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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 224                      **Hearing Date:** April 7, 2015  
**Author:** Liu  
**Version:** March 19, 2015  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** MK

**Subject: Elderly Parole Program**

## HISTORY

**Source:** Californians United for a Responsible Budget; Legal Services for Prisoners with Children

**Prior Legislation:** None applicable

**Support:** A New PATH; AllCare Alliance; American Civil Liberties Union; American Friends Service Committee; California Attorneys for Criminal Justice; California Catholic Conference; California Partnership; California Public Defenders Association; Californians for Safety and Justice; Center on Juvenile and Criminal Justice; Communities United for Restorative Youth Justice; Courage Campaign; Ella Baker Center for Human Rights; FACTS EDUCATION and PROJECTS; Fair Chance Project; Friends Committee on Legislation of California; Justice Now; Life Support Alliance; Los Angeles Community Action Network; Prison Law Office; Prison Policy Initiative; Sisters of St. Joseph of Carondelet; Western Regional Advocacy Project; several individuals

**Opposition:** California District Attorneys Association; California State Sheriffs' Association

## PURPOSE

*The purpose of this bill is to codify court-ordered elderly parole by reducing the age from 60 to 50 and the time that must be served in prison from 25 to 15 years.*

*Existing law* provides that in the case of any inmate sentenced to an indeterminate sentence the Board of Parole Hearings (the Board) shall meet with each inmate during the sixth year prior to the inmate's eligible parole release date for the purposes of reviewing and documenting the inmates activities and conduct pertinent to both parole eligibility and to the granting and withholding of postconviction credit. (Penal Code § 3041(a))

*Existing law* provides that one year prior to the inmates minimum eligible parole release date a panel of two or more commissioners or deputy commissioners shall meet with the inmate and shall normally set a parole release date. (Penal Code § 3041(a))

*Existing law* provides that the release date shall be set in a manner that will provide uniform terms for offenses of similar gravity and magnitude with respect to their threat to the public, and that will comply with the sentencing rules that the Judicial Council may issue and any sentencing

information relevant to the setting of the parole release dates. The Board shall establish criteria for the setting of parole release dates and in doing so shall consider the number of victims of crime for which the inmate was sentenced and other factors in mitigation or aggravation of the crime. (Penal Code § 3041 (a))

*Existing law* provides that one year prior to the inmate's minimum eligible parole release date a panel of two or more commissioners or deputy commissioners shall again meet with the inmate, hall except as provided, normally set a parole release date as provided in Section 3041.5. (Penal Code § 3041(a))

According to the Three-judge Court order filed February 10, 2014 the CDCR must “[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*)

*This bill* provides that a prisoner shall be considered for parole under the Elderly Parole Program if she or she meets both of the following conditions:

- The prisoner is 50 years of age or older; and,
- The prisoner has served 15 years of continued incarcerations on his or her sentence including time served prior to sentencing.

*This bill* provides that when considering the release of a prisoner under elderly parole the board shall give special consideration to whether age, time served, and diminished physical condition, if any have reduced the elderly prisoner's risk for future violence.

*This bill* provides that elderly parole does not apply to prisoners sentenced to death or to imprisonment for life without the possibility of parole.

*This bill* contains uncodified legislative findings.

## 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:

SB 224 seeks to codify the existing Elderly Parole Program, implemented by the Brown Administration following the three-judge panel decision in *Coleman v. Brown* (2013). This program could be eliminated at any time at CDCR’s discretion. The bill also expands the eligibility criteria for inmates to be considered for parole from age 60 years and older and having served 25 years on their current sentence, to age 50 years and older and having served 15 years on their current sentence.

According to a 2012 ACLU report, there is a long-standing consensus among correctional experts and criminologists that “50 years of age is the appropriate point marking when a prisoner becomes “aging” or “elderly.”<sup>1</sup> The National Institute of Corrections (NIC) has also used this cutoff in determining what age constitutes “elderly” prisoners.

The human and financial cost of incarcerating elders is astronomical. Incarcerating elderly prisoners ages 50 years and older each year in the United

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<sup>1</sup> [https://www.aclu.org/files/assets/elderlyprisonreport\\_20120613\\_1.pdf](https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf)

States costs approximately twice as much compared to other age groups.<sup>2</sup> California alone spends approximately \$55,000 a year for every inmate that is incarcerated.<sup>3</sup> And in 2014, health care costs comprised the second largest area of prison spending in California; approximately 29% of the state's prison budget (LAO, 2014).<sup>4</sup> Additionally, due to the accumulative impact of day-to-day conditions in prisons, such as high levels of stress, less access to nutritional food, and increased exposure to chronic illness, studies have shown that incarcerated people are roughly ten to fifteen years older physiologically than they are chronologically.<sup>5</sup> Consequently, these individuals can be expected to suffer from more advanced diseases than their non-incarcerated peers, with treatment and health care costs projected in the millions for elderly prisoners.

