
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguín, Chair
2025 - 2026 Regular

Bill No: SB 1278 **Hearing Date:** April 21, 2026
Author: Niello
Version: March 23, 2026
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Elderly Parole Program*

HISTORY

Source: California District Attorneys Association; San Diego County District Attorney's Office

Prior Legislation: SB 286 (Jones), held in Senate Appropriations, 2025
SB 445 (Jones), failed passage in Senate Public Safety, 2021
AB 3234 (Ting), Ch. 334, Stats. of 2020
SB 411 (Jones), not heard in Senate Public Safety, 2019
AB 1448 (Weber), Ch. 676, Stats. of 2017
SB 224 (Liu), ordered to the Inactive File on the Senate Floor, 2015

Support: Arcadia Police Officers' Association; Brea Police Association; Burbank Police Officers' Association; California Association of School Police Chiefs; California Baptist for Biblical Values; California Coalition of School Safety Professionals; California District Attorneys Association; California Narcotic Officers' Association; California Police Chiefs Association; California Reserve Peace Officers Association; Claremont Police Officers Association; Corona Police Officers Association; Culver City Police Officers' Association; Fullerton Police Officers' Association; Los Angeles School Police Management Association; Los Angeles School Police Officers Association; Murrieta Police Officers' Association; Newport Beach Police Association; Palos Verdes Police Officers Association; Peace Officers Research Association of California; Placer County Deputy Sheriffs' Association; Pomona Police Officers' Association; Riverside Police Officers Association; Riverside Sheriffs' Association; San Diego County District Attorney's Office; The California Baptist Capitol Ministry

Opposition: ACLU California Action; California Public Defenders Association; Ella Baker Center for Human Rights; Justice2Jobs Coalition; La Defensa; Smart Justice California

PURPOSE

The purpose of this bill is to exclude from Elderly Parole eligibility individuals convicted of specified felony sex offenses or sentenced as a habitual sex offender or under the One Strike Sex Offense statute.

Existing law requires the Board of Parole Hearings (BPH) to meet with each incarcerated person during the sixth year prior to the person's minimum eligible parole date (MEPD) for the purposes of reviewing and documenting the person's activities and conduct pertinent to both parole eligibility. Requires that the BPH provide the person with information about the parole hearing process, legal factors relevant to his or her suitability or unsuitability for parole, and individualized recommendations for the person regarding his or her work assignments, rehabilitative programs, and institutional behavior during the consultation. (Pen. Code, § 3041, subd. (a)(1).)

Existing law provides that one year prior to the incarcerated person's MEPD, a panel of two or more commissioners or deputy commissioners shall meet with the person and shall normally grant parole. (Pen. Code, § 3041, subd. (a)(2).)

Existing law requires that an incarcerated person be released upon a grant of parole, subject to all applicable review periods. Prohibits the release of an incarcerated person who has not reached his or her MEPD unless the person is eligible for earlier release pursuant to his or her youth offender parole eligibility date or elderly parole eligible date. (Pen. Code, § 3041, subd. (a)(4).)

Existing law requires the BPH to grant parole to an incarcerated person 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. (Pen. Code, § 3041, subd. (b)(1).)

Existing law prohibits a person imprisoned under a life sentence from being paroled until he or she has served the greater of the following: 1) a term of at least seven calendar years; or 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. Requires that notwithstanding this provision of law, an incarcerated person found suitable for parole pursuant to a youth offender parole hearing or an elderly parole hearing be paroled regardless of the manner in which BPH sets release dates pursuant to other provisions of current law, as applicable. (Pen. Code, § 3046, subds. (a), (c).)

Existing law establishes the Elderly Parole Program, to be administered by BPH, for purposes of reviewing the parole suitability of any incarcerated person who is 50 years of age or older and has served a minimum of 20 years of continuous incarceration on the person's current sentence, serving either a determinate or indeterminate sentence. (Pen. Code, § 3055, subd. (a).)

Existing law defines "elderly parole eligible date" as the date on which an incarcerated person who qualifies as an elderly offender is eligible for release from prison. (Pen. Code, § 3055, subd. (b)(1).)

Existing law defines "incarceration" as 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 (CDCR) facility. (Pen. Code, § 3055, subd. (b)(2).)

Existing law requires the BPH to give special consideration to whether age, time served, and diminished physical condition, if any, have reduced the elderly incarcerated individual's risk for future violence, when considering the person's release. (Pen. Code, § 3055, subd. (c).)

