

AMENDED IN ASSEMBLY SEPTEMBER 3, 2013

AMENDED IN ASSEMBLY AUGUST 12, 2013

AMENDED IN ASSEMBLY JUNE 27, 2013

AMENDED IN SENATE MAY 24, 2013

AMENDED IN SENATE APRIL 4, 2013

AMENDED IN SENATE MARCH 18, 2013

SENATE BILL

No. 260

Introduced by Senator Hancock

(Coauthors: Senators De León, Lara, and Steinberg)

(Principal coauthor: Assembly Member Bloom)

(Coauthors: Assembly Members ~~Hall~~ and *Bocanegra, Bonta, Hall, Rendon, and Ting*)

February 13, 2013

An act to amend Sections 3041, 3046, and 4801 of, and to add Section 3051 to, the Penal Code, relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

SB 260, as amended, Hancock. Youth offender parole hearings.

Existing law provides that the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings, or both, may, for specified reasons, recommend to the court that a prisoner's sentence be recalled, and that a court may recall a prisoner's sentence. When a defendant who was under 18 years of age at the time of the commission of a crime has served at least 15 years of his or her sentence, existing law allows the defendant to submit a petition for recall and resentencing, and authorizes the court, in its discretion, to recall the

sentence and to resentence the defendant, provided that the new sentence is not greater than the initial sentence.

This bill would require the Board of Parole Hearings to conduct a youth offender parole hearing to consider release of offenders who committed specified crimes prior to being 18 years of age and who were sentenced to state prison. The bill would ~~require parole consideration to be given~~ *make a person eligible for release on parole at a youth offender parole hearing* during the 15th year of incarceration if the person meeting these criteria received a determinate sentence, during the 20th year if the person received a sentence that was less than 25 years to life, and during the 25th year of incarceration if the person received a sentence that was 25 years to life. The bill would require the board, in reviewing a prisoner's suitability for parole, to give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law. The bill would require that, in assessing growth and maturity, psychological evaluations and risk assessment instruments, if used by the board, be administered by licensed psychologists employed by the board and take into consideration the diminished culpability of juveniles as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual. The bill would permit family members, friends, school personnel, faith leaders, and representatives from community-based organizations with knowledge about the young person prior to the crime or his or her growth and maturity since the commission of the crime to submit statements for review by the board and ~~would permit the individual to designate one person to attend the youth offender parole hearing and read a brief statement.~~ *board.*

Existing law requires the board to meet with each inmate sentenced pursuant to certain provisions of law during his or her 3rd year of incarceration for the purpose of reviewing his or her file, making recommendations, and documenting activities and conduct pertinent to granting or withholding postconviction credit.

This bill would instead require the board to meet with those inmates, including those who are eligible to be considered for parole pursuant to a youth offender parole hearing, during the 6th year prior to the inmate's minimum eligible parole release date. The bill would also require the board to provide an inmate additional, specified information during this consultation, including individualized recommendations

regarding the inmate’s work assignments, rehabilitative programs, and institutional behavior, and to provide those findings and recommendations, in writing, to the inmate within 30 days following the consultation.

Existing law, also added by Proposition 8, adopted June 8, 1982, and amended by Proposition 36, adopted November 6, 2012, commonly known as the Three Strikes law, requires increased penalties for certain recidivist offenders in addition to any other enhancement or penalty provisions that may apply, including individuals with current and prior convictions of a serious felony, as specified.

Existing law, as amended by Proposition 83, adopted November 7, 2006, commonly known as Jessica’s Law, requires a person convicted of certain felonies under specified circumstances to be committed to prison for a term of years to life.

