

ASSEMBLY BILL

No. 1166

Introduced by Assembly Member Nielsen

February 27, 2009

An act to amend Sections 3041 and 3041.5 of the Penal Code, relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

AB 1166, as introduced, Nielsen. Parole: hearings: review.

Existing law provides that, one year prior to the minimum eligible parole release date of an inmate serving an indeterminate sentence, a panel of 2 or more commissioners or deputy commissioners of the Board of Parole Hearings shall meet with the inmate and set a parole release date, as specified. Existing law provides that in the event of a tie vote, the matter shall be referred to the board for an en banc hearing, as specified.

This bill would, instead, provide that in the event of a tie vote, the matter shall be referred to the board for an en banc review of the record that was before the panel that rendered the tie vote. The bill would require the board to vote, upon the en banc review of the record, to either grant or deny parole and render a statement of decision.

Existing law, as amended by Proposition 9, the Victim's Bill of Rights Act of 2008: Marsy's Law, of the November 4, 2008, statewide general election, establishes procedures at all hearings for the purpose of reviewing a prisoner's parole suitability, or the setting, postponing, or rescinding of parole dates, and provides prisoners and victims specified rights at these hearings.

This bill would exempt en banc reviews of tie votes from these provisions.

Proposition 9 permits the Legislature, by a statute enacted by a vote of $\frac{3}{4}$ of the membership of each house and in accordance with specified procedures, to amend the provisions of the act. Because this bill would eliminate en banc hearings and exempt en banc reviews from the application of this act’s statutory provisions, it would require a $\frac{3}{4}$ vote.

Vote: $\frac{3}{4}$. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3041 of the Penal Code is amended to
 2 read:
 3 3041. (a) In the case of any inmate sentenced pursuant to any
 4 provision of law, other than Chapter 4.5 (commencing with Section
 5 1170) of Title 7 of Part 2, the Board of Parole Hearings shall meet
 6 with each inmate during the third year of incarceration for the
 7 purposes of reviewing the inmate’s file, making recommendations,
 8 and documenting activities and conduct pertinent to granting or
 9 withholding postconviction credit. One year prior to the inmate’s
 10 minimum eligible parole release date a panel of two or more
 11 commissioners or deputy commissioners shall again meet with the
 12 inmate and shall normally set a parole release date as provided in
 13 Section 3041.5. No more than one member of the panel shall be a
 14 deputy commissioner. In the event of a tie vote, the matter shall
 15 be referred for an en banc hearing by the board *review of the record*
 16 *that was before the panel that rendered the tie vote. Upon en banc*
 17 *review, the board shall vote to either grant or deny parole and*
 18 *render a statement of decision.* The release date shall be set in a
 19 manner that will provide uniform terms for offenses of similar
 20 gravity and magnitude in respect to their threat to the public, and
 21 that will comply with the sentencing rules that the Judicial Council
 22 may issue and any sentencing information relevant to the setting
 23 of parole release dates. The board shall establish criteria for the
 24 setting of parole release dates and in doing so shall consider the
 25 number of victims of the crime for which the inmate was sentenced
 26 and other factors in mitigation or aggravation of the crime. At least
 27 one commissioner of the panel shall have been present at the last
 28 preceding meeting, unless it is not feasible to do so or where the
 29 last preceding meeting was the initial meeting. Any person on the
 30 hearing panel may request review of any decision regarding parole

1 for an en banc hearing by the board. In case of a review, a majority
2 vote in favor of parole by the board members participating in an
3 en banc ~~hearing~~ review is required to grant parole to any inmate.

4 (b) The panel or the board, sitting en banc, shall set a release
5 date unless it determines that the gravity of the current convicted
6 offense or offenses, or the timing and gravity of current or past
7 convicted offense or offenses, is such that consideration of the
8 public safety requires a more lengthy period of incarceration for
9 this individual, and that a parole date, therefore, cannot be fixed
10 at this meeting. After the effective date of this subdivision, any
11 decision of the parole panel finding an inmate suitable for parole
12 shall become final within 120 days of the date of the hearing.
13 During that period, the board may review the panel's decision.
14 The panel's decision shall become final pursuant to this subdivision
15 unless the board finds that the panel made an error of law, or that
16 the panel's decision was based on an error of fact, or that new
17 information should be presented to the board, any of which when
18 corrected or considered by the board has a substantial likelihood
19 of resulting in a substantially different decision upon a rehearing.
20 In making this determination, the board shall consult with the
21 commissioners who conducted the parole consideration hearing.
22 No decision of the parole panel shall be disapproved and referred
23 for rehearing except by a majority vote of the board, sitting en
24 banc, following a public ~~hearing~~ meeting.

