
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1242 **Hearing Date:** April 24, 2018
Author: Newman
Version: April 16, 2018
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Parole*

HISTORY

Source: California Narcotic Officers Association
Los Angeles Police Protective League
Los Angeles County Professional Peace Officers Association
Peace Officers Research Association of California

Prior Legislation: None

Support: Association of Deputy District Attorneys; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California District Attorneys Association; California Public Defenders Association; Los Angeles Police Protective League

Opposition: ACLU of California

PURPOSE

The purpose of this bill is to codify existing regulations and practices which establish the criteria that demonstrate a life-term inmate's suitability for parole.

Existing law provides that in the case of any inmate sentenced pursuant to any law, except as specified, the Board of Parole Hearings (BPH) must meet with each inmate during the sixth year before the inmate's minimum eligible parole date 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 inmate's consultation, the board provide the inmate with information about the parole hearing process, legal factors relevant to his or her suitability or unsuitability for parole, and individualized recommendations for the inmate regarding his or her work assignments, rehabilitative programs, and institutional behavior. Within 30 days following the consultation, the board shall issue its positive and negative findings and recommendations to the inmate in writing. (Pen. Code, § 3041, subd. (a)(1).)

Existing law provides that one year before the inmate's minimum eligible parole date (MEPD) a panel of two or more commissioners or deputy commissioners shall again meet with the inmate and shall normally grant parole. (Pen. Code, § 3041, subd. (a)(2).)

Existing law provides that upon a grant of parole, the inmate shall be released subject to all applicable review periods. Existing law also provides that an inmate shall not be released before reaching his or her MEPD unless the inmate 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 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).)

Existing law provides that any time before an inmate's release, the Governor may request review of a decision by a parole authority concerning the grant or denial of parole to any inmate in a state prison. The Governor shall state the reason or reasons for the request, and whether the request is based on a public safety concern, a concern that the gravity of current or past convicted offenses may have been given inadequate consideration, or on other factors. The request shall be reviewed by a majority of BPH commissioners, and a vote in favor of parole by a majority of the commissioners reviewing the request shall be required to grant parole to any inmate. (Pen. Code, § 3041.1.)

Existing law provides that during the 30 days following the granting, denial, revocation, or suspension by the board of the parole of an inmate sentenced to an indeterminate prison term based upon a conviction of murder, the Governor, when reviewing the board's decision pursuant to his or her constitutional authority, shall review materials provided by the board. (Pen. Code, § 3041.2, subd. (a).)

Existing law provides that if the Governor decides to reverse or modify a parole decision of the board pursuant to his or her constitutional authority, he or she shall send a written statement to the inmate specifying the reasons for his or her decision. (Pen. Code, § 3041.2, subd. (b).)

This bill requires the following to be established to the satisfaction of the parole board before parole is granted to a life-term inmate:

- The inmate has remorse and insight into the nature of the crime of which the inmate is convicted, unless the inmate asserts his or her factual innocence of the crime.
- The inmate has not minimized his or her role in the crime, and is credible about his or her role in the crime.
- The inmate demonstrates the changes the inmate has made to illustrate his or her departure from prior criminality.
- The inmate has been free from disciplinary actions for a reasonable period of time prior to the hearing.
- The inmate demonstrates positive activities while in custody.
- The inmate has developed realistic postrelease plans to avoid relapse or other conduct that contributed to prior criminality.

COMMENTS

1. Need for This Bill

According to the author:

Under current law, the Board of Parole Hearings (Board) is responsible for conducting hearings to determine whether inmates who have been sentenced to life with the possibility of parole are granted or denied parole....In instances where an inmate has been convicted of murder, the Board is responsible for making the determination of whether or not the person should still be considered dangerous and therefore a continued risk to public safety. To make that determination, the panel considers several factors including: the offense committed, the inmate's criminal history, their social history, psychological factors, medical conditions, institutional behavior, and the inmate's rehabilitative efforts and progress while in prison.

By statute, anytime a "lifer" is granted parole, the Governor is then required to review the decision....In those circumstances when an inmate convicted of murder is considered for parole, the Governor has the authority to reverse or modify the decision. Since January 1, 2014, the Board has granted questionable parole dates to 10 inmates previously convicted of murdering a peace officer, and in each of those cases where Governor Brown had the legal authority to do so, he ultimately overturned those grants.

Peace officers are essential to the maintenance of a safe society, doing daily the often dangerous—and sometimes deadly—work of protecting the citizenry, providing aid to victims, and holding criminals accountable....

...On multiple occasions, however, the Board has made deeply flawed parole grants in which it arguably failed in its obligation to prioritize public safety above the rights of dangerous criminals. Governor Brown, under his authority to review such grants, has been meticulous and thorough, making decisions that reflect a sober and thoughtful analysis of the cases before him.

...There is no assurance, however, that his successors will apply a similar rigor. Consequently, there is merit to...codifying and incorporating into law the straightforward and objective methodology he has employed in his own deliberations.