Existing law requires the BPH to consider whether the incarcerated person meets or will meet the criteria for the Elderly Parole Program. (Pen. Code, § 3055, subd. (d).)

Existing law requires that an individual who is eligible for an elderly parole hearing meet with the BPH pursuant to existing provisions of law regarding parole hearings. Requires the BPH to release the individual on parole, as provided, if the person is found suitable for parole under the Elderly Parole Program. (Pen. Code, § 3055, subd. (e).)

Existing law requires the BPH to set the time for a subsequent elderly parole hearing if parole is not granted. Provides that no subsequent elderly parole hearing is necessary if the offender is released pursuant to other statutory provisions prior to the date of the subsequent hearing. (Pen. Code, § 3055, subd. (f).)

Existing law excludes the following individuals from elderly parole 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; a person who was convicted of first-degree murder of a peace officer who was killed while engaged in the performance of their duties, and the individual knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of their duties, or the victim was a peace officer or a former peace officer, and was intentionally killed in retaliation for the performance of their official duties, as defined. (Pen. Code, § 3055, subds. (g), (h).)

Existing law provides that the Elderly Parole Program does not alter the rights of victims at parole hearings. (Pen. Code, § 3055, subd. (i).)

Existing law includes the following sex offenses in the “violent felony” list: rape accomplished by means of force or threats; sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; lewd or lascivious act on a child under 14 years of age; sexual penetration by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or sexual penetration of a child under 14 and who is more than 10 years younger than the perpetrator; continuous sexual abuse of a child; and rape or sexual penetration, in concert. (Pen. Code, § 667.5, subd. (c)(3), (4), (5), (6), (11), (16), (18).)

Existing law includes the following sex offenses in the “serious felony” list: rape, sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; lewd or lascivious act on a child under 14 years of age; sexual penetration by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim; assault with the intent to commit mayhem, rape, sodomy, or oral copulation; rape or sexual penetration, in concert; continuous sexual abuse of a child; and human trafficking of a minor. (Pen. Code, § 1192.7, subd. (c)(3), (4), (5), (6), (25), (29), (34), (35), (42).)

Existing law requires a person to receive a five-year enhancement for a conviction of any of the following offenses when the person has a prior conviction for any of those offenses:

- Rape, by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another; by an intoxicating or controlled substance; by threatening to retaliate in the future against the victim or any other person; or by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another.
- Spousal rape, by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another; by threatening to retaliate in the future against the victim or any other person; or by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another.
- Rape or sexual penetration, in concert.
- Sodomy by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury; by threatening to retaliate in the future against the victim or any other person; in concert; or by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another.
- Lewd or lascivious act by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury
- Continuous sexual abuse of a child.
- Oral copulation by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury; by threatening to retaliate in the future against the victim or any other person; in concert; or by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another.
- Sexual penetration by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury, or by or by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another.
- Assault with intent to commit mayhem, rape, sodomy, oral copulation, lewd and lascivious act on a child under 14, sexual penetration, or rape in concert.
- An offense committed in another jurisdiction that includes all of the elements of an offense specified in this provision of law.
(Pen. Code, § 667.6, subd. (a).)

Existing law provides for full, separate, and consecutive terms to be imposed for each violation of specified felony sex offenses. (Pen. Code, § 667.6, subds. (c)-(e).)

Existing law, the One Strike Sex Offense statute, provides for a mandatory sentence of 15 years-to-life or 25 years-to-life if a person is convicted of one several specified felony sex offenses under one or more circumstances, as provided. (Pen. Code, § 667.61, subds. (b)-(e).)

Existing law provides that a habitual sexual offender is a person who has previously been convicted of one or more of the following offenses and who is convicted in the present proceeding of one of these offenses:

- Rape by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury, or threat to retaliate in the future.
- Rape of a spouse by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury, or threat to retaliate in the future.
- Rape or sexual penetration, in concert.
- Lewd or lascivious act on a child under 14, and lewd or lascivious act on a child under 14 by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury.

- Sexual penetration, by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury or sexual penetration of a person who is under 14 years of age and who is more than 10 years younger.
- Continuous sexual abuse of a child.
- Sodomy of a person who is under 14 years of age and more than 10 years younger, or in concert.
- Oral copulation of a person who is under 14 years of age and more than 10 years younger, or in concert.
- Kidnapping with intent to commit a lewd and lascivious act on a child under 14.
- Kidnapping to commit specified sex offenses.
- Kidnapping with intent to commit rape, oral copulation, sodomy, or other specified sex offense.
- Aggravated sexual assault of a child.
- An offense committed in another jurisdiction that includes all of the elements of one of the above offenses. (Pen. Code, § 667.71, subds. (a), (c).)

