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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair  
2021 - 2022 Regular

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**Bill No:** SB 875                      **Hearing Date:** April 26, 2022  
**Author:** Skinner  
**Version:** March 10, 2022  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Crimes: parole*

## HISTORY

**Source:** Author

**Prior Legislation:** None

**Support:** A New Way of Life; ACLU California Action; California Public Defenders Association; Californians for Safety and Justice; Communities United for Restorative Youth Justice; Ella Baker Center for Human Rights; Essie Justice Group; Fair Chance Project; Felony Murder Elimination Project; Fresno Barrios Unidos; Initiate Justice; League of Women Voters of California; Legal Services for Prisoners with Children; National Institute for Criminal Justice Reform; Root & Rebound; Transformative In-Prison Workshop; UnCommon Law; 2 individuals

**Opposition:** None known

## PURPOSE

***The purpose of this bill is to prohibit the Board of Parole Hearings (BPH) from considering specified factors when reaching a finding of unsuitability for parole, including, the person's race, ethnicity, national origin, gender, sexual orientation, gender identity, disability, cultural or religious affiliation, and cognitive, speech, or physical impairment.***

*Existing law* provides that in the case of any incarcerated person sentenced pursuant to any law, except as specified, the BPH must meet with each inmate during the sixth year before the inmate's minimum eligible parole date (MEPD) for the purposes of reviewing and documenting the inmate's activities and conduct pertinent to parole eligibility. (Pen. Code, § 3041, subd. (a)(1).)

*Existing law* requires that during the incarcerated person's consultation, the board 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. Requires the board, within 30 days following the consultation, to issue its positive and negative findings and recommendations to the person in writing. (Pen. Code, § 3041, subd. (a)(1).)

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

*Existing law* provides that the panel or the board, sitting en banc, shall grant parole to an inmate 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).)

*This bill* prohibits the board from considering any discriminatory factor in reaching a finding of unsuitability for parole, including, but not limited to, any of the following:

- The person's race, ethnicity, national origin, gender, sexual orientation, gender identity, disability, or cultural or religious affiliation.
- The person's cognitive, speech, or physical impairment.
- The person's current or prior history of mental illness or a substance use disorder unless there is clear and convincing evidence that the illness or disorder cannot be effectively managed in the community.
- The person's housing status at the time of conviction, current or prior employment history, socioeconomic status, or education level.
- The person's relations or prior association with a group of persons who share the person's race, ethnicity, national origin, neighborhood, or religion, unless there is clear and convincing evidence that the association is ongoing and currently relevant to a specific future risk of violence.
- Other factors which have been documented to be subject to bias, including, but not limited to, a parole candidate's prior status as a victim or alleged victim of crime, verbal or nonverbal communication, tone of voice, volume of speech, facial expressions, body language, eye contact, or the candidate's ability to articulate complex or abstract concepts.

## COMMENTS

### 1. Need For This Bill

According to the author:

In recent years, California has worked to dismantle implicit bias in many areas of the law, including implicit bias training requirements for registered nurses, physicians, real estate appraisers, and attorneys and judges practicing in all areas of the law.

SB 875 seeks to address implicit bias in the parole determination process by removing the use of factors associated with bias when the Board of Parole Hearings (Board) is assessing an applicant's readiness for release.

## 2. Parole Suitability

Inmates who are indeterminately sentenced must be granted parole by the BPH in order to be released from prison. The Penal Code provides that the parole board “shall grant parole to an inmate 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).) The fundamental consideration when making a determination about an inmate’s suitability for parole is whether the inmate currently poses an unreasonable risk of danger to society if released from prison. (*In re Shaputis* (2008) 44 Cal.4th 1241.) The decision whether to grant parole is an inherently subjective determination. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 655.)

In deciding whether to grant parole, the BPH must consider all relevant and reliable information available. (Cal. Code Regs., tit. 15, § 2402, subd. (b).) Factors the BPH must consider include the nature of the commitment offense, including the circumstances of the person’s social history; past and present mental state; past criminal history, including involvement in other criminal misconduct which is reliably documented; the base and other commitment offenses, including behavior before, during and after the crime; past and present attitude toward the crime; any conditions of treatment or control, including the use of special conditions under which the prisoner may safely be released to the community; and any other information which bears on the person’s suitability for release. (Cal. Code Regs., tit. 15, §§ 2281, subd. (b), 2402, subd. (b).) The regulations further state that “[c]ircumstances which taken alone may not firmly establish unsuitability for parole may contribute to a pattern which results in a finding of unsuitability.” (Cal. Code Regs., tit. 15, § 2402, subd. (b).)

