
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2310 **Hearing Date:** June 18, 2024
Author: Hart
Version: May 16, 2024
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Parole hearings: language access*

HISTORY

Source: UnCommon Law
Californians for Safety & Justice
Ella Baker Center for Human Rights
Initiate Justice
California Coalition for Women Prisoners
Transgender Gender-Variant & Intersex Justice Project

Prior Legislation: AB 943 (Kalra), Ch. 459, Stats. 2023
AB 1177 (McKinnor), held in Assembly Appropriations in 2023

Support: ACLU California Action; California Federation of Interpreters; California Public Defenders Association; Communities United for Restorative Youth Justice; GRIP Training Institute; La Defensa; Smart Justice California; Western Center on Law & Poverty

Opposition: None known

Assembly Floor Vote: 73 - 0

PURPOSE

The purpose of this bill is to establish the “Parole Hearing Language Accessibility Act,” which requires the Board of Parole Hearings (BPH) to provide limited-English-proficient (LEP) parole candidates with meaningful access to parole hearing proceedings.

Existing law, the Dymally-Alatorre Bilingual Services Act, requires every state agency involved in the furnishing of information or the rendering of services to the public whereby contact is made with a substantial number of non-English-speaking people, to employ a sufficient number of qualified bilingual persons in public contact positions to ensure provision of information and services to the public, in the language of the non-English-speaking person. (Gov. Code, §§ 7290-7299.8.)

Existing law authorizes BPH to determine whether people who are serving indeterminate sentences are suitable for release on parole once they reach their minimum eligible parole date. (Pen. Code, § 3041, subd. (a).)

Existing law requires the following for all parole suitability hearings:

- The incarcerated person to be permitted to review the file which will be examined by BPH at least 10 days before the hearing.
- The incarcerated person, the victim, next of kin, members of victim's family, and two representatives designated by the victim or next of kin, are permitted to request and receive a stenographic record of all proceedings.
(Pen. Code, § 3041.5, subd. (a)(1) & (4).)

Existing law requires BPH, within 10 days following any decision granting parole, to send the incarcerated individual a written statement setting forth the reason or reasons for granting parole, the conditions the person must meet in order to be released, and the consequences of failure to meet those conditions. (Pen. Code, § 3041.5, subd. (b)(1).)

Existing law requires BPH, within 20 days following any decision denying parole, to send the incarcerated individual a written statement setting forth the reason or reasons for denying parole, and suggest activities in which the person might participate that will benefit the person while incarcerated. (Pen. Code, § 3041.5, subd. (b)(2).)

Existing law requires BPH, within 10 days of any board action resulting in the rescinding of parole, to send the incarcerated individual a written statement setting forth the reason or reasons for that action, and to schedule the next hearing, as specified. (Pen. Code, § 3041.5, subd. (b)(5).)

Existing law requires BPH to record all hearings to review and consider parole suitability and transcribe those hearings within 30 days of any hearing. Provides that all parole hearing transcripts must be filed and maintained by BPH and be made publicly available no later than 30 days from the date of the hearing. (Pen. Code, § 3042, subd. (b).)

Existing law mandates that any statements, recommendations, or other materials considered by BPH be incorporated into the transcript of the hearing unless there is a security concern, as specified. (Pen. Code, § 3042, subd. (d).)

This bill requires BPH to translate all of the following documents:

- Notice and Request for Assistance at Parole Proceedings (BPH 1073).
- Notice of Confidential Disclosure.
- Hearing Rights Form (BPH 1003).
- Board of Parole Hearings Decision (BPH 1001).
- Notices or memoranda regarding confidential information.
- Forms or written materials pertaining to individual rights, services, or benefits, including those pertaining to victims and their next of kin.
- Notices pertaining to the denial, reduction, modification, or termination of services and benefits, and the right to file a grievance or appeal.
- Notices informing LEP parole candidates of language assistance services and forms for requesting language assistance services.
- Letters or written material from the board that require a response from the LEP parole candidate.
- Consent and complaint forms.

This bill requires BPH, beginning January 1, 2027, to translate the following documents:

- Parole hearing transcripts.
- Comprehensive risk assessment reports.

This bill requires BPH to translate the following documents on a rolling basis as follows:

- Notices of rights including, but not limited to, BPH form 1003, BPH form 1073, and notices of LEP assistance must be translated within 60 days of the effective date of this act.
- All other standard documents that are not case specific must be translated no later than 365 days after the effective date of this act for the 15 most commonly spoken languages in California, based on department and board demographic data, and no later than 730 days after the effective date of this act for all remaining languages.
- Parole hearing transcripts and comprehensive risk assessment reports created after January 1, 2027, must be translated within 30 days of the creation of the document.

