SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2015 - 2016 Regular

Bill No:	AB 487	**Hearing Date:**	June 23, 2015
Author:	Gonzalez		
Version:	April 16, 2015		
Urgency:	No	**Fiscal:**	Yes
Consultant:	MK		

Subject: ***Parole Hearings: Notification of District Attorneys***

HISTORY

Source: San Diego County District Attorney

Prior Legislation: Proposition 9, Marsy's Law (2008)

Support: Association for Los Angeles Deputy Sheriffs; Association of Deputy District Attorneys; California College and University Police Chiefs Association; California Correctional Supervisors Organization; California District Attorneys Association; California Police Chiefs Association Inc.; California Narcotic Officers Association; California State Sheriffs' Association; Crime Victims United of California; County of San Diego; Los Angeles Deputy Sheriffs Association; Los Angeles Police Protective League; Riverside Sheriffs Association

Opposition: California Public Defenders Association

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this bill is to provide that when an inmate requests advancement in a parole hearing the Board of Parole Hearings must provide notice to the victim and to the district attorney 30 days prior to making a decision.

Existing law provides guidelines for the Board of Parole Hearings to schedule parole hearings for prisoners in California Department of Correction and Rehabilitation for whom they are appropriate. (Penal Code, § 3041.5.)

Existing law requires the board set a date to reconsider whether an inmate should be released on parole that ensures a meaningful consideration of whether the inmate is suitable for release on parole. (Penal Code, § 3041.5.)

Existing law requires that within 10 days following any meeting where a parole date has been set, the board shall send the prisoner a written statement setting forth his or her parole date, the conditions he or she must meet in order to be released on the date set, and the consequences of failure to meet those conditions. (Penal Code, § 3041(b)(1).)

Existing law requires that within 20 days following any meeting where a parole date has not been set, the board shall send the prisoner a written statement setting forth the reason or reasons for refusal to set a parole date, and suggest activities in which he or she might participate that will benefit him or her while he or she is incarcerated. (Penal Code, § 3041.5 (b)(2).)

Existing law specifies that the board shall schedule the next hearing, after considering the views and interests of the victim, as follows:

- Fifteen years after any hearing at which parole is denied, unless the board finds by clear and convincing evidence that the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041 are such that consideration of the public and victim's safety does not require a more lengthy period of incarceration for the prisoner than 10 additional years. (Penal Code, § 3041.5 (b)(3)(A).)
- Ten years after any hearing at which parole is denied, unless the board finds by clear and convincing evidence that the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041 are such that consideration of the public and victim's safety does not require a more lengthy period of incarceration for the prisoner than seven additional years. (Penal Code, § 3041.5 (b)(3)(B).) Three years, five years, or seven years after any hearing at which parole is denied, because the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041 are such that consideration of the public and victim's safety requires a more lengthy period of incarceration for the prisoner, but does not require a more lengthy period of incarceration for the prisoner than seven additional years. (Pen. Code, § 3041.5, subd. (b)(3)(c).)

Existing law allows the Board of Parole Hearings discretion, after considering the views and interests of the victim, advance a parole hearing to an earlier date, when a change in circumstances or new information establishes a reasonable likelihood that consideration of the public and victim's safety does not require the additional period of incarceration of the prisoner. (Penal Code, § 3041.5 (b)(4).)

Existing law allows an inmate to request that the board exercise its discretion to advance a hearing set pursuant to paragraph (3) of subdivision (b) to an earlier date, by submitting a written request to the board, with notice, upon request, and a copy to the victim which shall set forth the change in circumstances or new information that establishes a reasonable likelihood that consideration of the public safety does not require the additional period of incarceration of the inmate. (Penal Code § 3041.5 (d)(1).)

Existing law mandates that the board shall have sole jurisdiction, after considering the views and interests of the victim to determine whether to grant or deny a written request to advance the hearing, and its decision shall be subject to review by a court or magistrate only for a manifest abuse of discretion by the board. The board shall have the power to summarily deny a request that does not comply with the provisions of this subdivision or that does not set forth a change in circumstances or new information as required. (Pen. Code, § 3041.5, sub. (d)(2).)

Existing law specifies an inmate may make only one written request to advance a hearing during each three-year period. Following either a summary denial of a request to advance a hearing, or the decision of the board after a hearing to not set a parole date, the inmate shall not be entitled to submit another request for a hearing pursuant to subdivision to set a parole date until a three-

year period of time has elapsed from the summary denial or decision of the board. (Penal Code, § 3041.5 (d)(3).)

Existing law specifies that within 10 days of any board action resulting in the postponement of a previously set parole date, the board shall send the prisoner a written statement setting forth a new date and the reason or reasons for that action and shall offer the prisoner an opportunity for review of that action. (Penal Code § 3041.5 (b)(5).)

Existing law requires that within 10 days of any board action resulting in the rescinding of a previously set parole date, the board shall send the prisoner a written statement setting forth the reason or reasons for that action, and shall schedule the prisoner's next hearing as specified. (Penal Code, § 3041.5 (b)(6).)

