

AMENDED IN SENATE MAY 11, 2010

AMENDED IN SENATE APRIL 14, 2010

AMENDED IN SENATE APRIL 7, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 1399

Introduced by Senator Leno

February 19, 2010

An act to amend Section 3041 of, and to add ~~Seetion Sections~~ 2065 and 3550 to, the Penal Code, and to add Section 10755 to the Welfare and Institutions Code, relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

SB 1399, as amended, Leno. Parole: physically or cognitively debilitated or incapacitated inmates.

Existing law generally regulates the granting and conditioning of parole, and places the duty to monitor parolees on the Division of Adult Parole Operations. Existing law, the Victim's Bill of Rights Act of 2008: Marsy's Law, as added by Proposition 9 at the November 4, 2008, statewide general election, provides that the Board of Parole Hearings or its successor in interest shall be the state's parole authority and shall be responsible for protecting victims' rights in the parole process.

This bill would provide that, except as specified, any prisoner who the ~~Board of Parole Hearings~~ chief medical officer determines, based on the results of medical evaluations, suffers from a significant and permanent condition, disease, or syndrome resulting in the prisoner being physically or cognitively debilitated or incapacitated ~~and shall be granted medical parole, if the Board of Parole Hearings determines that the conditions under which the prisoner would be released would~~

not reasonably pose a threat to public safety, shall be granted medical parole. Those provisions would 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 parole pursuant to this bill is prohibited by any initiative statute. The bill would require that parole placements and revocations pursuant to its provisions shall be made in accordance with the Victim's Bill of Rights Act of 2008: Marsy's Law. The bill would require a physician employed by the Department of Corrections and Rehabilitation who is the primary care provider for a prisoner to recommend that a prisoner be referred to the Board of Parole Hearings for consideration for medical parole if the physician believes the prisoner meets the *medical* criteria for medical parole. The bill would provide that the Division of Adult Parole Operations shall have the authority to impose any reasonable conditions on prisoners subject to parole pursuant to this bill, including, but not limited to, the requirement that parolees submit to electronic monitoring.

Existing law generally provides for the duties and functions of the Department of Corrections and Rehabilitation. Existing law provides that the State Department of Health Care Services is designated as the state agency with full power to supervise every phase of the administration of health care services and medical assistance for which grants-in-aid are received from the federal government or made by the state in order to secure full compliance with the applicable provisions of state and federal laws.

This bill would require that Department of Corrections and Rehabilitation to, among other things, enter into memoranda of understanding with the Social Security Administration and the State Department of Health Care Services to facilitate prerelease agreements to help inmates initiate benefits claims, as specified, and pay the state share of Medi-Cal costs for inmates that have been granted medical parole. The bill would require the State Department of Health Care Services to seek any federal waivers or approvals necessary for the Department of Corrections and Rehabilitation to pay the state share of Medi-Cal expenditures associated with inmates granted medical parole.

Vote: majority. 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 2065 is added to the Penal Code, to read:*
2 *2065. The Department of Corrections and Rehabilitation shall*
3 *complete all of the following tasks associated with inmates granted*
4 *medical parole pursuant to Section 3041 or 3550:*

5 *(a) The department shall enter into memoranda of understanding*
6 *with the Social Security Administration and the State Department*
7 *of Health Care Services to facilitate prerelease agreements to help*
8 *inmates initiate benefits claims.*

9 *(b) The department shall pay the state share of Medi-Cal costs*
10 *for inmates that have been granted medical parole.*

11 *(c) The department shall reimburse providers for the medical*
12 *treatment and long-term care costs of inmates granted medical*
13 *parole who have not retained medical insurance, at a rate no lower*
14 *than the Medi-Cal rate until the point that a parolee retains*
15 *alternate health care coverage.*

16 *(d) The department shall reimburse counties for the costs*
17 *associated with providing an inmate granted medical parole with*
18 *a public guardian.*

19 **SECTION 4.**

20 **SEC. 2.** Section 3041 of the Penal Code is amended to read:

