. (a) (1) In the case of any inmate sentenced pursuant to any law, other than Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, the Board of Parole Hearings shall meet with each inmate during the sixth year before the inmate's minimum eligible parole date for the purposes of reviewing and documenting the inmate's activities and conduct pertinent to parole eligibility. During this consultation, the board shall provide the inmate information about the parole hearing process, legal factors relevant to his or her suitability or unsuitability for parole, and individualized recommendations for the inmate regarding his or her work assignments, rehabilitative programs, and institutional behavior. Within 30 days following the consultation, the board shall issue its positive and negative findings and recommendations to the inmate in writing.

(2) One year before the inmate's minimum eligible parole date a panel of two or more commissioners or deputy commissioners shall again meet with the inmate and shall normally grant parole as provided in Section 3041.5. No more than one member of the panel shall be a deputy commissioner.

(3) In the event of a tie vote, the matter shall be referred for an en banc review of the record that was before the panel that rendered the tie vote. Upon en banc review, the board shall vote to either grant or deny parole and render a statement of decision. The en banc review shall be conducted pursuant to subdivision (e).

(4) Upon a grant of parole, the inmate shall be released subject to all applicable review periods. However, an inmate shall not be released before reaching his or her minimum eligible parole date as set pursuant to Section 3046 unless the inmate is eligible for earlier release pursuant to his or her youth offender parole eligibility date or elderly parole eligible date.

(5) At least one commissioner of the panel shall have been present at the last preceding meeting, unless it is not feasible to do so or where the last preceding meeting was the initial meeting. Any person on the hearing panel may request review of any decision regarding parole for an en banc hearing by the board. In case of a review, a majority vote in favor of parole by the board members participating in an en banc review is required to grant parole to any inmate.

(b) (1) The panel or the board, sitting en banc, shall grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual.

(2) After July 30, 2001, any decision of the parole panel finding an inmate suitable for parole shall become final within 120 days of the date of the hearing. During that period, the board may review the panel's decision. The panel's decision shall become final pursuant to this subdivision unless the board finds that the panel made an error of law, or that the panel's decision was based on an error of fact, or that new information should be presented to the board, any of which when corrected or considered by the board has a substantial likelihood of resulting in a substantially different decision upon a rehearing. In making this determination, the board shall consult with the commissioners who conducted the parole consideration hearing.

(3) A decision of a panel shall not be disapproved and referred for rehearing except by a majority vote of the board, sitting en banc, following a public meeting.

(c) For the purpose of reviewing the suitability for parole of those inmates eligible for parole under prior law at a date earlier than that calculated under Section 1170.2, the board shall appoint panels of at least two persons to meet annually with each inmate until the time the person is released pursuant to proceedings or reaches the expiration of his or her term as calculated under Section 1170.2.

(d) It is the intent of the Legislature that, during times when there is no backlog of inmates awaiting parole hearings, life parole consideration hearings, or life rescission hearings, hearings will be conducted by a panel of three or more members, the majority of whom shall be commissioners. The board shall report monthly on the number of cases where an inmate has not received a completed initial or subsequent parole consideration hearing within 30 days of the hearing date required by subdivision (a) of Section 3041.5 or paragraph (2) of subdivision (b) of Section 3041.5, unless the inmate has waived the right to those timeframes. That report shall be considered the backlog of cases for purposes of this section, and shall include information on the progress toward eliminating the backlog, and on the number of inmates who have waived their right to the above timeframes. The report shall be made public at a regularly scheduled meeting of the board and a written report shall be made available to the public and transmitted to the Legislature quarterly.

(e) For purposes of this section, an en banc review by the board means a review conducted by a majority of commissioners holding office on the date the matter is heard by the board. An en banc review shall be conducted in compliance with the following:

(1) The commissioners conducting the review shall consider the entire record of the hearing that resulted in the tie vote.

(2) The review shall be limited to the record of the hearing. The record shall consist of the transcript or audiotape of the hearing, written or electronically recorded statements actually considered by the panel that produced the tie vote, and any other material actually considered by the panel. New evidence or comments shall not be considered in the en banc proceeding.

(3) The board shall separately state reasons for its decision to grant or deny parole.