Existing law provides that a habitual sexual offender shall be punished by imprisonment in the state prison for 25 years to life. (Pen. Code, § 667.71, subd. (b).)

This bill excludes individuals with the following convictions for felony sex offenses from Elderly Parole eligibility:

- Rape accomplished by means of force or threats.
- Sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person.
- Oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person.
- Lewd or lascivious act on a child under 14 years of age.
- Sexual penetration by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or sexual penetration of a child under 14 and who is more than 10 years younger than the perpetrator.
- Continuous sexual abuse of a child.
- Rape or sexual penetration, in concert.
- Rape.
- Assault with the intent to commit mayhem, rape, sodomy, or oral copulation.
- Human trafficking of a minor.

This bill excludes individuals sentenced pursuant to the One Strike Sex Offense statute or habitual sex offender statute.

This bill excludes individuals sentenced pursuant to Penal Code section 667.6 (applies only to individuals convicted of specified felony sex offenses who have a prior conviction for any of those offenses).

This bill provides that the Elderly Parole Program exclusions created by its provisions as well as the existing exclusion for a person convicted of the murder of a peace officer apply to a person who is incarcerated as of January 1, 2026, regardless of the person's previous eligibility for parole or the status of any parole petition filed prior to that date.

COMMENTS

1. Need For This Bill

According to the author:

SB 1278 modifies the California Elderly Parole program by excluding some violent and repeat sex offenders from being eligible under the program. Specifically, those convicted of enhanced sentences for rape, sodomy, lewd and lascivious acts, and habitual sex offenders. The current elderly parole program disregards the long last effects of these egregious crimes on the victims. When someone like David Funston or Gregory Vogelsang becomes eligible for parole, it means their victims must relive the immense trauma during parole hearings. SB 1278 will prevent certain violent and serial sex offenders from gaining eligibility under elderly parole and will create parity with the Youth Offender Parole Program. This will assure sex offense victims have the peace and security of knowing that the person who violated them will not be eligible for release simply for reaching 50 years of age.

2. Elderly Parole

As the result of severe prison overcrowding, the Three-Judge Court ordered CDCR to implement several population reduction measures, including to “[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*) In response to the order, BPH created the Elderly Parole Program and began holding elderly parole hearings on October 1, 2014. Incarcerated individuals with determinate terms as well as those sentenced to life with the possibility of parole are eligible for the program. (<https://www.cdcr.ca.gov/bph/elderly-parole-hearings-overview/>) Incarcerated individuals who are sentenced to life without the possibility of parole, or who are sentenced to death are not eligible for the program. (*Id.*)

AB 1448 (Weber), Chapter 676, Statutes of 2017, codified the Elderly Parole Program. However, AB 1448 narrowed the eligibility criteria by excluding individuals who were sentenced pursuant to “Three Strikes” or who were convicted of first-degree murder of a peace officer from the Elderly Parole Program. (Pen. Code, § 3055, subds. (g) & (h).) AB 3234 (Ting), Chapter 334, Statutes of 2020, expanded the eligibility criteria for elderly parole. Specifically, AB 3234 lowered the minimum age at which an incarcerated individual is eligible for elderly parole from 60 to 50 and the amount of time that must be served from 25 years to 20 years. Incarcerated individuals who meet the eligibility criteria of the court-ordered Elderly Parole Program but who are excluded from the statutory Elderly Parole Program are eligible for elderly parole consideration under the court-ordered program. (BPH, *Elderly Parole Fact Sheet* (Mar. 2022), p. 1 available at <https://www.cdcr.ca.gov/bph/wp-content/uploads/sites/161/2022/03/Elderly-Parole-Fact-Sheet3_18-1.pdf>.)

3. Analogous Provision in Youth Offender Parole Statute Pertaining to One Strike Sex Offenses

Penal Code section 3051 governs the youth offender parole process. Penal Code section 3051 generally provides that an individual who was 25 years of age or younger at the time of his or her controlling offense, or under 18 years of age if the person was sentenced to life without the possibility of parole, is eligible for release on parole at the 15th, 20th, or 25th year of incarceration depending on the sentence imposed. As is the case with the Elderly Parole Program, the youth offender parole process affords some incarcerated individuals an opportunity to parole at an earlier date than would otherwise be the case. Both parole processes also require the BPH to consider additional factors when making a parole suitability determination.