21 *3041. (a) In the case of any inmate sentenced pursuant to any*
22 *provision of law, other than Chapter 4.5 (commencing with Section*
23 *1170) of Title 7 of Part 2, the Board of Parole Hearings shall meet*
24 *with each inmate during the third year of incarceration for the*
25 *purposes of reviewing the inmate's file, making recommendations,*
26 *and documenting activities and conduct pertinent to granting or*
27 *withholding postconviction credit. One year prior to the inmate's*
28 *minimum eligible parole release date a panel of two or more*
29 *commissioners or deputy commissioners shall again meet with the*
30 *inmate and shall normally set a parole release date as provided in*
31 *Section 3041.5. No more than one member of the panel shall be a*
32 *deputy commissioner. In the event of a tie vote, the matter shall*
33 *be referred for an en banc review of the record that was before the*
34 *panel that rendered the tie vote. Upon en banc review, the board*
35 *shall vote to either grant or deny parole and render a statement of*
36 *decision. The en banc review shall be conducted pursuant to*
37 *subdivision (e). The release date shall be set in a manner that will*
38 *provide uniform terms for offenses of similar gravity and*

1 magnitude with respect to their threat to the public, and that will
2 comply with the sentencing rules that the Judicial Council may
3 issue and any sentencing information relevant to the setting of
4 parole release dates. The board shall establish criteria for the setting
5 of parole release dates and in doing so shall consider the number
6 of victims of the crime for which the inmate was sentenced and
7 other factors in mitigation or aggravation of the crime. At least
8 one commissioner of the panel shall have been present at the last
9 preceding meeting, unless it is not feasible to do so or where the
10 last preceding meeting was the initial meeting. Any person on the
11 hearing panel may request review of any decision regarding parole
12 for an en banc hearing by the board. In case of a review, a majority
13 vote in favor of parole by the board members participating in an
14 en banc review is required to grant parole to any inmate.

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

36 (c) For the purpose of reviewing the suitability for parole of
37 those inmates eligible for parole under prior law at a date earlier
38 than that calculated under Section 1170.2, the board shall appoint
39 panels of at least two persons to meet annually with each inmate
40 until the time the person is released pursuant to proceedings or

1 reaches the expiration of his or her term as calculated under Section
2 1170.2.

3 (d) It is the intent of the Legislature that, during times when
4 there is no backlog of inmates awaiting parole hearings, life parole
5 consideration hearings, or life rescission hearings, hearings will
6 be conducted by a panel of three or more members, the majority
7 of whom shall be commissioners. The board shall report monthly
8 on the number of cases where an inmate has not received a
9 completed initial or subsequent parole consideration hearing within
10 30 days of the hearing date required by subdivision (a) of Section
11 3041.5 or paragraph (2) of subdivision (b) of Section 3041.5, unless
12 the inmate has waived the right to those timeframes. That report
13 shall be considered the backlog of cases for purposes of this
14 section, and shall include information on the progress toward
15 eliminating the backlog, and on the number of inmates who have
16 waived their right to the above timeframes. The report shall be
17 made public at a regularly scheduled meeting of the board and a
18 written report shall be made available to the public and transmitted
19 to the Legislature quarterly.

20 (e) For purposes of this section, an en banc review by the board
21 means a review conducted by a majority of commissioners holding
22 office on the date the matter is heard by the board. An en banc
23 review shall be conducted in compliance with the following:

24 (1) The commissioners conducting the review shall consider
25 the entire record of the hearing that resulted in the tie vote.

26 (2) The review shall be limited to the record of the hearing. The
27 record shall consist of the transcript or audiotape of the hearing,
28 written or electronically recorded statements actually considered
29 by the panel that produced the tie vote, and any other material
30 actually considered by the panel. New evidence or comments shall
31 not be considered in the en banc proceeding.

32 (3) The board shall separately state reasons for its decision to
33 grant or deny parole.

34 (4) A commissioner who was involved in the tie vote shall be
35 recused from consideration of the matter in the en banc review.