This bill would exempt from its provisions inmates who were sentenced pursuant to the Three Strikes law or Jessica’s Law, or sentenced to life in prison without the possibility of parole. *The bill would not apply to an individual to whom the bill would otherwise apply, but who, subsequent to attaining 18 years of age, commits an additional crime for which malice aforethought is a necessary element of the crime or for which the individual is sentenced to life in prison.*

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. The Legislature finds and declares that, as stated
2 by the United States Supreme Court in Miller v. Alabama (2012)
3 183 L.Ed.2d 407, “only a relatively small proportion of
4 adolescents” who engage in illegal activity “develop entrenched
5 patterns of problem behavior,” and that “developments in
6 psychology and brain science continue to show fundamental
7 differences between juvenile and adult minds,” including “parts
8 of the brain involved in behavior control.” The Legislature
9 recognizes that youthfulness both lessens a juvenile’s moral
10 culpability and enhances the prospect that, as a youth matures into
11 an adult and neurological development occurs, these individuals
12 can become contributing members of society. The purpose of this
13 act is to establish a parole eligibility mechanism that provides a
14 person serving a sentence for crimes that he or she committed as

1 a juvenile the opportunity to obtain release when he or she has
2 shown that he or she has been rehabilitated and gained maturity,
3 in accordance with the decision of the California Supreme Court
4 in *People v. Caballero* (2012) 55 Cal.4th 262 and the decisions of
5 the United States Supreme Court in *Graham v. Florida* (2010) 560
6 U.S. 48, and *Miller v. Alabama* (2012) 183 L.Ed.2d 407. Nothing
7 in this act is intended to undermine the California Supreme Court's
8 holdings in *In re Shaputis* (2011) 53 Cal.4th 192, *In re Lawrence*
9 (2008) 44 Cal.4th 1181, and subsequent cases. It is the intent of
10 the Legislature to create a process by which growth and maturity
11 of youthful offenders can be assessed and a meaningful opportunity
12 for release established.

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

14 3041. (a) In the case of any inmate sentenced pursuant to any
15 law, other than Chapter 4.5 (commencing with Section 1170) of
16 Title 7 of Part 2, the Board of Parole Hearings shall meet with
17 each inmate during the sixth year prior to the inmate's minimum
18 eligible parole release date for the purposes of reviewing and
19 documenting the inmate's activities and conduct pertinent to both
20 parole eligibility and to the granting or withholding of
21 postconviction credit. During this consultation, the board shall
22 provide the inmate information about the parole hearing process,
23 legal factors relevant to his or her suitability or unsuitability for
24 parole, and individualized recommendations for the inmate
25 regarding his or her work assignments, rehabilitative programs,
26 and institutional behavior. Within 30 days following the
27 consultation, the board shall issue its positive and negative findings
28 and recommendations to the inmate in writing. One year prior to
29 the inmate's minimum eligible parole release date a panel of two
30 or more commissioners or deputy commissioners shall again meet
31 with the inmate and shall normally set a parole release date as
32 provided in Section 3041.5. No more than one member of the panel
33 shall be a deputy commissioner. In the event of a tie vote, the
34 matter shall be referred for an en banc review of the record that
35 was before the panel that rendered the tie vote. Upon en banc
36 review, the board shall vote to either grant or deny parole and
37 render a statement of decision. The en banc review shall be
38 conducted pursuant to subdivision (e). The release date shall be
39 set in a manner that will provide uniform terms for offenses of
40 similar gravity and magnitude with respect to their threat to the

1 public, and that will comply with the sentencing rules that the
2 Judicial Council may issue and any sentencing information relevant
3 to the setting of parole release dates. The board shall establish
4 criteria for the setting of parole release dates and in doing so shall
5 consider the number of victims of the crime for which the inmate
6 was sentenced and other factors in mitigation or aggravation of
7 the crime. At least one commissioner of the panel shall have been
8 present at the last preceding meeting, unless it is not feasible to
9 do so or where the last preceding meeting was the initial meeting.
10 Any person on the hearing panel may request review of any
11 decision regarding parole for an en banc hearing by the board. In
12 case of a review, a majority vote in favor of parole by the board
13 members participating in an en banc review is required to grant
14 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 SEC. 3. Section 3046 of the Penal Code is amended to read:

37 3046. (a) No prisoner imprisoned under a life sentence may
38 be paroled until he or she has served the greater of the following:

39 (1) A term of at least seven calendar years.

