
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 1308 **Hearing Date:** June 27, 2017
Author: Mark Stone
Version: March 30, 2017
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Youth Offender Parole Hearings*

HISTORY

Source: Human Rights Watch
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Pacific Juvenile Defender Center
Post-Conviction Justice Project of the University of Southern California's Gould School of Law
Youth Justice Coalition

Prior Legislation: SB 261 (Hancock) Chapter 471, Stats. 2015
SB 260 (Hancock) Chapter 312, Stats. 2013
SB 9 (Yee) Chapter 828, Stats. 2012
SB 399 (Yee) Failed Assembly Floor 2010
SB 999 (Yee) Failed Assembly Floor 2008
SB 1223 (Kuehl) Failed Assembly Appropriations 2004

Support: Anti-Recidivism Coalition; American Civil Liberties Union; Asian Law Alliance; Alliance for Boys and Men of Color; California Catholic Conference Institute; California Attorneys for Criminal Justice; California Coalition for Youth; California Public Defenders Association; Center on Juvenile and Criminal Justice; Children's Defense Fund-California; Ella Baker Center for Human Rights; Equal Justice Society; Fair Chance Project; Felony Murder Elimination Project; Friends Committee of California; Healing Dialogue and Action; Hinton's Small Family Home; Initiate Justice; Justice Now; Lutheran Office of Public Policy-California; March and Rally Los Angeles; Motivating Individual Leadership for Public Advancement; National Center for Youth Law; Pasatiempo Pictures; Prison Law Office; Riverside County Alliance for Boys and Men of Color; Santa Clara University; the Sentencing Project; Silicon Valley De-Bug; The W Haywood Burns Institute; Women's Leadership Project; Youth Law Center; a number of individuals

Opposition: Association for Los Angeles Deputy Sheriffs; Association for Deputy District Attorneys; California Association of Code Enforcement Officers; California College and University and University Police Chiefs Association; California Correctional Supervisors Organization; California District Attorneys Association; California Narcotic Officers Association; Crime Victims Action Alliance; the Los Angeles County Probation Officers Union AFSCME Local 685; the Los Angeles County Professional Peace Officers Association; the Los Angeles Police Protective League; San Diego County District Attorney

PURPOSE

The purpose of this bill is to expand the youth offender parole process, a parole process for persons sentenced to lengthy prison terms for crimes committed before attaining 23 years of age, to include those who have committed their crimes before attaining the age of 25.

Existing law creates the youth offender parole hearing which is a hearing by the Board of Parole Hearings for the purpose of reviewing the parole suitability of any prisoner who was under 23 years of age at the time of his or her controlling offense. (Penal Code § 3051)

Existing law provides that the timing for the youth offender parole hearing depends on the sentence: if the controlling offense was a determinate sentence the offender shall be eligible for release after 15 years; if the controlling offense was a life term less than 25 years then the person is eligible for release after 20 years; and, if the controlling offense was 25 years or more then the person is eligible for release after 25 years. (Penal Code § 3051 (b).)

Existing law provides that if the youth offender is found suitable for parole at the youthful offender parole hearing then the youth offender shall be released on parole. (Penal Code § 3051 (e).)

Existing law provides that in reviewing a prisoner's suitability for parole in a youthful offender parole hearing, the Board of Parole Hearings 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. (Penal Code § 4801 (c).)

This bill expands those eligible for a youthful parole hearing to those whose committing offense occurred before they reached the age of 25.

This bill provides that those eligible for a youthful offender parole hearing on the effective date of this bill who were sentenced to an indeterminate life sentence shall have their hearings by January 1, 2020.

This bill provides that those eligible for a youthful offender parole hearing on the effective date of this bill who were sentenced to determinate terms shall have their hearings by January 1, 2022 and their parole eligibility consultation shall occur before January 1, 2019.

COMMENTS

1. Need for This Bill

According to the author:

Under current law, certain inmates—who were under the age of 23 when committed a crime for which they received a lengthy or life sentence—are eligible for a youth offender parole hearing after serving a lengthy prison sentence. AB 1308 would align public policy with scientific research. This measure would expand eligibility of the youth parole hearing process to certain individuals who were 25 or under when they committed a crime for which they received a lengthy

or life sentence for a youth offender parole hearing. Scientific evidence on adolescence and young adult development and neuroscience shows that certain areas of the brain, particularly those affecting judgment and decision-making, do not develop until the early-to mid-20s. Research has shown that the prefrontal cortex doesn't have nearly the functional capacity at age 18 as it does at 25. The prefrontal cortex is responsible for a variety of important functions of the brain including: attention, complex planning, decision making, impulse control, logical thinking, organized thinking, personality development, risk management, and short-term memory. These functions are highly relevant to criminal behavior and culpability.

