



notify the prisoner and designated family members of the recall and resentencing procedures. (Penal Code § 1170(e)(4))

*Existing law* provides that the prisoner or his or her family member or designee may request consideration for recall and resentencing by contacting the chief medical officer at the prison or the Secretary of CDCR. If the Secretary of CDCR determines that the prisoner satisfies the criteria, the Secretary or BPH may recommend to the court that the prisoner's sentence be recalled. (Penal Code § 1170 (e)(6).)

*Existing law* states that the Secretary shall submit a recommendation for release within 30 days in the case of inmates sentenced to determinate terms. (Penal Code § 1170 (e)(6).)

*Existing law* provides that in the case of inmates sentenced to indeterminate terms, the Secretary may make a recommendation to BPH with respect to inmates who have applied for consideration for recall and resentencing. (Penal Code § 1170 (e)(6).)

*Existing law* allows the BPH to make an independent judgment as to whether the inmate is eligible and to make findings related thereto before rejecting the request or making a recommendation to the Court. (Penal Code § 1170 (e)(6).)

*Existing law* provides that any recommendation for recall submitted to the court by CDCR or BPH shall include one or more medical evaluations, a post-release plan, and findings made as to the prisoner's eligibility. (Penal Code § 1170 (e)(7).)

*Existing law* provides that the above compassionate release provisions do not apply to a prisoner sentenced to death or a term of life without the possibility of parole. (Penal Code § 1170 (e) (2) B)

*This bill* provides that the compassionate release provisions do not apply if a person was convicted of first degree murder of a peace officer who was killed while engaged in the performance of his or her duties and the individual knew or should have known that the victim was a peace officer.

*This bill* also provides that the compassionate release provisions do not apply if a person was convicted of murder of a peace officer or former peace officer who was intentionally murdered in retaliation for the performance of his or her official duties and the defendant was sentenced after January 1, 2016.

*Existing law* establishes the medical parole program whereby any prisoner who the head physician of the institution where the prisoner is located determines is permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour care, and that incapacitation did not exist at the time of sentencing, shall be granted medical parole if the BPH determines that the conditions under which the prisoner would be released would not reasonably pose a threat to public safety. (Penal Code § 3550(a).)

*Existing law* provides that the medical parole law shall not be construed to alter or diminish the rights conferred under the Victim's Bill of Rights Act of 2008: Marsy's Law, including notification of victims of parole proceedings. (Penal Code § 3550(b).)

*Existing law* states that when a physician employed by CDCR who is the primary care provider for an inmate identifies an inmate that he or she believes meets the medical criteria for medical parole, the primary care physician shall recommend to the head physician of the institution where the prisoner is located that the prisoner be referred to the BPH for consideration for medical parole. Within 30 days of receiving that recommendation, if the head physician of the institution concurs in the recommendation of the primary care physician, he or she shall refer the matter to BPH using a standardized form and format developed by the department, and if the head physician of the institution does not concur in the recommendation, he or she shall provide the primary care physician with a written explanation of the reasons for denying the referral. (Penal Code § 3550(c).)

*Existing law* allows the prisoner or his or her family member or designee to independently request consideration for medical parole by contacting the head physician at the prison or CDCR. Within 30 days of receiving the request, the head physician of the institution shall, in consultation with the prisoner's primary care physician, make a determination regarding whether the prisoner meets the criteria for medical parole as specified and, if the head physician of the institution determines that the prisoner satisfies the criteria, he or she shall refer the matter to BPH using a standardized form and format developed by CDCR. If the head physician of the institution does not concur in the recommendation, he or she shall provide the prisoner or his or her family member or designee with a written explanation of the reasons for denying the application. (Penal Code § 3550(d).)

*Existing law* requires CDCR to complete parole plans for inmates referred to the BPH for medical parole consideration. The parole plans shall include, but not be limited to, the inmate's plan for residency and medical care. (Penal Code § 3550(e).)

*Existing law* provides, notwithstanding any other law, that medical parole hearings shall be conducted by two-person panels consisting of at least one commissioner. In the event of a tie vote, the matter shall be referred to the full board for a decision. Medical parole hearings may be heard in absentia. (Penal Code § 3550(f).)

*Existing law* requires the BPH, upon receiving a recommendation from the head physician of the institution where a prisoner is located for the prisoner to be granted medical parole, to make an independent judgment regarding whether the conditions under which the inmate would be released pose a reasonable threat to public safety, and make written findings related thereto. (Penal Code § 3550(g).)

*Existing law* authorizes the BPH or the Division of Adult Parole Operations to impose any reasonable conditions on prisoners subject to medical parole supervision, including, but not limited to, the requirement that the parolee submit to electronic monitoring. As a further condition of medical parole, the parolee may be required to submit to an examination by a physician selected by the BPH for the purpose of diagnosing the parolee's current medical condition. In the event such an examination takes place, a report of the examination and diagnosis shall be submitted to the BPH by the examining physician. If the BPH determines, based on that medical examination that the person's medical condition has improved to the extent that the person no longer qualifies for medical parole, the board shall return the person to the custody of the CDCR. (Penal Code § 3550(h).)