1 (2) A term as established pursuant to any other provision of law
2 that establishes a minimum term or minimum period of
3 confinement under a life sentence before eligibility for parole.

4 (b) If two or more life sentences are ordered to run consecutively
5 to each other pursuant to Section 669, no prisoner so imprisoned
6 may be paroled until he or she has served the term specified in
7 subdivision (a) on each of the life sentences that are ordered to run
8 consecutively.

9 (c) Notwithstanding subdivisions (a) and (b), a prisoner found
10 suitable for parole pursuant to a youth offender parole hearing as
11 described in Section 3051 shall be paroled regardless of the manner
12 in which the board set release dates pursuant to subdivision (a) of
13 Section 3041, subject to subdivision (b) of Section 3041 and
14 Sections 3041.1 and 3041.2, as applicable.

15 (d) The Board of Prison Terms shall, in considering a parole
16 for a prisoner, consider all statements and recommendations which
17 may have been submitted by the judge, district attorney, and sheriff,
18 pursuant to Section 1203.01, or in response to notices given under
19 Section 3042, and recommendations of other persons interested
20 in the granting or denying of the parole. The board shall enter on
21 its order granting or denying parole to these prisoners, the fact that
22 the statements and recommendations have been considered by it.

23 SEC. 4. Section 3051 is added to the Penal Code, to read:

24 3051. (a) (1) A youth offender parole hearing is a hearing by
25 the Board of Parole Hearings for the purpose of reviewing the
26 parole suitability of any prisoner who was under 18 years of age
27 at the time of his or her controlling offense.

28 (2) For the purposes of this section, the following definitions
29 shall apply:

30 (A) "Incarceration" means detention in a city or county jail, a
31 local juvenile facility, a mental health facility, a Division of
32 Juvenile Justice facility, or a Department of Corrections and
33 Rehabilitation facility.

34 (B) "Controlling offense" means the offense or enhancement
35 for which ~~the~~ *any* sentencing court imposed the longest term of
36 imprisonment.

37 (b) (1) A person who was convicted of a controlling offense
38 that was committed before the person had attained 18 years of age
39 and for which the sentence is a determinate sentence shall be
40 ~~considered~~ *eligible* for release on parole at a youth offender parole

1 hearing by the board during his or her 15th year of incarceration,
2 unless previously released pursuant to other statutory provisions.

3 (2) A person who was convicted of a controlling offense that
4 was committed before the person had attained 18 years of age and
5 for which the sentence is a life term of less than 25 years to life
6 shall be ~~considered~~ *eligible* for release on parole by the board
7 during his or her 20th year of incarceration at a youth offender
8 parole hearing, unless previously released or entitled to an earlier
9 parole consideration hearing pursuant to other statutory provisions.

10 (3) A person who was convicted of a controlling offense that
11 was committed before the person had attained 18 years of age and
12 for which the sentence is a life term of 25 years to life shall be
13 ~~considered~~ *eligible* for release on parole by the board during his
14 or her 25th year of incarceration at a youth offender parole hearing,
15 unless previously released or entitled to an earlier parole
16 consideration hearing pursuant to other statutory provisions.

17 (c) An individual subject to this section shall meet with the
18 board pursuant to subdivision (a) of Section 3041.

19 (d) The board shall conduct a youth offender parole hearing to
20 consider release. At the youth offender parole hearing, the board
21 shall release the individual on parole as provided in Section 3041,
22 except that the board shall act in accordance with subdivision (c)
23 of Section 4801.

24 (e) The youth offender parole hearing to consider release shall
25 provide for a meaningful opportunity to obtain release. The board
26 shall review and, as necessary, revise existing regulations and
27 adopt new regulations regarding determinations of suitability made
28 pursuant to this section, subdivision (c) of Section 4801, and other
29 related topics, consistent with relevant case law, in order to provide
30 that meaningful opportunity for release.

31 (f) (1) In assessing growth and maturity, psychological
32 evaluations and risk assessment instruments, if used by the board,
33 shall be administered by licensed psychologists employed by the
34 board and shall take into consideration the diminished culpability
35 of juveniles as compared to that of adults, the hallmark features
36 of youth, and any subsequent growth and increased maturity of
37 the individual.

