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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 1448                      **Hearing Date:** July 11, 2017  
**Author:** Weber  
**Version:** May 30, 2017  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Elderly Parole Program*

## HISTORY

Source: Author

Prior Legislation: SB 244 (Liu) held Senate Appropriations 2015

Support: American Civil Liberties Union; Alliance for Boys and Men of Color; Anti-Recidivism Coalition; California Attorneys for Criminal Justice; California Catholic Conference; Center on Juvenile and Criminal Justice; California Public Defenders Association; over a dozen individuals

Opposition: Association of Deputy District Attorneys; Association for Los Angeles Deputy Sheriffs; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California Correctional Supervisors Organization; California District Attorneys Association; California Narcotic Officers Association; California Police Chiefs Association; California State Sheriffs' Association; Crime Victims United of California; Los Angeles County Probation Officers Union AFSCEME Local 685; Los Angeles County Professional Peace Officers Association; Los Angeles Police Protective League; Riverside Sheriffs' Association

Assembly Floor Vote: 41 - 33

## PURPOSE

*The purpose of this bill is to codify the Elderly Parole Program, to be administered by the Board of Parole Hearings (BPH).*

*Existing law* provides that in the case of any inmate sentenced to an indeterminate sentence the Board of Parole Hearings (the Board) shall meet with each inmate during the sixth year prior to the inmate's eligible parole release date for the purposes of reviewing and documenting the inmates activities and conduct pertinent to both parole eligibility and to the granting and withholding of postconviction credit. (Penal Code § 3041(a))

*Existing law* provides that one year prior to the inmates minimum eligible parole release date a panel of two or more commissioners or deputy commissioners shall meet with the inmate and shall normally set a parole release date. (Penal Code § 3041(a))

*Existing law* provides that the release date shall be sent in a manner that will provide uniform terms for offenses of similar gravity and magnitude with respect to their threat to the public, and that will comply with the sentencing rules that the Judicial Council may issue and any sentencing information relevant to the setting of the parole release dates. The Board shall establish criteria for the setting of parole release dates and in doing so shall consider the number of victims of crime for which the inmate was sentenced and other factors in mitigation or aggravation of the crime. (Penal Code § 3041 (a))

*Existing law* provides that one year prior to the inmate's minimum eligible parole release date a panel of two or more commissioners or deputy commissioners shall again meet with the inmate, hall except as provided, normally set a parole release date as provided in Section 3041.5. (Penal Code § 3041(a))

According to the Three-judge Court order filed February 10, 2014 the CDCR must "[f]inalize and implement a new parole process whereby inmates who are 60 years of age or older and have served a minimum of twenty-five years of their sentence will be referred to the Board of Parole Hearings to determine suitability for parole." (February 10, 2014 Order, 2:90-cv-0520 LKK DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown*)

*This bill* provides that the Elderly Parole Program is hereby established, to be administered by the BPH.

*This bill* requires a prisoner to be considered for parole under the Elderly Parole Program if he or she meets both of the following conditions:

- a) The prisoner is 60 years of age or older; and,
- b) The prisoner has served a minimum of 25 years of continued incarceration on his or her current sentence, serving either a determinate or indeterminate sentence.

*This bill* provides that when considering the release of a prisoner by the panel or board sitting en banc, the board shall give special consideration to whether age, time served, and diminished physical condition, if any, have reduced the elderly prisoner's risk of future violence.

*This bill* states that when scheduling a parole suitability hearing or when considering a request for an advance hearing, the board shall consider whether the prisoner meets the above age and continuous incarceration requirement.

*This bill* provides that if the prisoner is found suitable for parole under the Elderly Parole Program, the board shall release the individual on parole, as specified.

*This bill* prohibits a prisoner from being paroled who has been sentenced under the "Three Strikes" Law, or who has been sentenced to life in prison without the possibility of parole or death.

## COMMENTS

### 1. Need for This Bill

According to the author:

Costs associated with geriatric medical needs begin to accumulate at 50 years of age, given that there is an overwhelming consensus that the age of 50 constitutes a point when prisoners are considered elderly. In 2010, the LAO estimated from other state projections that incarcerating elderly offenders costs two to three times more than for the general prison population. In 2010, the average cost of incarcerating an inmate was approximately \$51,000.

Following *Plata/Coleman v. Brown* (2013), California was ordered to reduce its prison population to 137.5% of design capacity by 2016, owing to overcrowding concerns. On February 10, 2014, the court directed the California Department of Corrections and Rehabilitation (CDCR) to implement a new parole process whereby elderly prisoners are referred to the BPH to determine suitability for parole. Governor Brown, along with the CDCR, subsequently implemented the Elderly Parole Program as part of the state's long-standing plan to decrease prison over-crowding. This program was applied to suitability hearings scheduled after October 1, 2014.

Under the existing program, elderly prisoners who would qualify for a parole hearing after serving a certain number of years may become eligible for an earlier review hearing if they meet certain age and time served requirements. Currently, elderly prisoners who are 60 years and older, and who have been incarcerated for at least 25 years, are referred to the BPH for a review hearing. Elderly prisoners sentenced to death or life without the possibility of parole are not eligible to receive a hearing, or to be granted parole, under this program.