Since the passage of SB 260 and 261 motivation to focus on rehabilitation has increased. An offender is more likely to enroll in school, drop out of a gang, or participate in positive programs if they can sit before a parole board sooner, if at all, and have a chance of being released.

2. Case law on Juvenile Offenders

In 2010, the United States Supreme Court ruled that it is unconstitutional to sentence a youth who did not commit homicide to a sentence of life without the possibility of parole (LWOP). (*Graham v. Florida* (2010) 540 U.S. 48 [130 S.Ct. 2011] (*Graham*)). The Court discussed the fundamental differences between a juvenile and adult offender and reasserted its earlier findings from *Roper v. Simmons* (2005) 543 U.S. 551, that juveniles have lessened culpability than adults due to those differences. The Court stated that "life without parole is an especially harsh punishment for a juvenile," noting that a juvenile offender "will on average serve more years and a greater percentage of his life in prison than an adult offender." (*Graham v. Florida, supra*, 540 U.S. at pp. 48-51.) However, the Court stressed that "while the Eighth Amendment forbids a State from imposing a life without parole sentence on a juvenile non-homicide offender, it does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. The Eighth Amendment does not foreclose the possibility that persons convicted of non-homicide crimes committed before adulthood will remain behind bars for life. It does forbid States from making the judgment at the outset that those offenders never will be fit to reenter society." (*Id.* at pp. 51-52.)

In *Miller v. Alabama* (2012) 567 U.S. 460 [132 S.Ct. 2455] (*Miller*), the Court further decided that mandatory LWOP sentences for minors under age 18 at the time of a homicide violate the prohibition against cruel and unusual punishment.

In *People v. Caballero* (2012) 55 Cal.4th 262, 268 (*Caballero*), the California Supreme Court ruled that sentencing a juvenile offender for a non-homicide offense to a term of years with a parole eligibility date that falls outside the juvenile offender's natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment. (*People v. Caballero* (2012) 55 Cal.4th 262, 268 (*Caballero*)). The Court stated that "the state may not deprive [juveniles] at sentencing of a meaningful opportunity to demonstrate their rehabilitation and fitness to reenter society in the future." (*Ibid.*) Citing *Graham* the Court stated "the sentencing court must consider all mitigating circumstances attendant in the juvenile's crime and life, including but not limited to his or her chronological age at the time of the crime, whether the juvenile offender was a direct perpetrator or an aider and abettor, and his or her physical and mental development, so that it can impose a time when the juvenile offender will be able to seek

parole from the parole board.” (*Id.* at pp. 268-269.) In *Caballero*, the defendant was convicted of three counts of attempted murder and received a sentence of 110-years-to-life. Relying on the reasoning in the *Graham* case, the Court found that while the juvenile did not receive a sentence of LWOP, trial court’s sentence effectively deprives the defendant of any “realistic opportunity to obtain release” from prison during his or her expected lifetime, thus the sentence is a de facto LWOP sentence and violates the Eighth Amendment’s prohibition against cruel and unusual punishment. (*Id.* at p. 268.)

The court in *Caballero* advised that “[d]efendants who were sentenced for crimes they committed as juveniles who seek to modify life without parole or equivalent de facto sentences already imposed may file petitions for writs of habeas corpus in the trial court in order to allow the court to weigh the mitigating evidence in determining the extent of incarceration required before parole hearings.” (*People v. Caballero, supra*, 55 Cal.4th at p. 269.) The Court did not provide a precise timeframe for setting these future parole hearings, but stressed that “the sentence must not violate the defendant’s Eighth Amendment rights and must provide [the defendant with] a ‘meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation’ under *Graham’s* mandate.” (*Ibid.*)

While the court in *Caballero* pointed out that these inmates may file petitions for writs of habeas corpus in the trial court, the court also urged the Legislature to establish a parole eligibility mechanism for an individual sentenced to a de facto life term for crimes committed as a juvenile. SB 260 (Hancock), Chapter 312, Statutes of 2013, established a parole process for inmates who were sentenced to lengthy prison terms for crimes committed when they were under the age of 18, rather than requiring the inmate to file a writ of habeas corpus and appear before the trial court for resentencing. (Penal Code, § 3051.) SB 261 (Hancock), Chapter 471, Statutes of 2015, expanded those eligible for a youth offender parole hearing to those whose committing offense occurred before they reached the age of 23. (Penal Code, § 3051.) In *People v. Franklin* (2016) 63 Cal.4th 261, the Supreme Court held the enactment of Penal Code section 3051 satisfies the requirement of *Miller-Caballero* that a defendant who was a minor at the time of an offense have a reasonable opportunity to gain release during his or her natural lifetime, because it requires that the defendant receive a parole hearing during his 25th year of incarceration.