This bill requires BPH to adopt a process to ensure that the translation of forms and notices of rights are updated each time the original document is revised.

This bill requires BPH to do all of the following to ensure the accuracy of the translation:

- Hire qualified translators.
- Provide translators with a bilingual glossary of standardized legal and parole hearing-specific terminology for the five most commonly spoken languages within the population of the Department of Corrections and Rehabilitation.
- Limit the use of automated translation technology to assist a qualified human translator.

This bill requires an audio recording to be rendered that clearly captures both English and non-English testimony if a parole candidate has requested language access assistance for a parole hearing, reconsideration hearing, rescission hearing, or medical parole hearing,

This bill requires BPH to provide the audio recording rendered to the parole candidate's attorney or representative and to the public upon request no later than 30 days from the date of the hearing at no cost to the candidate.

This bill requires a parole hearing, reconsideration hearing, rescission hearing, or medical parole hearing to be postponed or continued if any of the following occur unless a parole candidate waives their right to a qualified interpreter on the record and requests to proceed with the hearing:

- No qualified interpreter is provided for a parole candidate who requested language assistance.
- The parole candidate or their attorney object to proceeding with the interpreter provided due to a lack of competency or adherence to ethical or professional codes of conduct.
- The board determines that the interpreter cannot effectively assist the parole candidate.

This bill requires BPH to provide timely and language-accessible notice to all parole candidates of all available language access services and an opportunity to request an interpreter prior to each proceeding or activity in which an LEP parole candidate has the right to access an interpreter. Requires BPH to also provide timely and language-accessible notice of the process for filing a complaint or grievance or for requesting a rehearing due to a failure to provide adequate language access. Requires BPH to provide all information in the preferred language if the department or the board are aware of the LEP parole candidate's preferred language.

This bill requires BPH to develop, periodically update, and publish bilingual glossaries of parole hearing terminology. Requires BPH to provide bilingual glossaries to language access service providers, including interpreters and translators, parole candidates who have requested language assistance, and attorneys representing parole candidates who have requested language assistance.

This bill requires BPH, no later than July 1, 2026, to promulgate regulations that establish all of the following:

- A requirement that BPH make every effort to provide interpreters certified by the Judicial Council for parole hearing proceedings and comprehensive risk assessment interviews, including by limiting the use of foreign language contracts to agencies with appropriate expertise and hiring practices, rates, and standards necessary to provide certified interpreters for legal proceedings.
- Standards for interpreters provided for indigent parole candidates during attorney visits.
- The specific selection and recruitment procedures that must be exhausted to demonstrate that an interpreter certified by the Judicial Council is not available before a noncertified interpreter can be provisionally qualified.
- The standards and procedures for provisionally qualifying a noncertified interpreter, including voir dire.
- Procedures for routinely verifying the identity, credentials, and qualifications of interpreters.
- The definition of a "qualified interpreter," including specific educational, training, ethical, and competency-based standards. Provides that at a minimum, an interpreter is deemed not to be qualified to provide interpretation in a parole hearing unless the interpreter has demonstrated, through training and testing, fluency in both English and the target language, oral interpretation skills, knowledge of interpreter ethics and professional codes of conduct, knowledge of interpretation standards and techniques, and specialized knowledge of parole hearing terminology, concepts, and protocol.

This bill requires BPH, at least annually, to collect, review, update, and publish on its website all of the following information:

- Information about the board's language access services and policies.
- Summary information regarding hearings with an interpreter, including parole hearing outcomes, the number of hearings in each language, and the number of hearings with a certified interpreter.
- Summary information regarding the credentials and certification of translators and interpreters utilized, including the number of certified interpreters provided and the number of noncertified interpreters provided.

This bill includes the following definitions:

- “Certified interpreter” means an interpreter who is certified by the Judicial Council to interpret a language designated by the Judicial Council, as specified, an interpreter registered by the Judicial Council to interpret in a nondesignated language and qualified by the court under the qualification procedures and guidelines adopted by the Judicial Council, as specified, or an interpreter from another state who is granted reciprocity by the Judicial Council’s Court Interpreters Program.
- “Qualified translator” means a translator who is certified by the Judicial Council.