38 (2) Family members, friends, school personnel, faith leaders,
39 and representatives from community-based organizations with
40 knowledge about the individual before the crime or his or her

1 growth and maturity since the time of the crime may submit
2 statements for review by the board.

3 ~~(3) An individual subject to this section may designate one
4 person who may attend the youth offender parole hearing, if not
5 otherwise barred by law, regulation, or existing procedure from
6 the location of the hearing, who may read a brief statement.~~

7 ~~(4)~~

8 (3) Nothing in this section is intended to alter the rights of
9 victims at a parole hearings.

10 (g) If parole is not granted, the board shall set the time for a
11 subsequent youth offender parole hearing in accordance with
12 paragraph (3) of subdivision (b) of Section 3041.5. In exercising
13 its discretion pursuant to paragraph (4) of subdivision (b) and
14 subdivision (d) of Section 3041.5, the board shall consider the
15 factors in subdivision (c) of Section 4801. No subsequent youth
16 offender parole hearing shall be necessary if the offender is released
17 pursuant to other statutory provisions prior to the date of the
18 subsequent hearing.

19 (h) This section shall not apply to cases in which sentencing
20 occurs pursuant to ~~the Three Strikes law Section 1170.12,~~
21 *subdivisions (b) to (i), inclusive, of Section 667, or Section 667.61,*
22 or in which an individual was sentenced to life in prison without
23 the possibility of parole. *This section shall not apply to an*
24 *individual to whom this section would otherwise apply, but who,*
25 *subsequent to attaining 18 years of age, commits an additional*
26 *crime for which malice aforethought is a necessary element of the*
27 *crime or for which the individual is sentenced to life in prison.*

28 (i) The board shall complete all youth offender parole hearings
29 for individuals who become entitled to have their parole suitability
30 considered at a youth offender parole hearing on the effective date
31 of this section by July 1, 2015.

32 SEC. 5. Section 4801 of the Penal Code is amended to read:

33 4801. (a) The Board of Parole Hearings may report to the
34 Governor, from time to time, the names of any and all persons
35 imprisoned in any state prison who, in its judgment, ought to have
36 a commutation of sentence or be pardoned and set at liberty on
37 account of good conduct, or unusual term of sentence, or any other
38 cause, including evidence of intimate partner battering and its
39 effects. For purposes of this section, “intimate partner battering
40 and its effects” may include evidence of the nature and effects of

1 physical, emotional, or mental abuse upon the beliefs, perceptions,
2 or behavior of victims of domestic violence ~~where~~ *if* it appears the
3 criminal behavior was the result of that victimization.

4 (b) (1) The board, in reviewing a prisoner’s suitability for parole
5 pursuant to Section 3041.5, shall give great weight to any
6 information or evidence that, at the time of the commission of the
7 crime, the prisoner had experienced intimate partner battering, but
8 was convicted of an offense that occurred prior to August 29, 1996.
9 The board shall state on the record the information or evidence
10 that it considered pursuant to this subdivision, and the reasons for
11 the parole decision. The board shall annually report to the
12 Legislature and the Governor on the cases the board considered
13 pursuant to this subdivision during the previous year, including
14 the board’s decisions and the specific and detailed findings of its
15 investigations of these cases.

16 (2) The report for the Legislature to be submitted pursuant to
17 paragraph (1) shall be submitted pursuant to Section 9795 of the
18 Government Code.

19 (3) The fact that a prisoner has presented evidence of intimate
20 partner battering cannot be used to support a finding that the
21 prisoner lacks insight into his or her crime and its causes.

22 (c) When a prisoner committed his or her controlling offense,
23 as defined in subdivision (a) of Section 3051, prior to attaining 18
24 years of age, the board, in reviewing a prisoner’s suitability for
25 parole pursuant to Section 3041.5, shall give great weight to the
26 diminished culpability of juveniles as compared to adults, the
27 hallmark features of youth, and any subsequent growth and
28 increased maturity of the prisoner in accordance with relevant case
29 law.