

ASSEMBLY BILL

No. 353

Introduced by Assembly Member Brown

February 13, 2013

An act to amend Section 3550 of the Penal Code, relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

AB 353, as introduced, Brown. Parole: medical parole.

Existing law provides that the Board of Parole Hearings or its successor in interest shall be the state's parole authority. Existing law provides that a prisoner who is found to be permanently medically incapacitated, as specified, 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. Existing law exempts a prisoner sentenced to death, a prisoner sentenced to life without the possibility of parole, and a prisoner who is serving a sentence for which parole is prohibited by initiative statute, from medical parole eligibility.

This bill would additionally exempt from medical parole eligibility a prisoner who was convicted of the murder of a peace officer, as provided. This bill would not apply that exemption to a prisoner who committed the underlying offense on or after January 1, 2011, but before January 1, 2014.

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 3550 of the Penal Code is amended to
2 read:

3 3550. (a) Notwithstanding any other provision of law, except
4 as provided in subdivision (b), ~~any prisoner who~~ if the head
5 physician of ~~the~~ an institution ~~where the~~ in which a prisoner is
6 ~~located~~ incarcerated determines, as provided in this section, *that*
7 *the prisoner* is permanently medically incapacitated with a medical
8 condition that renders him or her permanently unable to perform
9 activities of basic daily living, and results in the prisoner requiring
10 24-hour care, and that incapacitation did not exist at the time of
11 sentencing, *the prisoner* shall be granted medical parole if the
12 Board of Parole Hearings determines that the conditions under
13 which ~~the prisoner~~ *he or she* would be released would not
14 reasonably pose a threat to public safety.

15 (b) *This section does not alter or diminish the rights conferred*
16 *under the Victim’s Bill of Rights Act of 2008 (Marsy’s Law).*
17 Subdivision (a) ~~shall~~ does not apply to any ~~prisoner~~ of the
18 following:

19 (1) *A prisoner sentenced to death or life in prison without*
20 *possibility of parole or to any inmate parole.*

21 (2) *A prisoner who is serving a sentence for which parole,*
22 *pursuant to subdivision (a), is prohibited by any initiative statute.*
23 ~~The provisions of this section shall not be construed to alter or~~
24 ~~diminish the rights conferred under the Victim’s Bill of Rights Act~~
25 ~~of 2008: Marsy’s Law.~~

26 (3) (A) *A prisoner who was convicted of murder if the victim*
27 *was a peace officer, as defined in Section 830.1, 830.2, 830.3,*
28 *830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4,*
29 *830.5, 830.6, 830.10, 830.11, or 830.12, who was killed while*
30 *engaged in the performance of his or her duties, and the individual*
31 *knew, or reasonably should have known, that the victim was a*
32 *peace officer engaged in the performance of his or her duties.*

33 (B) *The victim was a peace officer, as defined in any of those*
34 *sections enumerated in subparagraph (A), or had been a peace*
35 *officer, as defined in any of those sections, and was intentionally*
36 *murdered in retaliation for the performance of his or her official*
37 *duties.*

1 *This paragraph does not apply to an individual who murdered*
2 *the peace officer or former peace officer on or after January 1,*
3 *2011, but before January 1, 2014.*

4 (c) When a physician employed by the Department of
5 Corrections and Rehabilitation who is the primary care provider
6 for ~~an inmate~~ *a prisoner* identifies ~~an inmate~~ *a prisoner* that he or
7 she believes meets the medical criteria for medical parole specified
8 in subdivision (a) the primary care physician shall recommend to
9 the head physician of the institution where the prisoner is located
10 that the prisoner be referred to the Board of Parole Hearings for
11 consideration for medical parole. Within 30 days of receiving that
12 recommendation, if the head physician of the institution concurs
13 in the recommendation of the primary care physician, he or she
14 shall refer the matter to the Board of Parole Hearings using a
15 standardized form and format developed by the department, and
16 if the head physician of the institution does not concur in the
17 recommendation, he or she shall provide the primary care physician
18 with a written explanation of the reasons for denying the referral.

19 (d) Notwithstanding any other provisions of this section, the
20 prisoner or his or her family member or designee may
21 independently request consideration for medical parole by
22 contacting the head physician at the prison or the department.
23 Within 30 days of receiving the request, the head physician of the
24 institution shall, in consultation with the prisoner's primary care
25 physician, make a determination regarding whether the prisoner
26 meets the criteria for medical parole as specified in subdivision
27 (a) and, if the head physician of the institution determines that the
28 prisoner satisfies the criteria set forth in subdivision (a), he or she
29 shall refer the matter to the Board of Parole Hearings using a
30 standardized form and format developed by the department. If the
31 head physician of the institution does not concur in the
32 recommendation, he or she shall provide the prisoner or his or her
33 family member or designee with a written explanation of the
34 reasons for denying the application.

35 (e) The Department of Corrections and Rehabilitation shall
36 complete parole plans for inmates referred to the Board of Parole
37 Hearings for medical parole consideration. The parole plans shall
38 include, but not be limited to, the inmate's plan for residency and
39 medical care.

1 (f) Notwithstanding any other law, medical parole hearings shall
2 be conducted by two-person panels consisting of at least one
3 commissioner. In the event of a tie vote, the matter shall be referred
4 to the full board for a decision. Medical parole hearings may be
5 heard in absentia.

6 (g) Upon receiving a recommendation from the head physician
7 of the institution where a prisoner is located for the prisoner to be
8 granted medical parole pursuant to subdivision (c) or (d), the board,
9 as specified in subdivision (f), shall make an independent judgment
10 regarding whether the conditions under which the inmate would
11 be released pose a reasonable threat to public safety, and make
12 written findings related thereto.

13 (h) Notwithstanding any other provision of law, the board or
14 the Division of Adult Parole Operations shall have the authority
15 to impose any reasonable conditions on prisoners subject to medical
16 parole supervision pursuant to subdivision (a), including, but not
17 limited to, the requirement that the parolee submit to electronic
18 monitoring. As a further condition of medical parole, pursuant to
19 subdivision (a), the parolee may be required to submit to an
20 examination by a physician selected by the board for the purpose
21 of diagnosing the parolee's current medical condition. In the event
22 such an examination takes place, a report of the examination and
23 diagnosis shall be submitted to the board by the examining
24 physician. If the board determines, based on that medical
25 examination, that the person's medical condition has improved to
26 the extent that the person no longer qualifies for medical parole,
27 the board shall return the person to the custody of the department.

28 (1) Notwithstanding any other provision of law establishing
29 maximum periods for parole, a prisoner sentenced to a determinate
30 term who is placed on medical parole supervision prior to the
31 earliest possible release date and who remains eligible for medical
32 parole, shall remain on medical parole, pursuant to subdivision
33 (a), until that earliest possible release date, at which time the
34 parolee shall commence serving that period of parole provided by,
35 and under the provisions of, Chapter 8 (commencing with Section
36 3000) of Title 1.

37 (2) Notwithstanding any other provisions of law establishing
38 maximum periods for parole, a prisoner sentenced to an
39 indeterminate term who is placed on medical parole supervision
40 prior to the prisoner's minimum eligible parole date, and who

1 remains eligible for medical parole, shall remain on medical parole
2 pursuant to subdivision (a) until that minimum eligible parole date,
3 at which time the parolee shall be eligible for parole consideration
4 under all other provisions of Chapter 8 (commencing with Section
5 3000) of Title 1.

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

15 (j) The provisions for medical parole set forth in this title shall
16 not affect an inmate's eligibility for any other form of parole or
17 release provided by law.

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