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 inmate'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 prisoner'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 inmate was committed 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 inmate 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 inmate 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 inmate has a history of unstable or tumultuous relationships with others.

- The inmate has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.
- The inmate has a lengthy history of severe mental problems related to the offense.
- The inmate 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 inmate does not have a record of assaulting others as a juvenile or committing crimes with a potential of personal harm to victims.
- The inmate has experienced reasonably stable relationships with others.
- The inmate 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 inmate 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 inmate suffered from Battered Woman Syndrome, as defined, and it appears the criminal behavior was the result of that victimization.
- The inmate lacks any significant history of violent crime.
- The inmate's present age reduces the probability of recidivism.
- The inmate 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, subs. (c) & (d).)

3. Effect of This Legislation

This bill requires the following to be established to the satisfaction of the parole board before parole is granted to a life-term inmate:

- The inmate has remorse and insight into the nature of the crime of which the inmate is convicted, unless the inmate asserts his or her factual innocence of the crime.
- The inmate has not minimized his or her role in the crime, and is credible about his or her role in the crime.
- The inmate demonstrates the changes the inmate has made to illustrate his or her departure from prior criminality.
- The inmate has been free from disciplinary actions for a reasonable period of time prior to the hearing.
- The inmate demonstrates positive activities while in custody.
- The inmate has developed realistic postrelease plans to avoid relapse or other conduct that contributed to prior criminality.

Although the phrasing may be slightly different, each of these factors is included in existing regulations and required to be considered by the parole board in making parole suitability determinations. (See Cal. Code of Regs., tit. 15, § 2402, subs. (b), (c), (d).)

4. Argument in Support

The California District Attorneys Association writes:

Senate Bill 1242... would establish additional requirements for parole hearings for an inmate with a life sentence that are required to be met before parole is granted....

This bill is a good attempt to ensure that an inmate really deserves parole, has made positive changes in his or her life, and has a plan for what he or she will do upon release. This is the kind of information and evidence that parole commissioners should already be seeking and requiring. Putting it into a statute as a requirement is good public safety policy.

5. Argument in Opposition

According to the ACLU of California:

Under current law, the Board of Parole Hearings (BPH) “shall grant parole to an inmate unless... consideration of the public safety requires a more lengthy period of incarceration for this individual” (Penal Code § 3041(b)). The California Code of Regulations further governs this process, listing a number of factors that show suitability and unsuitability, and dictating that parole should be denied if the parole board determines that “the prisoner will pose an unreasonable risk of danger to society if released from prison.” (CCR 15 § 2402, 2281). In other words, the impact on public safety is the primary consideration in determining whether a person is suitable for parole.

SB 1242 upends this deliberative process, requiring consideration of tenuous factors that are not included in the regulations or in the statute, and which have not been connected to a person’s risk of committing crimes in the future, including a person’s “insight into the nature of the crime,” and whether they have “minimized [their] role in the crime.”

Over the past decade, many people have been denied parole based on the vague notion of “insight.” Although the California Supreme Court upheld a “lack of insight” as a rationale for reversing a parole decision,¹ they also acknowledged the potential difficulty in assessing “insight,” stating that “expressions of insight and remorse will vary from prisoner to prisoner and that there is no special formula for a prisoner to articulate in order to communicate that he or she has gained insight into, and formed a commitment to ending, a previous pattern of violent behavior.”²

¹ *In re Shaputis*, 190 P.3d (Cal. 2008).

² *Id.* at 585 n.18.

In a subsequent California Supreme Court decision, a concurring opinion noted that “the social science literature does not support a generalization that an inmate’s lack of insight into the causes of past criminal activity or failure to admit the official version of the commitment offense is itself a reliable predictor of future dangerousness.”³ The opinion also acknowledged the term’s potential for abuse: “precisely because lack of insight is such a readily available diagnosis, its significance as an indicator of current dangerousness must be rationally articulated under the individual circumstances of each case—lest ‘lack of insight’ become, impermissibly, a new talisman with the potential to render almost all life inmates unsuitable for parole.”⁴

SB 1242 would take the dangerous step of codifying the vague and abuse-prone notion of “insight” into the requirements for the BPH’s consideration. Furthermore, SB 1242 would require consideration of whether the person “has minimized his or her role in the crime,” regardless of whether they are presently minimizing their role. That is, their minimization at any point since the offense took place could be used as justification for denying them parole and keeping them incarcerated, even if they are no longer minimizing their role.

There is no rationale for taking these steps to codify requirements that go beyond the guidelines of the regulations for determining parole suitability. Lifers have a lower recidivism rate than any other population in California’s prisons: Of the 392 people released by BPH between July 2010 and June 2011, only three people — less than one percent — returned to prison with a new term within three years.⁵

-- END --

³ *In re Shaputis*, 265 P.3d 253, 275 (Cal. 2011)

⁴ *Id.* at 278.

⁵ CDCR, *2015 Outcome Evaluation Report*. Office of Research (2016).