This bill further expands those eligible for a youth offender parole hearing under Penal Code section 3051 to those whose committing offense occurred when they were 25 years of age or younger. The rationale, as expressed by the author and supporters of this bill, is that research shows that cognitive brain development continues into the early 20s or later. The parts of the brain that are still developing during this process affect judgment and decision-making, and are highly relevant to criminal behavior and culpability. (See Johnson, et al., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, Journal of Adolescent Health (Sept. 2009); National Institute of Mental Health, *The Teen Brain: Still Under Construction* (2011).) “The development and maturation of the prefrontal cortex occurs primarily during adolescence and is fully accomplished at the age of 25 years. The development of the prefrontal cortex is very important for complex behavioral performance, as this region of the brain helps accomplish executive brain functions.”

(<<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3621648/>> [as of April 20,2017].)

3. Youth Offender Parole Hearings Status

According to the State's March 2017 status report on measures being taken to reduce the prison population pursuant to the three-judge panel's February 10, 2014 order:

The State continues to implement Senate Bill 260 (2013) and Senate Bill 261 (2015), which allows inmates whose crimes were committed before the age of 23 to appear before the Board of Parole Hearings (the Board) to demonstrate their suitability for release after serving at least fifteen years of their sentence. From January 1, 2014 through February 28, 2017, the Board held 2,519 youth offender hearings, resulting in 659 grants, 1,547 denials, 313 stipulations to unsuitability, and there are currently no split votes that require referral to the full Board for further consideration. An additional 1,467 hearings were scheduled during this time period, but were waived, postponed, continued, or cancelled. (Defendants' March 2017 Status Report In Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown.*)

4. Argument in Support

According to Human Rights Watch:

The Youth Offender Parole law was originally passed by the legislature in 2012, and applied only to persons under the age of 18 at the time of a crime. As a result, the state has more than four years of concrete information about how the law works. The most recent account shows that 74% of Youth Offender Parole hearings have resulted in denials. With a grant rate of 26%, Youth Offender Parole has proven thus far to be a cautious and moderate adjustment to the parole process.

The Youth Offender Parole law is based on developmental and neurological evidence about adolescents and young adults. Neuroscientific research finds that the process of cognitive brain development continues into early adulthood. For boys and young men especially, this development process continues into the mid-20s. The still-developing areas of the brain, particularly those that affect judgment and decision making, are highly relevant to criminal behavior and culpability.

California law recognizes the need to protect and provide special opportunities to young adults. Among other things, state law extends foster care services to age 21; sets Division of Juvenile Justice jurisdiction at age 23; and the Department of Corrections and Rehabilitation provides special opportunities and protections for young adults in prison up to age 25.

People who commit crimes should be held accountable. However, when a young person who is still neurologically and socially developing is sentenced to a lengthy prison term, California disregards the human capacity for rehabilitation and ignores the very real physical and psychological differences between young people and older adults. Punishment should reflect the capacity of a young person to change and mature. Assembly Bill 1308 would ensure that young adults face punishment for their crimes, but also have a meaningful chance for parole.

5. Argument in Opposition

According to the San Diego County District Attorney:

We challenge the sweeping generalization embedded in the bill that holds all persons under the age of 25 to a lower standard of culpability just as we did in 2015 when Senate Bill 261 was introduced. The Governor signed Senate Bill 261 which raised the youth offenders from 18 to 23 years of age and it became effective January 1, 2016. Now, barely one year later, AB 1308 seeks to change the age of the ‘youthful offender’ to 25 years and younger.

...

We understand the need for providing incentives to youthful offenders who have received very long sentences. However, AB 1308 simply allows for those 25 and younger to be entitled to parole hearings after serving a certain amount of time. AB 1308 does not require these men and women to complete programming milestones. There are no incentives in AB 1308 for these adult offenders to pursue education, vocational training or to attend AA meetings to be eligible, they just have to do their time. Further, in many of these cases, the crimes committed by these ‘youthful offenders’ are horrendous, families have been shattered, and many victims have been given a life sentence of their own from which there is no early release.

The impact and consequences of early release for “youthful offenders” is still being calculated because the law has barely been in effect for a year. We believe it is far too soon to take a second bite of the “youthful offender” parole program by raising the age to 25 years and younger.

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