The elderly inmate population tends to have lower recidivism rates as compared to the general prison population. According to CDCR, in 2012 felony arrests in California for individuals ages 50 and older were among the lowest percentage of all felony arrests for all age groups (for ages 50-59, 7.67% and for ages 60-69, 1.73%). Parolees ages 50 years and older who were re-incarcerated for parole violations was significantly lower, as compared to other age groups: 8.0% for ages 50-59 and 1.0% for ages 60-69.

States across the nation are dealing with growing and aging prison populations and the accompanying budget impacts. At least 15 states and the District of Columbia have defined a process for releasing older persons from prison. SB 224 allows California to follow this national trend by modeling Maryland's Geriatric Parole Program, which requires prisoners to have served 15 years until they can be eligible for the parole. (Md. Code Ann., Crim. Law § 14-101(g)).

Codifying the current elder parole process and expanding it to reach incarcerated elders ages 50 years and older who have served 15 consecutive years in prison is a reasonable step towards reducing the cost and overcrowding issues associated with California's prisons. SB 224 furthers the narrative of treating our aging population humanely and compassionately in addition to relieving the burden of imprisonment on taxpayers and the families of older prisoners

## 2. Elderly Parole

In *Coleman v. Brown*, *Plata v. Brown* in which the plaintiffs are seeking a reduction in the California prison population, the Three-Judge Court Order of February 10, 2014 required CDCR to create an "elderly parole" program in which prisoners who have reached the age of 60 and served 25 years will be considered for parole. The elderly parole hearings began on October 1, 2014. CDCR's February 2015 status report in response to the February 10, 2014 court order states the progress of the elderly parole program stating:

Parole process for inmates 60 years of age or older having served at least 25 years: The Board continues to schedule eligible inmates for hearings who were

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<sup>2</sup> Ibid.

<sup>3</sup> CalFacts, December 2014, LAO.

<sup>4</sup> CalFacts, December 2014, LAO.

<sup>5</sup> [https://www.aclu.org/files/assets/elderlyprisonreport\\_20120613\\_1.pdf](https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf)

not already in the Board's hearing cycle, including inmates sentenced to determinate terms. The Board has scheduled 549 hearings for inmates eligible for elderly parole, resulting in 115 grants, 247 denials, and 26 stipulations to unsuitability. The remaining 159 scheduled cases were waived by the inmate, postponed, continued, or cancelled. "(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*).

The age 60 was determined because there is a significant reduction in crimes committed by those over 60. According to felony arrest and CDCR admissions data by age:

In California, individuals age 60 or over were responsible for the lowest percentage of all felony arrests of all age groups in 2012, with the exception of children under the age of 10. Individuals age 60 or over were responsible for 1.9% of all felony arrests.

While the data shows that there are still 32,980 felony arrests of people 50-59 years of age those numbers drop 7,454 at age 60.

([http://www.cdcr.ca.gov/BOPH/docs/Policy/2012\\_California\\_Arrest\\_and\\_CDCR\\_Admissions\\_Data\\_by\\_Age\\_Final.pdf](http://www.cdcr.ca.gov/BOPH/docs/Policy/2012_California_Arrest_and_CDCR_Admissions_Data_by_Age_Final.pdf))

### 3. Codification of Elderly Parole

As noted by the author, currently the elderly parole program is in response to the court order and could be stopped by CDCR at any time after the order is lifted. This bill would codify an elderly parole program for persons who have reached the age of 50 and have served 15 years in prison.

The sponsor, Legal Services for Prisoners with Children point to a report by the National Institute of Corrections which defines elderly prisoners as those 50 years of age and older as the rationale for lowering the age to 50 years old. (US Department of Justice, National Institute of Corrections *An Administrative Overview of the Older Inmate*, August 1992) Prison Law Office, and other supporters also note:

The human and financial cost of incarcerating elders is astronomical. California may spend two to three times more on elder prisoners, with age-related costs beginning to accumulate at 50 years old, with costs as high as \$1,000,000 a year per person for acute care. Furthermore, older people have significantly lower arrest rates. In 2001, the federal arrest rate for persons aged 40 to 44 was .73%. This rate decreases by half every five years dropping to .46% for person 45-49. For elders 50-54 years old, the arrest rate plummets to .26%. There is also a lower risk of recidivism for older prisoners age 50 and older.

Along with reducing the age for elderly parole, this bill reduces the time that must be served lowering it from 25 years in the current program to 15 years. The author may wish to consider having the length of time served be 25 years for those who have been sentenced under the three-strikes provisions of the law in order to avoid any potential legal conflicts with that initiative.

#### 4. Opposition

The California Sheriffs' Association opposes this bill stating:

Preliminarily, it should be noted that the state prison population is below the court-ordered benchmark of 137.5 percent of design capacity. As such, we question whether any additional population reduction measures are warranted at this time. However, we are particularly concerned with your measure as it would undermine the lawfully imposed sentences of those convicted of murder and violent sexual offenses. While we recognize the recidivism rate of criminal offenders drops off significantly as offenders age, the likelihood of reoffending is not the sole basis to consider whether someone should be eligible for parole. We think providing for mandatory parole consideration for all offenders that simply reach the age of 50 will undermine the criminal justice system and negatively impact the lives of victims that will be notified of an offender's potential release

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