(4) A commissioner who was involved in the tie vote shall be recused from consideration of the matter in the en banc review.

SEC. 1.1. Section 3041 of the Penal Code is amended to read:

3041. (a) (1) In the case of any inmate sentenced pursuant to any law, other than Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, the Board of Parole Hearings shall meet with each inmate during the sixth year before the inmate's minimum eligible parole date for the purposes of reviewing and documenting the inmate's activities and conduct pertinent to parole eligibility. During this consultation, the board shall provide the inmate information about the parole hearing process, legal factors relevant to his or her suitability or unsuitability for parole, and individualized recommendations for the inmate regarding his or her work assignments, rehabilitative programs, and institutional behavior. Within 30 days following the consultation, the board shall issue its positive and negative findings and recommendations to the inmate in writing.

(2) One year before the inmate's minimum eligible parole date a panel of two or more commissioners or deputy commissioners shall again meet with the inmate and shall normally grant parole as provided in Section 3041.5. No more than one member of the panel shall be a deputy commissioner.

(3) In the event of a tie vote, the matter shall be referred for an en banc review of the record that was before the panel that rendered the tie vote. Upon en banc review, the board shall vote to either grant or deny parole and render a statement of decision. The en banc review shall be conducted pursuant to subdivision (e).

(4) Upon a grant of parole, the inmate shall be released subject to all applicable review periods. However, an inmate shall not be released before reaching his or her minimum eligible parole date as set pursuant to Section 3046 unless the inmate is eligible for earlier release pursuant to his or her youth offender parole eligibility date or elderly parole eligible date.

(5) At least one commissioner of the panel shall have been present at the last preceding meeting, unless it is not feasible to do so or where the last preceding meeting was the initial meeting. Any person on the hearing panel may request review of any decision regarding parole for an en banc hearing by the board. In case of a review, a majority vote in favor of parole by the board members participating in an en banc review is required to grant parole to any inmate.

(b) (1) The panel or the board, sitting en banc, shall grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual. The panel or the board, sitting en banc, shall consider the entire criminal history of the inmate, including all current or past convicted offenses, in making this determination.

(2) After July 30, 2001, any decision of the parole panel finding an inmate suitable for parole shall become final within 120 days of the date of the hearing. During that period, the board may review the panel's decision. The panel's decision shall become final pursuant to this subdivision unless the board finds that the panel made an error of law, or that the panel's decision was based on an error of fact, or that new information should be presented to the board, any of which when corrected or considered by the board has a substantial likelihood of resulting in a substantially different decision upon a rehearing. In making this determination, the board shall consult with the commissioners who conducted the parole consideration hearing.

(3) A decision of a panel shall not be disapproved and referred for rehearing except by a majority vote of the board, sitting en banc, following a public meeting.

(c) For the purpose of reviewing the suitability for parole of those inmates eligible for parole under prior law at a date earlier than that calculated under Section 1170.2, the board shall appoint panels of at least two persons to meet annually with each inmate until the time the person is released pursuant to proceedings or reaches the expiration of his or her term as calculated under Section 1170.2.

(d) It is the intent of the Legislature that, during times when there is no backlog of inmates awaiting parole hearings, life parole consideration hearings, or life rescission hearings, hearings will be conducted by a panel of three or more members, the majority of whom shall be commissioners. The board shall report monthly on the number of cases where an inmate has not received a completed initial or subsequent parole consideration hearing within 30 days of the hearing date required by subdivision (a) of Section 3041.5 or paragraph (2) of subdivision (b) of Section 3041.5, unless the inmate has waived the right to those timeframes. That report shall be considered the backlog of cases for purposes of this section, and shall include information on the progress toward eliminating the backlog, and on the number of inmates who have waived their right to the above timeframes. The report shall be made public at a regularly scheduled meeting of the board and a written report shall be made available to the public and transmitted to the Legislature quarterly.

(e) For purposes of this section, an en banc review by the board means a review conducted by a majority of commissioners holding office on the date the matter is heard by the board. An en banc review shall be conducted in compliance with the following:

(1) The commissioners conducting the review shall consider the entire record of the hearing that resulted in the tie vote.