36 (f) Notwithstanding any other provision of law, except as
37 provided in subdivision (g), any prisoner sentenced to a term of
38 imprisonment under Section 1168 who—the Board of Parole
39 Hearings determines, based on the results of the medical
40 evaluations performed by the Department of Corrections and

1 Rehabilitation physicians *the chief medical officer at the institution*
2 *where the prisoner is located determines, as provided in this*
3 *section, suffers from a significant and permanent condition, disease,*
4 *or syndrome resulting in the prisoner being physically or*
5 *cognitively debilitated or incapacitated*—*and shall be granted*
6 *medical parole if the Board of Parole Hearings determines that*
7 *the conditions under which the prisoner would be released would*
8 *not reasonably pose a threat to public safety*—*shall be granted*
9 *medical parole.*

10 (g) Subdivision (f) shall not apply to any prisoner sentenced to
11 death or life in prison without possibility of parole or to any inmate
12 who is serving a sentence for which parole, pursuant to subdivision
13 (f), is prohibited by any initiative statute. Parole placements and
14 revocations pursuant to subdivision (f) shall be made in accordance
15 with the Victim's Bill of Rights Act of 2008: Marsy's Law.

16 (h) When a physician employed by the Department of
17 Corrections and Rehabilitation who is the primary care provider
18 for an inmate identifies an inmate that he or she believes meets
19 the *medical* criteria for medical parole specified in subdivision (f),
20 the primary care physician shall recommend to the chief medical
21 officer of the institution where the prisoner is located that the
22 prisoner be referred to the Board of Parole Hearings for
23 consideration for medical parole. Within 30 days of receiving that
24 recommendation, *if* the chief medical officer—*shall make a*
25 *determination of the prisoner's eligibility for medical parole and,*
26 *if he or she concurs in the recommendation of the primary care*
27 *physician, he or she shall refer the matter to the Board of Parole*
28 *Hearings. If Hearings, and if* the chief medical officer does not
29 concur in the recommendation, he or she shall provide the primary
30 care physician with a written explanation of the reasons for denying
31 the referral.

32 (i) Notwithstanding any other law, medical parole hearings shall
33 be conducted by two-person panels consisting of at least one
34 commissioner. In the event of a tie vote, the matter shall be referred
35 to the full board for a decision.

36 (j)

37 (i) Notwithstanding any other provisions of this section, the
38 prisoner or his or her family member or designee may
39 independently request consideration for medical parole by
40 contacting the chief medical officer at the prison or the secretary.

1 Within 30 days of receiving the request, the chief medical officer
2 shall, in consultation with the prisoner's primary care physician,
3 make a determination whether the prisoner meets the criteria for
4 medical parole as specified in subdivision (f) and, if the chief
5 medical officer determines that the prisoner satisfies the criteria
6 set forth in subdivision (f), he or she shall refer the matter to the
7 Board of Parole Hearings. If the chief medical officer does not
8 concur in the recommendation, he or she shall provide the prisoner
9 or his or her family member or designee with a written explanation
10 of the reasons for denying the application.

11 (j) *The Department of Corrections and Rehabilitation shall
12 complete parole plans for inmates referred to the Board of Parole
13 Hearings for medical parole consideration. The parole plans shall
14 include, but not be limited to, the inmate's plan for residency and
15 medical care.*

16 (k) *Notwithstanding any other law, medical parole hearings
17 shall be conducted by two-person panels consisting of at least one
18 commissioner. In the event of a tie vote, the matter shall be referred
19 to the full board for a decision.*

20 (k)

21 (l) Upon receiving a recommendation from a chief medical
22 officer of the department for a prisoner to be granted medical parole
23 pursuant to subdivision (h) or ~~(j)~~ (i), the board, as specified in
24 subdivision ~~(i)~~ (k), shall make an independent judgment whether
25 the conditions under which the inmate would be released pose a
26 reasonable threat to public safety, and make written findings
27 related thereto.