*Existing law* requires CDCR, at the time a prisoner is placed on medical parole supervision, to ensure that the prisoner has applied for any federal entitlement programs for which the prisoner

is eligible, and has in his or her possession a discharge medical summary, full medical records, parole medications, and all property belonging to the prisoner that was under the control of the department. Any additional records shall be sent to the prisoner's forwarding address after release to health care-related parole supervision. (Penal Code § 3550(i).)

*Existing law* states that medical parole shall not apply to any prisoner sentenced to death or life in prison without possibility of parole or to any inmate who is serving a sentence for which medical parole is prohibited by any initiative statute. (Penal Code § 3550(b).)

*This bill* provides that a prisoner who was convicted of first degree murder of a peace officer who the prisoner knew or should have known was in the performance of his or her duties is not eligible for medical parole.

*This bill* also provides that a prisoner who was convicted of murder of a peace officer or former peace officer who was intentionally murdered in retaliation for the performance of his or her official duties and the defendant was sentenced after January 1, 2016 shall not be eligible for medical parole.

#### 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:

In 1973, a Mr. Gerald Youngberg took the lives of San Bernardino County Sheriff's Lt. Al Stewart, California Highway Patrol Officer Larry Wetterling, and gas station attendant named Robert Jenkins in execution-style murders. In 2012, Youngberg attempted to receive a medical parole release from prison despite major law enforcement opposition throughout California.

Interestingly, California's medical parole law exempts from eligibility persons sentenced to death or life without the possibility of parole – a sentence Mr. Youngberg would have certainly received had those punishment options been available when he committed this triple murder in 1973. For a period of time in the 1970s, the sentencing options of the death penalty or life without the possibility of parole were not available.

Although Youngberg was ultimately denied his medical parole, the danger that he or a similarly situated person who has been convicted of murdering a peace officer could be released on either medical parole or compassionate release parole remains very real.

Senate Bill 6 would exempt from medical parole eligibility and compassionate release eligibility a prisoner who was convicted of the murder of a peace officer.

The honorable work that our men and women in law enforcement perform on a daily basis is crucial to ensuring that our neighbors and families live in safe communities. Senate Bill 6 is necessary to guarantee that individuals convicted of these heinous crimes serve their entire sentences given to them by a jury of their peers.

### 2. Compassionate Release and Medical Parole

There are two ways that a prisoner may be released in California for medical reasons, compassionate release or medical parole.

With compassionate release:

A recommendation for the recall of a terminally prisoner under P.C. 1170(e) may be initiated by notification to the warden by any department physician who determines that a prisoner has 6 months or less to live. (P.C. 1170(e)(4).) Also, a prisoner or family member or designee may independently request consideration for recall by contacting the prison's chief medical officer or the secretary. If the secretary determines that the prisoner satisfies the criteria for recall, the secretary or board may recommend to the court that the sentence be recalled. For inmates sentenced to determinate terms, the secretary must submit a recommendation for release within 30 days. For those sentenced to indeterminate terms, the secretary may make a recommendation to the board. At its next lawfully noticed meeting, the board must consider this information and make an independent judgment and related findings before rejecting the request or making a recommendation to the court. (P.C. 1170(e)(6).)

A recommendation for recall by the secretary or the board must include one or more medical evaluations, a postrelease plan, and the required findings. (P.C. 1170(e)(7).) Within 10 days of receipt of a positive recommendation, the court must hold a hearing to consider whether recall is appropriate. (P.C. 1170(e)(3).) If possible, the matter must be heard by the judge who sentenced the prisoner. (P.C. 1170(e)(8).)

If the court grants the recall, the department must release the prisoner within 48 hours of receipt of the court's order, unless the prisoner agrees to a longer time period. (P.C. 1170(e)(9).) (3 Witkin Cal. Crim. Law Punishment § 395)

SB 1399 (Leno) (Chapter 405, Statutes of 2010) enacted medical parole, which became operative in January of 2011. (Penal Code § 3550.) The law provides that medical parole shall be granted where (1) an inmate has been found by the head physician in the institute where they are housed to be permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour care and (2) the Board of Parole Hearings also makes a determination that the conditions under which the prisoner would be released would not reasonably pose a threat to public safety.

Neither compassionate release nor medical parole applies to a person who is sentenced to life without parole.

### **3. No Compassionate Release or Medical Parole for Peace Officer Murder**

This bill provides that compassionate release and medical parole do not apply to a person convicted of first degree murder of a peace officer while performing his or her duties or in retaliation for his or her duties.

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