Existing law requires the board conduct a parole hearing as a de novo hearing. Findings made and conclusions reached in a prior parole hearing shall be considered in but shall not be deemed to be binding upon subsequent parole hearings for an inmate, but shall be subject to reconsideration based upon changed facts and circumstances. When conducting a hearing, the board shall admit the prior recorded or memorialized testimony or statement of a victim or witness, upon request of the victim or if the victim or witness has died or become unavailable. At each hearing the board shall determine the appropriate action to be taken based on the criteria set forth in Penal Code Section 3041. (Penal Code, § 3041.5 (c).)

This bill requires that when an inmate requests that the parole board advance a parole hearing to an earlier date, by submitting a written request to the board, notice be sent to the district attorney of the county in which the offense was committed and to the victim, if the victim requested notification.

This bill requires notice of the inmate's request to advance the parole hearing to be forwarded by the parole board to the district attorney and the victim, if the victim requested notification, no less than 30 days before the board may grant the inmate's request.

This bill specifies that a failure to notify the district attorney or the victim, if the victim requested notification, of a request to advance the hearing shall postpone any action being taken on the hearing advancement until the notice is properly made.

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 2008, California voters passed the Victims' Bill of Rights Act, better known as Marsy's Law. This Amendment to the State's Constitution and certain Penal Code sections protects and expands the legal rights of victims of crime to include 17 rights in the judicial process, including the right to legal standing, protection from the defendant, notification of all court proceedings, and restitution, as well as being noticed and to be heard at any proceeding.
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> Unfortunately, existing law only requires that the Board of Parole Hearings notify the victims or next of kin in an inmate files a petition to advance their parole date, omitting the District Attorney in the notification process.
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> According to the San Diego County District Attorney's office, some victims are not getting notified in a timely fashion. AB 487 will ensure that when an inmate files such petitions, the District Attorney of the pertinent jurisdiction will also be

notified. The bill will also postpone the requested petition if the Board of Parole fails to notify the victim and the DA, only until this requirement is met.

2. Marsy's Law (Proposition 9, 2008)

Proposition 9 was passed by the voters of in 2008. Proposition 9 included a victims' bill of rights. Among the protections in the victims' bill of rights, was the right for victims to be noticed of criminal proceedings in which they were a victim. Proposition 9 also provided victims with the right to be heard at criminal proceedings. Victims can express their views personally, or through a representative. Criminal proceedings where victims have a right to notice and expression of views include parole hearings for inmates serving indeterminate life terms in the California Department of Corrections and Rehabilitation (CDCR).

Proposition 9 set forth the time frames for which a future parole hearing shall be set following the denial of parole. The law also provides a procedure for a person to ask for a hearing date to be advanced because of a change in circumstances or new information that establishes a reasonable likelihood that consideration of the public safety does not require the additional period of incarceration of an inmate.

3. Notice to the District Attorney

The law currently requires that a victim be notified when an inmate requests advancement in his or parole hearing date. This bill provides that at least 30 days before the Board of Parole Hearings makes a decision on a request to advance a parole hearing, the board must notify the district attorney and the victim, if the victim has requested notification. The bill specifies that notice shall be satisfies by mailing copies of the inmate's to the office of the district attorney and to the last address provided by the victim of the Office of Victim and Survivor Rights and Services.

4. "Remedy For Failure to Provide Notification"

Under existing law there are other sections that require notice by the Board of Parole Hearings in specific time frames. For example, Penal Code Section 3042 requires that 30 days before the Board of Prison Terms meets to review or consider the parole suitability or setting of a parole date for any prisoner sentenced to life the board shall notify the judge, the defense attorney, the district attorney and the law enforcement agency of the county where the prisoner was involved in the conviction. Penal Code Section 3043 also has a number of notice requirements relating to victims' statements and other people entitled to attend the hearing. In both of these sections no remedy is specified. If a violation of these sections is found at a hearing the Commissioners present have the ability to postpone the hearing or make any other accommodations they deem appropriate.

Unlike the sections above, or any other notice section governing the Board of Parole Hearings, this bill provides that failure to provide notification shall postpone any action being taken on the hearing advancement until the notice is properly made. This gives no ability for the commissioners to decide the appropriate remedy based on the situation at hand. What if there was technically failure to send the notice 30 days in advance but it was sent 29 days in advance and everyone showed up and wants to have the decision made that day? This bill would not allow the district attorney and the victims who may have traveled to the hearing to waive this provision and allow the action on the decision to be made. Is it appropriate to have the remedy

in law or would it be better to allow the Board of Parole Hearings to fashion the appropriate remedy when notice has not been made as they do in every other situation where notice is required? The appropriate remedies could vary case by case. Was the notice sent but not received? Was the notice sent and received but mailed in less than 30 days? Did those who were supposed to be noticed appear or have time to make their position known, whether or not the notice was mailed 30 or more days prior to the date of the decision? Was the notice sent in a timely manner but the victim for other reasons could use more time? Any of these scenarios are foreseeable and continuing the hearing on advancement would not always be the best solution for any or all of them. Yet, even if the district attorney and victim make a trip to the hearing, this bill would require the hearing to be continued. Should the bill be silent on the remedy?

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