28 (m)

29 (m) The Division of Adult Parole Operations shall have the
30 authority to impose any reasonable conditions on prisoners subject
31 to medical parole supervision pursuant to subdivision (f), including,
32 but not limited to, the requirement that the parolee submit to
33 electronic monitoring. As a further condition of medical parole,
34 pursuant to subdivision (f), the parolee may be required to submit
35 to an examination by a physician for the purpose of diagnosing
36 their current medical condition. In the event such an examination
37 takes place, a report of the examination and diagnosis shall be
38 submitted to the board by the examining physician. If the board
39 determines that the person's medical condition has substantially
40 improved and that the person poses a threat to public safety, the

1 board may revoke the parole and return the person to the custody
2 of the department.

3 (1) Notwithstanding any other provision of law establishing
4 maximum periods for parole, a prisoner placed on medical parole
5 supervision prior to the earliest possible parole date that the
6 prisoner would otherwise have been released to parole under, shall
7 remain on medical parole, pursuant to subdivision (f), until that
8 earliest possible parole date, at which time the provisions of
9 paragraph (2) shall apply.

10 (2) At the expiration of the period described in paragraph (1),
11 the parolee shall commence serving that period of parole provided
12 by, and under all other provisions of, Chapter 8 (commencing with
13 Section 3000) of Title 1 of Part 3.

14 (m) ~~The warden or warden's representative, along with the
15 appropriate medical or mental health care representatives, shall,~~

16 (n) *The Department of Corrections and Rehabilitation shall*, at
17 the time a prisoner is placed on medical parole supervision pursuant
18 to subdivision (f), ensure that the prisoner has applied for any
19 federal entitlement programs for which the prisoner is eligible,
20 and has in his or her possession a discharge medical summary, full
21 medical records, parole medications, and all property belonging
22 to the prisoner that was under the control of the department. Any
23 additional records shall be sent to the prisoner's forwarding address
24 after release to health care-related parole supervision.

25 **SEC. 2.**

26 *SEC. 3.* Section 3550 is added to the Penal Code, to read:

27 3550. (a) Notwithstanding any other provision of law, except
28 as provided in subdivision (b), any prisoner sentenced to a term
29 of imprisonment under Section 1170 who ~~the Board of Parole~~
~~Hearings determines, based on the results of the medical~~
~~evaluations performed by the Department of Corrections and~~
~~Rehabilitation physicians the chief medical officer of the institution~~
~~where the prisoner is located determines, as provided in this~~
~~section, suffers from a significant and permanent condition, disease,~~
~~or syndrome resulting in the prisoner being physically or~~
~~cognitively debilitated or incapacitated and shall be granted~~
~~medical parole if the Board of Parole Hearings determines that~~
~~the conditions under which the prisoner would be released would~~
~~not reasonably pose a threat to public safety shall be granted~~
40 ~~medical parole.~~

1 (b) Subdivision (a) shall not apply to any prisoner sentenced to
2 death or life in prison without possibility of parole or to any inmate
3 who is serving a sentence for which parole, pursuant to subdivision
4 (a), is prohibited by any initiative statute. Parole placements and
5 revocations pursuant to subdivision (a) shall be made in accordance
6 with the Victim's Bill of Rights Act of 2008: Marsy's Law.

7 (c) When a physician employed by the Department of
8 Corrections and Rehabilitation who is the primary care provider
9 for an inmate identifies an inmate that he or she believes meets
10 the *medical* criteria for medical parole specified in subdivision (a)
11 the primary care physician shall recommend to the chief medical
12 officer of the institution where the prisoner is located that the
13 prisoner be referred to the Board of Parole Hearings for
14 consideration for medical parole. Within 30 days of receiving that
15 recommendation, *if the chief medical officer shall make a*
16 ~~determination of the prisoner's eligibility for medical parole and,~~
17 ~~if he or she concurs in the recommendation of the primary care~~
18 ~~physician, he or she shall refer the matter to the Board of Parole~~
19 ~~Hearings. If Hearings, and if the chief medical officer does not~~
20 ~~concur in the recommendation, he or she shall provide the primary~~
21 ~~care physician with a written explanation of the reasons for denying~~
22 ~~the referral.~~

23 (d) ~~Notwithstanding any other law, medical parole hearings~~
24 ~~shall be conducted by two-person panels consisting of at least one~~
25 ~~commissioner. In the event of a tie vote, the matter shall be referred~~
26 ~~to the full board for a decision.~~