Although the parole board is required to consider the circumstances of the offense, the California Supreme Court has held that the parole board may not rely solely on the commitment offense when deciding to grant parole unless the circumstances of the offense “continue to be predictive of current dangerousness.” (*In re Lawrence* (2008) 44 Cal.4th 1181, 1221.) The parole board is prohibited from requiring an admission of guilt to any crime for which an incarcerated person was committed to CDCR when considering whether to grant an inmate parole. (Pen. Code, § 5011, subd. (b).) However, “an implausible denial of guilt may support a finding of current dangerousness, without in any sense requiring the inmate to admit guilt as a condition of parole....it is not the failure to admit guilt that reflects a lack of insight, but the fact that the denial is factually unsupported or otherwise lacking in credibility.” (*In re Shaputis* (2011) 53 Cal.4th 192, 216.) Although the term “insight” is not explicitly included in the regulations, the regulations “direct the Board to consider the inmate’s ‘past and present attitude toward the crime’ and ‘the presence of remorse,’ expressly including indications that the inmate ‘understands the nature and magnitude of the offense’.... fit[ting] comfortably within the descriptive category of ‘insight.’” (*Id.* at 218 (citations omitted).)

Additional guidance for making parole suitability determinations is provided in the regulations which list circumstances tending to show suitability and those tending to show unsuitability. The following circumstances tend to show unsuitability for release:

- The person committed the offense in an especially heinous, atrocious or cruel manner. The factors to be considered include:
  - Multiple victims were attacked, injured or killed in the same or separate incidents.

- The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder.
- The victim was abused, defiled or mutilated during or after the offense.
- The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering.
- The motive for the crime is inexplicable or very trivial in relation to the offense.
- The person on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the inmate demonstrated serious assaultive behavior at an early age.
- The person has a history of unstable or tumultuous relationships with others.
- The person has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.
- The person has a lengthy history of severe mental problems related to the offense.
- The person has engaged in serious misconduct in prison or jail. (Cal. Code of Regs., tit. 15, § 2402, subd. (c).)

The following are circumstances tending to show suitability:

- The person does not have a record of assaulting others as a juvenile or committing crimes with a potential of personal harm to victims.
- The person has experienced reasonably stable relationships with others.
- The person performed acts which tend to indicate the presence of remorse, such as attempting to repair the damage, seeking help for or relieving suffering of the victim, or indicating that he understands the nature and magnitude of the offense.
- The person committed his or her crime as the result of significant stress in his or her life, especially if the stress has built over a long period of time.
- At the time of the commission of the crime, the person suffered from Battered Woman Syndrome, as defined, and it appears the criminal behavior was the result of that victimization.
- The person lacks any significant history of violent crime.
- The person present age reduces the probability of recidivism.
- The person has made realistic plans for release or has developed marketable skills that can be put to use upon release.
- Institutional activities indicate an enhanced ability to function within the law upon release. (Cal. Code of Regs., tit. 15, § 2402, subd. (d).)

The circumstances which tend to show suitability and unsuitability for parole are set forth as general guidelines, and the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel. (Cal. Code of Regs., tit. 15, § 2402, subds. (c) & (d).)

### **3. Effect of This Bill**

This bill seeks to limit biased and arbitrary decision making with respect to parole denials. Specifically, this bill prohibits the board from considering any discriminatory factor in reaching a finding of unsuitability for parole, including, but not limited to, any of the following:

- The person's race, ethnicity, national origin, gender, sexual orientation, gender identity, disability, or cultural or religious affiliation.
- The person's cognitive, speech, or physical impairment.

- The person's current or prior history of mental illness or a substance use disorder unless there is clear and convincing evidence that the illness or disorder cannot be effectively managed in the community.
- The person's housing status at the time of conviction, current or prior employment history, socioeconomic status, or education level.
- The person's relations or prior association with a group of persons who share the person's race, ethnicity, national origin, neighborhood, or religion, unless there is clear and convincing evidence that the association is ongoing and currently relevant to a specific future risk of violence.
- Other factors which have been documented to be subject to bias, including, but not limited to, a parole candidate's prior status as a victim or alleged victim of crime, verbal or nonverbal communication, tone of voice, volume of speech, facial expressions, body language, eye contact, or the candidate's ability to articulate complex or abstract concepts.

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