Parole hearing decisions for elderly prisoners who qualify under the existing program are currently made in the same manner as for all other people eligible for parole hearings. The BPH may deny parole if a determination is made that the release would constitute an unreasonable risk of danger to public safety.

From February 11, 2014 through April 30, 2017, the Board has held 1,966 hearings for inmates eligible for elderly parole, resulting in 505 grants, 1,311 denials, 150 stipulations to unsuitability, and there currently are no split votes that require further review by the full Board. An additional 893 hearings were scheduled during this time period but were waived, postponed, continued, or cancelled.

There is a lower risk of recidivism among elderly prisoners, according to CDCR statistics. In 2015, CDCR reported that only 31.1 percent of persons who were 60 years of age and older, returned to prison after three years from being released from prison compared to the state average of 44.6 percent for all formerly incarcerated individuals. Recidivism rates for persons 50 to 54, inclusive, years of age and 55 to 59, inclusive, years of age after one year from being released from prison were 39.4 and 34.6 percent, respectively.

Assembly Bill 1448 codifies the existing Elderly Parole Program implemented by the Brown Administration following the prison overcrowding class action case *Plata/Coleman v. Brown* (2013). The bill sets the age and time served requirements for receiving a parole review hearing to allow people who are 60 years of age and older, and who have been incarcerated for at least 25 years on their current sentence, to be reviewed by the Board of Parole Hearings (BPH) under the elder parole review guidelines

## 2. Elderly Parole

In *Coleman v. Brown, Plata v. Brown* in which the plaintiffs are seeking a reduction in the California prison population, the Three-Judge Court Order of February 10, 2014 required CDCR to create an “elderly parole” program in which prisoners who have reached the age of 60 and served 25 years will be considered for parole. The elderly parole hearings began on October 1, 2014. CDCR’s February 2015 status report in response to the February 10, 2014 court order states the progress of the elderly parole program stating:

Parole process for inmates 60 years of age or older having served at least 25 years: The Board continues to schedule eligible inmates for hearings who were not already in the Board’s hearing cycle, including inmates sentenced to determinate terms. The Board has scheduled 549 hearings for inmates eligible for elderly parole, resulting in 115 grants, 247 denials, and 26 stipulations to unsuitability. The remaining 159 scheduled cases were waived by the inmate, postponed, continued, or cancelled. .”(Defendants’ February 2015 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*).

The age 60 was determined because there is a significant reduction in crimes committed by those over 60. According to felony arrest and CDCR admissions data by age:

In California, individuals age 60 or over were responsible for the lowest percentage of all felony arrests of all age groups in 2012, with the exception of children under the age of 10. Individuals age 60 or over were responsible for 1.9% of all felony arrests.

While the data shows that there are still 32,980 felony arrests of people 50-59 years of age those numbers drop 7,454 at age 60.

([http://www.cdcr.ca.gov/BOPH/docs/Policy/2012\\_California\\_Arrest\\_and\\_CDCR\\_Admissions\\_Data\\_by\\_Age\\_Final.pdf](http://www.cdcr.ca.gov/BOPH/docs/Policy/2012_California_Arrest_and_CDCR_Admissions_Data_by_Age_Final.pdf))

This bill codifies the existing elderly parole program.

## 3. Argument in Support

According to the California Catholic Conference:

In 2013, California was ordered to reduce its prison population to 137% of design capacity by 2016, owing to overcrowding concerns. In 2014 the court directed the California Department of Corrections and Rehabilitation (CDCR) to implement a new parole process whereby incarcerated are referred to the Board of Parole

Hearings (BPH) to determine suitability for parole. Under the program, incarcerated elders who would qualify for a parole hearing after serving after serving a certain number of years may become eligible may become eligible for an earlier review hearing if they meet certain age and time requirements. AB 1844 ensures the program continues in the future as a practical and sustainable means of reducing California's prison population.

The number of elderly prisoners in California state prisons will continue to increase exponentially. In 2013, the CDCR reported a population of prisoners 50 years of age and older as 27,580 and the population of 55 years of age and older as 14,856. Cost associated with geriatric medical needs begins to accumulate at 50 years of age. In 2010, it was estimated that incarcerating elderly offenders costs two to three times more than for the general prison population. In 2010, the average cost of incarcerating an inmate was approximately \$51,000.

#### **4. Argument in Opposition**

According to the California District Attorneys Association:

AB 1448 would codify an Elderly Parole Program, allowing earlier parole consideration for individuals who are 60 years old and have served at least 25 years of their current sentence.

We acknowledge that this program currently exists under the February 10, 2014 federal court order, and has been implemented since October 1, 2014. The purpose of this program and other measures ordered by the court, was to reduce California's prison population to less than 137% of design capacity. That has been done. In fact, CDCR met the court-ordered population cap more than a year early. With the recent passage of Proposition 57, it is unlikely that California will find itself exceeding the population cap set by the court.

AB 1448 seeks to put this early release program in statute, so that it will continue to exist after the court-order (and the programs it imposed) is lifted. We believe that it is unnecessary considering the much broader parole provisions of Proposition 57, it is unlikely that California will find itself exceeding the population cap set by the court.

Over the last decade, we've seen a steady erosion of constitutional principles of truth in sentencing, and Marsy's Law, at the expense of accountability and public safety. AB 1448 continues this troubling trend.

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