Both the elderly parole statute and youth offender parole statute contain categorical exclusions. Subdivisions (g) and (h) of Penal Code section 3055 exclude from elderly parole eligibility a person sentenced under the Three Strikes law, a person sentenced to death or life in prison without the possibility of parole, and a person convicted of the first-degree murder of a peace officer. Subdivision (h) of Penal Code section 3051 excludes from youth offender parole eligibility, a person sentenced under the Three Strikes law, under the One Strike law, or to life without the possibility of parole for an offense committed after the person turned 18.

The exclusion of One Strike sex offenses from youth offender parole eligibility was challenged on Equal Protection grounds. (See *People v. Edwards* (2019) 34 Cal. App. 5th 183; *People v. Williams* (2020) 47 Cal. App. 5th 475.) After the two appellate courts reached different conclusions regarding the constitutionality of this exclusion, the California Supreme Court granted review of the petition for the appellant in *Williams* in 2020.

In its 2024 decision, the Court upheld the exclusion of One Strike sex offenses from youth offender parole eligibility finding that there was no equal protection violation. (*People v. Williams* (2024) 17 Cal. 5th 99.) Applying the rational basis standard, the Court found:

The Legislature could rationally conclude, based on its view that a One Strike sex offender's risk of recidivism is high, that rehabilitation is unlikely, and therefore these offenders would not likely be eligible for parole, much less early parole under section 3051. With this understanding, the Legislature crafted section 3051(h), balancing a young adult's capacity for growth and rehabilitation against the set of concerns that had prompted the enactment and amendment of the One Strike law and ultimately deciding that those concerns militate against offering the possibility of early parole under section 3051. (internal citations omitted) (*Id.* at p. 130.)

4. Effect of This Bill

This bill narrows the eligibility criteria for the Elderly Parole Program, by excluding any person sentenced pursuant to Penal Code sections 667.6, 667.61 and 667.71 (i.e., statute requiring enhanced sentence when the person has a prior conviction for a specified sex offense and the current offense is one of those sex offenses, the One Strike Sex Offense statute, and the habitual sex offender statute, respectively). This bill additionally excludes individuals convicted of specified felony sex offenses. Finally, this bill provides that the Elderly Parole Program exclusions created by its provisions as well as the existing exclusion for a person convicted of the murder of a peace officer apply to a person who is incarcerated as of January 1, 2027,

regardless of the person's previous eligibility for parole or the status of any parole petition filed prior to that date.

It is worth noting that some incarcerated individuals who are currently eligible for elderly parole were already in the parole suitability hearing cycle based on their original MEPD. The parole eligibility of these individuals is not based on their inclusion in the Elderly Parole Program as their sentences have always permitted an opportunity for parole. Similarly, there are incarcerated individuals who are eligible for parole but not yet in the parole suitability hearing cycle because they have not reached their MEPD. Irrespective of inclusion in the Elderly Parole Program, these individuals will have an opportunity for parole once they have reached their MEPD. This means that even if certain categories of offenders are excluded from the Elderly Parole Program, the incarcerated individual will have parole hearings upon reaching their MEPD if the person otherwise has a sentence that permits parole (i.e., a sentence other than life without the possibility of parole or death).

Inclusion in the Elderly Parole Program may affect when an incarcerated individual has their initial parole hearing. However, inclusion in the Elderly Parole Program does not mean that an incarcerated individual will automatically be released from prison solely because the person meets the eligibility criteria for the program. Rather, eligibility for the program means that the BPH is required "to give special consideration to whether age, time served, and diminished physical condition, if any, have reduced the elderly inmate's risk for future violence, when considering the release of an inmate." (Pen. Code, § 3055, subd. (c).)

Finally, changes to the statutory Elderly Parole Program do not affect the court-order Elderly Parole Program. That means that some individuals who are eligible under the court-order program are not eligible under the statutory program and vice versa.

5. Argument in Support

The San Diego District Attorney's Office writes:

SB 1278 would not repeal the statutory Elderly Parole Program, nor change the three-judge panel Elderly Parole program that is still in effect. SB 1278 simply seeks to narrow the eligibility criteria for statutory Elderly Parole so that it more closely aligns with the eligibility criteria for the Youthful Offender program by excluding inmates sentenced under the One Strike Sex Law. SB 1278 would also exclude offenders who committed violent sex offenses. These inmates would still be eligible for the three-judge panel Elderly Parole Program once they reached the age of 60 and had served 25 consecutive years of incarceration.

