
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 230 **Hearing Date:** April 28, 2015
Author: Hancock
Version: March 24, 2015
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Sentencing: Parole*

HISTORY

Source: Author

Prior Legislation: SB 1363 (Hancock) failed Senate Floor 2014

Support: California Public Defenders Association

Opposition: None known

PURPOSE

The purpose of this bill is to provide that once a person is found suitable for parole he or she will be released.

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 inmate's 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 set 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 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, and except as provided, normally set a parole release date as provided in Section 3041.5. (Penal Code § 3041(a))

Existing law provides that 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 hearing the board may review the panel's decision. The decision shall become final unless there was an error of law or an error of fact or new information that should be presented to the board. No decision of the parole panel shall be disapproved and referred for rehearing except by a majority vote of the board, sitting en banc, following a public meeting. (Penal Code § 3041(b))

Existing regulations provide that, based on facts from the underlying crime, an inmate can be held for a longer period of time once they are found suitable for parole.

This bill provides that an inmate found suitable for parole shall be paroled subject to review by the Governor.

Existing law provides that up to 90 days prior to a scheduled release date, the Governor may request review of a decision by a parole authority concerning the grant or denial of parole to any inmate in state prison. (Penal Code § 3041.1)

This bill provides instead that any time before an inmate's release the Governor can make such a request.

This bill makes technical and conforming changes.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (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* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31,

2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

Under existing law, the Board of Parole Hearings (BPH) holds hearings to determine if an inmate serving a life sentence is suitable for parole. However, because of the confusing, convoluted way parole dates are calculated, an inmate can remain in prison several years after BPH deems him or her suitable.

Under Penal Code §3041 and pursuant to the settlement in *In re Butler* (2013), BPH holds an initial suitability hearing for an inmate one year before his or her minimum eligibility parole date. If the inmate is found suitable for parole, BPH then calculates the inmate's "base term."

The base term is the first step in determining the amount of time before an inmate is paroled. It is determined using a bi-axial matrix that calculates how much time in prison an inmate deserves based on the circumstances of the crime he or she committed. In addition to the time dictated by the base term, BPH can add enhancements for the use of a firearm, or offenses other than the original life sentence. The result is the "adjusted base term."

Many of the enhancements added can be problematic. For instance, some are used against an inmate twice; once by the trial judge at sentencing, and again (possibly years later) by BPH when calculating the adjusted base term. This goes against a determinate sentencing system in which enhancements are intended to be used at the front end, at the sentencing stage.

Some enhancements may also be based on assertions that are unsupported by a jury's finding-of-fact. For instance, a jury could omit finding that the inmate used a firearm. At a parole suitability hearing years later, BPH could assert that in spite of a jury finding to the contrary, it believes the inmate used a firearm and add an additional enhancement to the base term.

In addition, an enhancement can be added for an additional criminal charge that did not result in a conviction. The only requirement is that BPH believes the facts surrounding the crime are “reliably documented.” Again, this would be contrary to the findings-of-fact by a jury at trial, or a decision by a district attorney to drop the criminal charge.

At a subsequent parole hearing, BPH further adjusts the adjusted base term, which was calculated using these enhancements. It does so by giving an inmate post-conviction credits for the amount of time he or she has already served in prison. The adjusted base term minus post-conviction credits determines the calculated release date. If that date is in the future, the inmate must serve more time before being paroled.

This perverse result in which an inmate is found suitable for parole but must serve additional time (often years) before actually being paroled is the result of the confusing, convoluted system used to calculate release dates.

2. Release Upon a Finding of Suitability

Under existing law a person can be found suitable for parole by the board and still not be released because of the various enhancements that can be added to the person’s term. The first parole hearing is not until the date that seems like the person’s sentence (ie. 15 years is 15 to life minus any eligible credits etc.), yet because of the added time a person could be found suitable for parole and held in prison 2, 5, or even 10 or more years beyond that date. This is the case even though the Board of Parole Hearings, in determining suitability, takes into consideration the facts of the original crime along with the steps the inmate has taken toward rehabilitation and his or her current danger to the public. To be found suitable for parole the board has found that he or she is not a current danger; however, the current system keeps them in for longer at great expense and no added safety to the public.

This bill provides that if an inmate is found suitable he or she shall be released, after the Governor’s statutory right of review. The author believes that this is a truth in sentencing provision. If a person serves his or her time as imposed by the sentencing court and is found suitable, he or she is released. This will also give the inmate a realistic time frame to work toward rehabilitating himself or herself. The author believes that to be found suitable by the board and then kept longer because of factors in your original crime, that were already considered by the board, does not encourage rehabilitative behavior by inmates.

3. Change in Time for the Governor to Request a Review of the Parole Decision

Under existing law the Governor can ask for the review of a parole decision up to 90 days prior to the release. This works under the existing system in which a person can be found suitable for parole but not released for years afterwards. Under this bill once found suitable, a person will be released after the 120 days the Governor has to review parole decisions. Because of this shorter time frame to release, the Governor may not have time to ask for a review of the decision 90 days prior to the release. Thus this bill would allow the Governor to ask for the review any time prior to the release to give the Governor the time to study the decision and determine whether to ask for a review.

4. Support

In support the California Public Defenders Association states:

The effect of SB 230 is restoration of truth in sentencing. SB 230 would provide that when an individual is found suitable for parole by the Board of Parole Hearings (BPH), that they would actually be granted parole pending review by the Governor. Under the current convoluted system of calculating parole time, an inmate can remain in prison, sometimes upwards of years, after BPH finds them suitable for parole. Under current law, BPH considers and adds additional years to an inmate's incarceration based on previous criminal charges that the inmate was never convicted of or enhancements that the sentencing court already took into account. This opaque parole system results in inmates who have been found suitable for parole serving additional time (often years) before they are actually paroled.

SB 230 simplifies our parole system in a basic and commonsense way. It saves money and ensures public safety, by ensuring that suitable inmates are released.

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