
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 261 **Hearing Date:** April 28, 2015
Author: Hancock
Version: March 24, 2015
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Youth Offender Parole Hearings*

HISTORY

Source: Human Rights Watch
Anti-Recidivism Coalition
Youth Justice Coalition

Prior Legislation: SB 260 (Hancock) - Chapter 312, Stats. 2013

Support: Newt Gingrich; San Francisco District Attorney's Office; California Catholic Conference, Inc.; Ella Baker Center for Human Rights; The California Public Defenders Association; Life Support Alliance; The Los Angeles Regional Reentry Partnership; Islamic Shura Council of Southern California; National Compadres Network; Public Counsel; Project Kinship; Youth Law Center; California Attorneys for Criminal Justice; Center on Juvenile and Criminal Justice; Taxpayers for Improving Public Safety; Post-Conviction Justice Project; Office of Restorative Justice

Opposition: California District Attorneys Association

PURPOSE

The purpose of this bill is to expand the youth offender parole process, a parole process for persons sentenced to lengthy prison terms for crimes committed before attaining 18 years of age, to include those who have committed their crimes before attaining the age of 23.

Existing law creates the youth offender parole hearing which is a hearing by the Board of Parole Hearings for the purpose of reviewing the parole suitability of any prisoner who was under 18 years of age at the time of his or her controlling offense. (Penal Code § 3051)

Existing law provides that the timing for the youth offender parole hearing depends on the sentence: if the controlling offense was a determinate sentence the offender shall be eligible for release after 15 years; if the controlling offense was a life term less than 25 years then the person is eligible for release after 20 years; and, if the controlling offense was 25 years or more then the person is eligible for release after 25 years. (Penal Code § 3051 (b).)

Existing law provides that if the youth offender is found suitable for parole at the youthful offender parole hearing then the youth offender shall be released on parole. (Penal Code § 3051 (e).)

Existing law provides that in reviewing a prisoner's suitability for parole in a youthful offender parole hearing, the Board of Parole Hearings shall give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law. (Penal Code § 4801 (c).)

This bill expands those eligible for a youthful parole hearing to those whose committing offense occurred before they reached the age of 23.

This bill provides that those eligible for a youthful offender parole hearing on the effective date of this bill shall have their hearing by July 1, 2017.

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:

Science, law, and common sense support the appropriateness of SB 260 youth offender parole hearings for young adults between the age of 18 and 23.

Recent scientific evidence on adolescent and young adult development and neuroscience shows that certain areas of the brain—particularly those affecting judgment and decision-making — do not fully develop until the early - to mid-20s. Various studies by researchers from Stanford University (2009), University of Alberta (2011), and the National Institute of Mental Health (2011) all confirm that the process of brain development continues well beyond age 18.

This research has been relied on by judges and lawmakers. The US and California Supreme Courts have recognized in several recent opinions that adolescents are still developing in ways relevant to their culpability for criminal behavior and their special capacity to turn their lives around.¹

California already recognizes the uniqueness of young adults in its Department of Juvenile Justice (DJJ). DJJ is mandated to detain and provide services and programming to some young adults until age 23. The state has recognized early adulthood as a vulnerable period in other arenas as well, for example, extending foster care support beyond age 18 to age 21 in AB 12 (Beall, 2010). As recently as 2013, the Legislature passed AB 1276 (Bloom), which provided special protections and opportunities for young adults through age 22 entering prison.

2. Youthful Offender Parole Hearings

On April 15, 2015 the State filed its most recent status report in response to the Three-Judge panel. The report set forth the status of cases brought under SB 260 (Hancock) which created youthful offender parole hearings:

The State continues to implement Senate Bill 260 (2013), which allows inmates whose crimes were committed as minors to appear before the Board of Parole Hearings (the Board) to demonstrate their suitability for release after serving at least fifteen years of their sentence. From January 1, 2014 through March 31, 2015, the Board held 534 youth offender hearings, resulting in 158 grants, 328 denials, 46 stipulations to unsuitability, and 2 split votes that required referral to the full Board for further consideration. An additional 225 were scheduled during this time period, but were waived, postponed, continued, or cancelled. All

¹ See: *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *Miller v. Alabama*, 567 US __ (2012); *People v. Caballero*, 55 Cal. 4th 262 (Cal. 2012); *People v. Gutierrez*, 58 Cal. 4th 1354 (Cal. 2014).

available inmates who were immediately eligible for a hearing when the law took effect on January 1, 2014, have had a hearing date or have one scheduled on or before July 1, 2015, as required by the terms of Senate Bill 260. In addition, nearly all youth offenders who received a prior to January 1, 2014, have reached their minimum eligible parole dates and have been processed for release from their life term by the Board.” (Defendants’ April 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*).