25 (c) For the purpose of reviewing the suitability for parole of
26 those inmates eligible for parole under prior law at a date earlier
27 than that calculated under Section 1170.2, the board shall appoint
28 panels of at least two persons to meet annually with each inmate
29 until the time the person is released pursuant to proceedings or
30 reaches the expiration of his or her term as calculated under Section
31 1170.2.

32 (d) It is the intent of the Legislature that during times when
33 there is no backlog of inmates awaiting parole hearings, life parole
34 consideration hearings or life rescission hearings, hearings will be
35 conducted by a panel of three or more members, the majority of
36 whom shall be commissioners. The board shall report monthly on
37 the number of cases where an inmate has not received a completed
38 initial or subsequent parole consideration hearing within 30 days
39 of the hearing date required by subdivision (a) of Section 3041.5
40 or paragraph (2) of subdivision (b) of Section 3041.5, unless the

1 inmate has waived the right to those timeframes. That report shall
2 be considered the backlog of cases for purposes of this section,
3 and shall include information on the progress toward eliminating
4 the backlog, and on the number of inmates who have waived their
5 right to the above timeframes. The report shall be made public at
6 a regularly scheduled meeting of the board and a written report
7 shall be made available to the public and transmitted to the
8 Legislature quarterly.

9 (e) For purposes of this section, an ~~en banc hearing~~ *review* by
10 the board means a ~~hearing~~ *review* conducted by ~~a committee of~~
11 ~~nine randomly selected commissioners who are specifically~~
12 ~~appointed to hear adult parole matters, selected by the chairperson.~~
13 ~~The committee shall be comprised of a majority of commissioners~~
14 ~~holding office on the date the matter is heard by the committee~~
15 ~~board.~~

16 SEC. 2. Section 3041.5 of the Penal Code is amended to read:

17 3041.5. (a) At all hearings for the purpose of reviewing a
18 prisoner's parole suitability, or the setting, postponing, or
19 rescinding of parole dates, *with the exception of en banc review*
20 *of tie votes*, the following shall apply:

21 (1) At least 10 days prior to any hearing by the Board of Parole
22 Hearings, the prisoner shall be permitted to review his or her file
23 which will be examined by the board and shall have the opportunity
24 to enter a written response to any material contained in the file.

25 (2) The prisoner shall be permitted to be present, to ask and
26 answer questions, and to speak on his or her own behalf. Neither
27 the prisoner nor the attorney for the prisoner shall be entitled to
28 ask questions of any person appearing at the hearing pursuant to
29 subdivision (b) of Section 3043.

30 (3) Unless legal counsel is required by some other provision of
31 law, a person designated by the Department of Corrections *and*
32 *Rehabilitation* shall be present to insure that all facts relevant to
33 the decision be presented, including, if necessary, contradictory
34 assertions as to matters of fact that have not been resolved by
35 departmental or other procedures.

36 (4) The prisoner and any person described in subdivision (b) of
37 Section 3043 shall be permitted to request and receive a
38 stenographic record of all proceedings.

1 (5) If the hearing is for the purpose of postponing or rescinding
2 of parole dates, the prisoner shall have rights set forth in paragraphs
3 (3) and (4) of subdivision (c) of Section 2932.

4 (6) The board shall set a date to reconsider whether an inmate
5 should be released on parole that ensures a meaningful
6 consideration of whether the inmate is suitable for release on
7 parole.

8 (b) (1) Within 10 days following any meeting where a parole
9 date has been set, the board shall send the prisoner a written
10 statement setting forth his or her parole date, the conditions he or
11 she must meet in order to be released on the date set, and the
12 consequences of failure to meet those conditions.

13 (2) Within 20 days following any meeting where a parole date
14 has not been set, the board shall send the prisoner a written
15 statement setting forth the reason or reasons for refusal to set a
16 parole date, and suggest activities in which he or she might
17 participate that will benefit him or her while he or she is
18 incarcerated.