(2) The review shall be limited to the record of the hearing. The record shall consist of the transcript or audiotape of the hearing, written or electronically recorded statements actually considered by the panel that produced the tie vote, and any other material actually considered by the panel. New evidence or comments shall not be considered in the en banc proceeding.

(3) The board shall separately state reasons for its decision to grant or deny parole.

(4) A commissioner who was involved in the tie vote shall be recused from consideration of the matter in the en banc review.

SEC. 2. Section 3046 of the Penal Code is amended to read:

3046. (a) An inmate imprisoned under a life sentence shall not be paroled until he or she has served the greater of the following:

(1) A term of at least seven calendar years.

(2) A term as established pursuant to any other law that establishes a minimum term or minimum period of confinement under a life sentence before eligibility for parole.

(b) If two or more life sentences are ordered to run consecutively to each other pursuant to Section 669, an inmate so imprisoned shall not be paroled until he or she has served the term specified in subdivision (a) on each of the life sentences that are ordered to run consecutively.

(c) Notwithstanding subdivisions (a) and (b), an inmate found suitable for parole pursuant to a youth offender parole hearing as described in Section 3051 or an elderly parole hearing as described in Section 3055 shall be paroled regardless of the manner in which the board set release dates pursuant to subdivision (a) of Section 3041, subject to subdivision (b) of Section 3041 and Sections 3041.1 and 3041.2, as applicable.

(d) The Board of Parole Hearings shall, in considering a parole for an inmate, consider all statements and recommendations which may have been submitted by the judge, district attorney, and sheriff, pursuant to Section 1203.01, or in response to notices given under Section 3042, and recommendations of other persons interested in the granting or denying of parole. The board shall enter on its order granting or denying parole to these inmates, the fact that the statements and recommendations have been considered by it.

SEC. 3. Section 3055 is added to the Penal Code, to read:

3055. (a) The Elderly Parole Program is hereby established, to be administered by the Board of Parole Hearing, for purposes of reviewing the parole suitability of any inmate who is 60 years of age or older and has served a minimum of 25 years of continuous incarceration on his or her current sentence, serving either a determinate or indeterminate sentence.

(b) (1) For purposes of this code, the term "elderly parole eligible date" means the date on which an inmate who qualifies as an elderly offender is eligible for release from prison.

(2) For purposes of this section, "incarceration" means detention in a city or county jail, local juvenile facility, a mental health facility, a Division of Juvenile Justice facility, or a Department of Corrections and Rehabilitation facility.

(c) When considering the release of an inmate specified by subdivision (a) pursuant to Section 3041, the board shall give special consideration to whether age, time served, and diminished physical condition, if any, have reduced the elderly inmate's risk for future violence.

(d) When scheduling a parole suitability hearing date pursuant to subdivision (b) of Section 3041.5 or when considering a request for an advance hearing pursuant to subdivision (d) of Section 3041.5, the board shall consider whether the inmate meets or will meet the criteria specified in subdivision (a).

(e) An individual who is subject to this section shall meet with the board pursuant to subdivision (a) of Section 3041. If an inmate is found suitable for parole under the Elderly Parole Program, the board shall release the individual on parole as provided in Section 3041.

(f) If parole is not granted, the board shall set the time for a subsequent elderly parole hearing in accordance with paragraph (3) of subdivision (b) of Section 3041.5. No subsequent elderly parole hearing shall be necessary if the offender is released pursuant to other statutory provisions prior to the date of the subsequent hearing.

(g) 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 in which an individual was sentenced to life in prison without the possibility of parole or death.

(h) This section does not apply if the person was convicted of first-degree murder if the victim was a peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who was killed while engaged in the performance of his or her duties, and the individual knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties, or the victim was a peace officer or a former peace officer under any of the above-enumerated sections, and was intentionally killed in retaliation for the performance of his or her official duties.

(i) This section does not alter the rights of victims at parole hearings.

SEC. 4. Section 1.1 of this bill incorporates amendments to Section 3041 of the Penal Code proposed by both this bill and Assembly Bill 1408. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 3041 of the Penal Code, and (3) this bill is enacted after Assembly Bill 1408, in which case Section 1 of this bill shall not become operative.