27 (e)
28 (d) Notwithstanding any other provisions of this section, the
29 prisoner or his or her family member or designee may
30 independently request consideration for medical parole by
31 contacting the chief medical officer at the prison or the secretary.
32 Within 30 days of receiving the request, the chief medical officer
33 shall, in consultation with the prisoner's primary care physician,
34 make a determination whether the prisoner meets the criteria for
35 medical parole as specified in subdivision (a) and, if the chief
36 medical officer determines that the prisoner satisfies the criteria
37 set forth in subdivision (a), he or she shall refer the matter to the
38 Board of Parole Hearings. If the chief medical officer does not
39 concur in the recommendation, he or she shall provide the prisoner

1 or his or her family member or designee with a written explanation
2 of the reasons for denying the application.

3 (e) *The Department of Corrections and Rehabilitation shall*
4 *complete parole plans for inmates referred to the Board of Parole*
5 *Hearings for medical parole consideration. The parole plans shall*
6 *include, but not be limited to, the inmate's plan for residency and*
7 *medical care.*

8 (f) *Notwithstanding any other law, medical parole hearings*
9 *shall be conducted by two-person panels consisting of at least one*
10 *commissioner. In the event of a tie vote, the matter shall be referred*
11 *to the full board for a decision.*

12 (f)

13 (g) Upon receiving a recommendation from a chief medical
14 officer of the department for a prisoner to be granted medical parole
15 pursuant to subdivision (c) or (e), the board, as specified in
16 subdivision (d), shall make an independent judgment whether
17 the conditions under which the inmate would be released pose a
18 reasonable threat to public safety, and make written findings
19 related thereto.

20 (g)

21 (h) Notwithstanding any other provision of law, the Division
22 of Adult Parole Operations shall have the authority to impose any
23 reasonable conditions on prisoners subject to medical parole
24 supervision pursuant to subdivision (a), including, but not limited
25 to, the requirement that the parolee submit to electronic monitoring.
26 As a further condition of medical parole, pursuant to subdivision
27 (a), the parolee may be required to submit to an examination by a
28 physician for the purpose of diagnosing their current medical
29 condition. In the event such an examination takes place, a report
30 of the examination and diagnosis shall be submitted to the board
31 by the examining physician. If the board determines that the
32 person's medical condition has substantially improved and that
33 the person poses a threat to public safety, the board may revoke
34 the parole and return the person to the custody of the department.

35 (1) Notwithstanding any other provision of law establishing
36 maximum periods for parole, a prisoner placed on medical parole
37 supervision prior to the earliest possible parole date that the
38 prisoner would otherwise have been released to parole under, shall
39 remain on medical parole, pursuant to subdivision (a), until that

1 earliest possible parole date, at which time the provisions of
2 paragraph (2) shall apply.

3 (2) At the expiration of the period described in paragraph (1),
4 the parolee shall commence serving that period of parole provided
5 by, and under all other provisions of, Chapter 8 (commencing with
6 Section 3000) of Title 1 of Part 3.

7 (h) ~~The warden or warden's representative, along with the
8 appropriate medical or mental health care representatives, shall,~~

9 (i) *The Department of Corrections and Rehabilitation shall, at*
10 the time a prisoner is placed on medical parole supervision pursuant
11 to subdivision (a), ensure that the prisoner has applied for any
12 federal entitlement programs for which the prisoner is eligible,
13 and has in his or her possession a discharge medical summary, full
14 medical records, parole medications, and all property belonging
15 to the prisoner that was under the control of the department. Any
16 additional records shall be sent to the prisoner's forwarding address
17 after release to health care-related parole supervision.

18 SEC. 4. *Section 10755 is added to the Welfare and Institutions
Code, to read:*

20 10755. *The State Department of Health Care Services shall
21 seek any necessary waivers from federal rules or regulations and
22 any other approvals necessary to enable the Department of
23 Corrections and Rehabilitation to pay the state share of Medi-Cal
24 expenditures associated with inmates granted medical parole
25 pursuant to Section 3041 or 3550 of the Penal Code.*