19 (3) The board shall schedule the next hearing, after considering
20 the views and interests of the victim, as follows:

21 (A) Fifteen years after any hearing at which parole is denied,
22 unless the board finds by clear and convincing evidence that the
23 criteria relevant to the setting of parole release dates enumerated
24 in subdivision (a) of Section 3041 are such that consideration of
25 the public and victim's safety does not require a more lengthy
26 period of incarceration for the prisoner than 10 additional years.

27 (B) Ten years after any hearing at which parole is denied, unless
28 the board finds by clear and convincing evidence that the criteria
29 relevant to the setting of parole release dates enumerated in
30 subdivision (a) of Section 3041 are such that consideration of the
31 public and victim's safety does not require a more lengthy period
32 of incarceration for the prisoner than seven additional years.

33 (C) Three years, five years, or seven years after any hearing at
34 which parole is denied, because the criteria relevant to the setting
35 of parole release dates enumerated in subdivision (a) of Section
36 3041 are such that consideration of the public and victim's safety
37 requires a more lengthy period of incarceration for the prisoner,
38 but does not require a more lengthy period of incarceration for the
39 prisoner than seven additional years.

1 (4) The board may in its discretion, after considering the views
 2 and interests of the victim, advance a hearing set pursuant to
 3 paragraph (3) to an earlier date, when a change in circumstances
 4 or new information establishes a reasonable likelihood that
 5 consideration of the public and victim’s safety does not require
 6 the additional period of incarceration of the prisoner provided in
 7 paragraph (3).

8 (5) Within 10 days of any board action resulting in the
 9 postponement of a previously set parole date, the board shall send
 10 the prisoner a written statement setting forth a new date and the
 11 reason or reasons for that action and shall offer the prisoner an
 12 opportunity for review of that action.

13 (6) Within 10 days of any board action resulting in the
 14 rescinding of a previously set parole date, the board shall send the
 15 prisoner a written statement setting forth the reason or reasons for
 16 that action, and shall schedule the prisoner’s next hearing in
 17 accordance with paragraph (3).

18 (c) The board shall conduct a parole hearing pursuant to this
 19 section as a de novo hearing. Findings made and conclusions
 20 reached in a prior parole hearing shall be considered in but shall
 21 not be deemed to be binding upon subsequent parole hearings for
 22 an inmate, but shall be subject to reconsideration based upon
 23 changed facts and circumstances. When conducting a hearing, the
 24 board shall admit the prior recorded or memorialized testimony
 25 or statement of a victim or witness, upon request of the victim or
 26 if the victim or witness has died or become unavailable. At each
 27 hearing the board shall determine the appropriate action to be taken
 28 based on the criteria set forth in paragraph (3) of subdivision (a)
 29 of Section 3041.

30 (d) (1) An inmate may request that the board exercise its
 31 discretion to advance a hearing set pursuant to paragraph (3) of
 32 subdivision (b) to an earlier date, by submitting a written request
 33 to the board, with notice, upon request, and a copy to the victim
 34 which shall set forth the change in circumstances or new
 35 information that establishes a reasonable likelihood that
 36 consideration of the public safety does not require the additional
 37 period of incarceration of the inmate.

38 (2) The board shall have sole jurisdiction, after considering the
 39 views and interests of the victim to determine whether to grant or
 40 deny a written request made pursuant to paragraph (1), and its

1 decision shall be subject to review by a court or magistrate only
2 for a manifest abuse of discretion by the board. The board shall
3 have the power to summarily deny a request that does not comply
4 with the provisions of this subdivision or that does not set forth a
5 change in circumstances or new information as required in
6 paragraph (1) that in the judgment of the board is sufficient to
7 justify the action described in paragraph (4) of subdivision (b).

8 (3) An inmate may make only one written request as provided
9 in paragraph (1) during each three-year period. Following either
10 a summary denial of a request made pursuant to paragraph (1), or
11 the decision of the board after a hearing described in subdivision
12 (a) to not set a parole date, the inmate shall not be entitled to submit
13 another request for a hearing pursuant to subdivision (a) until a
14 three-year period of time has elapsed from the summary denial or
15 decision of the board.

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