
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 898 **Hearing Date:** May 10, 2016
Author: Gonzalez
Version: January 13, 2016
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Parole Suitability: Notice*

HISTORY

Source: California Professional Firefighters and CAL FIRE Local 2881

Prior Legislation: AB 1025 (Thurman), Chapter 483, Statutes of 1981

Support: California Fire Chiefs Association; California Labor Federation; California Special Districts Association; California State Association of Counties; California State Firefighters' Association; Fire Districts Association of California; LIUNA Local 792; Orange County Professional Firefighters Association, Local 3631; Peace Officers Research Association of California

Opposition: Legal Services for Prisoners with Children

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to provide that when an inmate who was convicted of the murder of a firefighter becomes eligible for a parole-suitability hearing, the Board of Parole Hearings must give written notice of the hearing to the department that had employed the deceased firefighter.

Existing law requires the Board of Parole Hearings (BPH) to send written notice to each of the following persons before it meets to consider the parole suitability or setting of a parole date of an inmate serving a life sentence:

- a) The superior court judge before whom the prisoner was tried and convicted;
- b) The attorney who represented the defendant at trial;
- c) The district attorney of the county in which the offense was committed;
- d) The law enforcement agency that investigated the case; and,
- e) If the prisoner was convicted of the murder of a peace officer, the law enforcement agency which had employed that officer at the time of the murder. (Penal Code § 3042 (a).)

Existing law provides that these entities must be notified at least 30 days before the BPH meets to review or consider the parole suitability or the setting of a parole date. (Penal Code § 3042(a).)

Existing law allows the entities who receive notice of the parole-suitability hearing to submit information to the BPH for its consideration. (Penal Code § 3042 (f)(3).)

Existing law requires the BPH to review and consider all information received from the judge and these other persons, and to consider adjusting the terms or conditions of parole to reflect the comments or concerns raised by this information. (Penal Code, § 3042 (f)(3).)

Existing law requires the BPH to provide the victim 90-days' notice of an upcoming parole-suitability hearing, if he or she requests that notice be given. (Penal Code § 3043 (a).)

Existing law allows the victim to personally appear at the suitability hearing or to submit a recorded statement expressing his or her views. (Penal Code, §§ 3043 (b)(1), and 3043.2 (a)(1).)

Existing law states that any person interested in the grant or denial of parole may submit a statement supporting or opposing parole and that such statements must be considered by the hearing panel. (Penal Code § 3043.5.)

Existing law requires the Director of the California Department of Corrections and Rehabilitation to give written notice to the State Fire Marshal, and all police departments and the sheriff in the county in which the person was convicted before releasing an inmate convicted of arson. (Penal Code § 11150.)

This bill provides that if an inmate was convicted of the murder of a firefighter BPH shall also send the written notice to the fire department that employed the firefighter at the time of the murder, if that fire department registers with BPH to receive that notification and provides the appropriate contact information.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several 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 December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 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).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 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 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:

Since 1981, existing law (Penal Code Section 3042) has appropriately ensured the notification of relevant, parole-related hearings to a slain peace officer's former employer. However, a firefighter's former employer is not included in parole notification process if he or she lost their life in an arson related fire. AB 989 will simply add a murdered firefighters former fire department employer if the department registers with the Board of Parole Hearings (BPH) and provides the necessary contact information.

Firefighters are a vital part of our public safety community in California since they constantly risk their lives in order to ensure the safety of others. They face similar stress and risk just like their law enforcement colleagues face while on-duty, which can result in loss of life.

It is only appropriate in these limited instances, a former employing fire department be extended the same notification courtesy as local law enforcement agencies when dealing with the possible parole of a prisoner convicted of murdering a firefighter. The parole notification proposed by AB 898 will provide an appropriate opportunity for the fire department to reflect on the actions of the individual and

voice their opinion about a prisoner remaining behind bars or being released back into their community.

2. Parole-Suitability Hearings

Inmates serving indeterminate "life" sentences that include the possibility of parole are not automatically entitled to parole, but are entitled to be considered for parole at a parole-suitability hearing. The BPH has exclusive authority to determinate parole suitability, and suitability for parole must first be found before a parole date is set. (*In re Dannenberg* (2005) 34 Cal.4th 1061, 1080.)

The BPH can consider all relevant and reliable information, but there are suitability factors specified by both statute and administrative regulations. (15 Cal. Code Regs., § 2402, subd. (b).) These include: the nature of the commitment offense and inmate's degree of insight into the offense, the inmate's prison record, recent psychological evaluations, and the inmate's parole plans. The overriding concern is whether the inmate poses a current threat to public safety. (*In re Dannenberg*, supra, 34 Cal.4th at p. 1084.) The BPH has broad discretion in how to weigh these factors, and its determination that an inmate is unsuitable will be upheld as long as it is supported by "some evidence." (*In re Lawrence* (2008) 44 Cal.4th 1181, 1213.)

3. Notice of Parole-Suitability Hearings

The BPH must send notice of a parole-suitability hearing to the trial judge, the prosecutor, defense counsel, the investigating law enforcement agency, and in the case of the murder of a peace officer, the officer's employer. (Penal Code, § 3042 (a).) These individuals are entitled to submit a statement expressing their views on whether the inmate should be paroled. Additionally, the victim of the crime may request that the BPH notify him or her of any scheduled parole-suitability hearing. The victim is entitled to personally appear to express his or her views on the granting of parole, or may submit a written or recorded statement instead. (Penal Code, § 3043.) Finally, any person interested in the grant or denial of parole may submit a statement supporting or opposing parole. (Penal Code, § 3043.5.) The board must consider all statements submitted in making its decision.

While under existing law the employer of a murdered firefighter may already submit a statement expressing its views on the grant of parole, the law currently does not require the employer be notified of the hearing. This bill will ensure that the agency which employed the deceased firefighter has notice that a parole-suitability hearing has been scheduled.

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