3. Crimes Committed Before The Offender Was 23

This bill expands those eligible for a youthful parole hearing to those whose committing offense occurred before they reached the age of 23.

Human Rights Watch, the co-sponsors of this bill, argues that:

Neuro-scientific research finds that the process of cognitive brain development continues into early adulthood — well beyond the age 18. For boys and young men especially this development process continues into the mid-20s. The still-developing areas of the brain, particularly those that affect judgment and decision-making, are highly relevant to criminal behavior and culpability.

Supporter National Center for Youth Law further argues this point stating:

The latest scientific evidence on adolescent development supports justification for SB 261. Research shows that certain areas of the brain, in particularly those that affect judgment and decision-making, do not fully develop until the early 20’s. This is confirmed in studies by Stanford University (2009), University of Alberta (2011), and the National Institute of Mental Health (2011). The Fact that young adults are still developing means they are uniquely situated for personal growth. SB 261 would continue the SB 260 trend towards reflecting the latest scientific evidence on young adult development by recognizing that young adults who were under the age of 23 at the time of their crime have an especially strong ability to grow.

Former US Speaker of the House of Representatives Newt Gingrich echoes the argument that these offenders have a capacity for growth both in his letter in support and in an editorial in the Huffington Post on April 13, 2015. He states:

It's only fair to recognize the difference between young- and full-grown adults in sentencing, just as we draw a distinction between juveniles and adults. People who commit offenses before their capacities are fully formed deserve a second chance -- an opportunity for a parole hearing if they mature, rehabilitate, and pay serious restitution to their victims and to the community.

SB 261 is compassionate, fair, and backed up by the latest scientific understanding of brain development. But it is also by no means lenient. To be eligible for a hearing, the bill would require that a young person must have served at least 15 years of his or her sentence, and even longer for more serious crimes.

This is no small amount of time for young adult -- it means spending a period of potentially more than half their lives at sentencing behind bars.

If young adults demonstrate real personal growth, rehabilitation, and remorse, they should have the opportunity to be eligible for a parole hearing after spending a very long period of time in prison. The California legislature should pass SB 261 to give them this opportunity -- and other states across the country should look to it as a model for making the criminal-justice system more fair, as well as more efficient.

The District of San Francisco has also recognized that these young offenders are not quite juveniles but not adults. In his support of this bill he states:

In the San Francisco District Attorney's Office, our Alternative Sentencing Planner — the first of its kind in the nation — takes a deep look at our cases to understand the risks and needs of the individual defendants. One theme that has emerged in this work is the difficulty of developing appropriate case dispositions for young adults, who have one leg in adolescence and one in adulthood. These young men and women are disproportionately represented in our adult justice system — and often fare poorly in that system, which lacks developmentally responsive interventions. As a result, I and other local criminal justice leaders have begun the essential work of developing a Young Adult Court that will handle criminal cases for individuals ages 18-25. We recognize that in many ways our current criminal system is not well suited to this unique age group and that we must implement reforms to improve outcomes for both the individuals themselves and the safety of our communities.

Even though arguably the neurological development continues to age 25 or beyond, the author expands youthful parole hearings in this bill to the age of 23 because that is the age in which a person can remain in the Youth Authority in California.

4. Opposition

The California District Attorneys Association opposes this bill stating:

The California Supreme Court ruled in *People v. Caballero* (2012) 55 Cal.4th 262, 282 that a juvenile offender sentenced to a de facto term of life imprisonment must be afforded a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” The Court additionally urged the Legislature to “enact legislation establishing a parole eligibility mechanism that provides a defendant serving a de facto life sentence without possibility of parole for non-homicide crimes that he or she committed as a juvenile with the opportunity to obtain release on a showing of rehabilitation and maturity.”

The key phrase in that opinion is “committed as a juvenile.” All of the major existing case law on juveniles who receive long sentences (*Miller v. Alabama*, 567 U.S. ____ (2012); *Graham v. Florida*, 560 U.S. ____ (2010); and *Caballero* itself) involves individuals who were under 18 at the time of their offense, and received a lengthy prison sentence. We are unaware of any case law under which

courts have considered someone a juvenile for an offense committed after they turned 18, but before they reached 23 years of age.

We believe that it is wholly inappropriate to expand this expedited parole process to include individuals who were adults when they committed their offenses. This bill isn't aimed at instances where a juvenile offender is charged as an adult – that was taken care of in SB 260. Instead, these are adults prosecuted in adult court, for very serious offenses that result in lengthy state prison commitments.

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