Currently, inmates convicted under the One Strike Sex Law are eligible for statutory Elderly Parole. In contrast, inmates convicted under the One Strike Sex Law are not eligible for early release under the Youthful Offender Parole program. SB 1278 would bring parity to the two parole programs for inmates convicted under the One Strike Sex Law. SB 1278 promotes fairness among offenders who have committed the most heinous crimes and honors survivors of sexual violence by reinforcing the principle of "truth in sentencing."

State prisons should reserve their space for the most dangerous offenders. Yet, the current statutory Elderly Parole program allows mature adults—who possess life

experience and a well-formed understanding of consequences—to benefit from the potential of early release under the Elderly Parole Program. In contrast, the Youthful Offender Parole program specifically excludes youthful offenders convicted of violent sex crimes punished under the One Strike Sex law that were committed while under the age of twenty-six, even though these youthful offenders are deemed to exhibit immaturity, impulsiveness, and lack of understanding of the consequences of their actions.

... SB 1278 targets a specific and high-risk population: individuals convicted of violent, sexual offenses.

According to the Legislative Analyst's Office, California's annual average cost to incarcerate a person was \$133,000 per person at the time the 2024-25 budget was enacted. ... A single reoffense by a high-risk parolee, especially one involving violence or sexual assault, can result not only in devastating human consequences, but also millions of dollars in investigative, legal, and custody costs. Furthermore, parole failures often result in new victims and their costly medical and legal resources. By excluding individuals convicted of violent, sexual offenses from the statutory elderly parole hearings, SB 1278 protects both public safety and the budget from unnecessary financial strain.

Senate Bill 1278 proposes a crucial shift to correct this disparity in the justice system. It aims to ensure fairness by reevaluating who deserves the opportunity for rehabilitation and release, recognizing that justice should be equitable for all age groups.

There is no logical reason to exclude youthful parole hearings but allow statutory elder parole hearings for the same class of serious and often violent sex offenders. SB 1278 is a proposal to correct this manifest injustice and give sex offense victims the peace and security of knowing that the person who violated them physically, mentally, and emotionally will have to serve their full term regardless of what age they were when they committed the offense, regardless of the age they have attained while serving their term. SB 1278 will fix these disparities in the current Elderly Parole program.

6. Argument in Opposition

According to Smart Justice California:

California's parole system, including its elderly parole program, is designed to protect our communities. It recognizes that California can improve public safety by incentivizing incarcerated people to take accountability, transform their thinking and behavior, and work toward repairing harm. Parole suitability reviews - including those conducted under the elderly parole program - are rigorous and discretionary, allowing consideration of meaningful changes in a person's circumstances while upholding public safety and incorporating victim input. Given the rigor of the existing parole process, the positive supervision outcomes for those who are granted parole, and the benefits to community safety, there is no need to further restrict access to the parole consideration process.

Smart Justice California educates and emboldens policymakers who support meaningful criminal justice reforms that promote safety, fairness and healthy communities. We are an alliance of philanthropists working hand-in-hand with a broad coalition to foster common sense criminal justice reform through the electoral process, stakeholder engagement and voter education.

In 2014, the court in the *Plata* and *Coleman* class action lawsuits mandated that the state create a geriatric parole consideration

process, recognizing that elderly people are the safest to release while posing the highest financial burden given their medical needs. The Legislature agreed with this assessment and codified the program in 2018, and later modified the criteria in 2021 so that people aged 50 or older who have served at least 20 years of incarceration are eligible (while keeping in place exclusions for those sentenced to LWOP, death, under the Three Strikes Law, and for first-degree murder of a peace officer).

To be clear, eligibility for elderly parole does not guarantee release; it merely allows the parole board to conduct a comprehensive hearing to determine if an individual can be safely released on parole supervision. For elderly people who are granted and released, they are placed on mandated parole supervision with both general and individualized supervision requirements. The Legislature thoroughly reassessed the program's eligibility criteria in 2021 and determined it was unnecessary to public safety to create

new exclusions. This is due to the exceptionally low risk posed by people currently eligible for the Elderly Parole program. SB 1278 would result in more elderly individuals serving excessively long sentences despite their readiness for supervised release, leading to wasted resources that could be better utilized for other purposes, including vital social service programs. Older incarcerated people are the most expensive to imprison because of age-related medical needs. Delaying or eliminating parole eligibility for this population will increase correctional and healthcare spending without producing a commensurate public safety return.

-- END --