COMMENTS

1. Need For This Bill

According to the author:

AB 2310 provides parole candidates, who have limited English proficiency (LEP), with meaningful interpretation and document translation services to provide them with access to justice in their native language. AB 2310 will require the Board of Parole Hearings to hire certified interpreters who are trained in the hearing process and knowledgeable about the legal terminology used in hearings. These translators will be available to assist LEP candidates during the parole hearing. The Board of Parole Hearings will be required to provide LEP candidates with interpreted documents translated into their native language. This includes hearing transcripts, parole decisions, and notices of rights. AB 2310 will ensure individuals undergoing parole hearings can fully comprehend the proceedings, and necessary legal documents, to ensure equal access to justice for limited English language speakers.

2. Limited-English-Proficiency Within the Prison Population

According to background material submitted by the author, CDCR data indicates that approximately 10% of the prison population speaks a primary language other than English. With regard to language access, CDCR’s website provides:

The State of California has bilingual resources available to assist non-English speaking persons in accessing state government information and services. The law requires departments to explain or translate information and services to the public into any language spoken by 5% or more of those served. This does not preclude departments from providing services if the 5% threshold is not met. If the California Department of Corrections and Rehabilitation (CDCR) has not provided the requested translated materials or interpreter services, you should request to speak to a manager in charge. CDCR is required to have a process for reviewing language-access complaints and should have information regarding their process. If CDCR is unable to assist or provide the requested language access services in your native language, please submit a formal complaint. After doing so, the Bilingual Services Team will follow-up for resolution with you. (CDCR, *California Bilingual Services Act*, available at <<https://www.cdcr.ca.gov/bilingual-services-act/>>.)

3. Parole Hearings and Transcripts

Incarcerated individuals who are indeterminately sentenced must be granted parole by BPH in order to be released from prison. During a parole suitability hearing, BPH commissioners ask the parole candidate about their social history, past and present mental state, past and present attitude toward the crime, and plans for work and housing if released. (Legislative Analyst's Office, *Promoting Equity in the Parole Hearing Process* (Jan. 5, 2023), p. 6 <<https://lao.ca.gov/Publications/Report/4658>>.) If the incarcerated person is found unsuitable for release, the next hearing is set for 3, 5, 7, 10, or 15 years in the future.

All parole hearings are required to be recorded and transcribed within 30 days of the hearing. (Pen. Code, § 3042, subd. (b).) If the incarcerated person, victim, or other specified person requests, BPH must provide them with a transcript. (Pen. Code, § 3041.5, subd. (a)(4).) Existing law also requires BPH, within 20 days following any decision denying parole, to send the incarcerated individual a written statement setting forth the reason or reasons for denying parole, and suggest activities in which the person might participate that will benefit the person while incarcerated. (Pen. Code, § 3041.5, subd. (b)(2).) Proponents of the bill assert that these documents should be translated into the parole candidate's preferred language in order for the person to have a complete understanding of why parole was denied and how to address the board's concerns.

4. Argument in Support

According to the Ella Baker Center for Human rights:

The state of California has the largest Limited English Proficient population in the country, with roughly 7 million LEP people in the state who speak over 200 languages and dialects. According to a California Department of Corrections and Rehabilitation (CDCR) Office of Research report published in December of 2023, over 10% of the incarcerated population is documented as speaking a primary language other than English.

The Board of Parole Hearings (BPH) is an executive agency made up of 21 governor-appointed commissioners who make release decisions for over 8,000 incarcerated people annually. The Board makes release decisions by conducting quasi-judicial hearings where parole candidates are interviewed extensively about their life history, commitment offense, transformation while incarcerated, programming and disciplinary history, and their insight into and remorse for past behavior. Succeeding in these testimony-based hearings is incredibly difficult for the average person, let alone for LEP parole candidates who depend on interpreters' assistance.

Furthermore, LEP parole candidates are not provided critical translated documents—including documents informing them of their rights or of their ability to request an interpreter—before the parole hearing. After the hearing, LEP parole candidates only receive an English language transcript and are thus unable to access vital information regarding the reason for their parole denial and how to prepare for their next hearing.

Access to due process and justice is not possible without language access. Limited English Proficient people must not be excluded from the promise of our laws, including the promise of a fair chance for parole consideration, simply because of their language limitations. By requiring the Board of Parole Hearings to translate documents and take steps to increase the quality of interpretation for parole hearing proceedings, AB 2310 will ensure that LEP parole candidates can meaningfully participate in our legal system and receive a fair and full parole hearing.

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