

ASSEMBLY BILL

No. 487

Introduced by Assembly Member Gonzalez

February 23, 2015

An act to amend Section 3041.5 of the Penal Code, relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

AB 487, as introduced, Gonzalez. Parole hearings: notification of district attorneys.

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, as amended by Proposition 9, the Victim's Bill of Rights Act of 2008: Marsy's Law, at 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 require notification of the district attorney of the county in which the offense was committed, or his or her designee, to receive notification of specified parole proceedings and would require nullification of action taken on the hearing advancement if the district attorney of the county in which the offense was committed, or his or her designee, and the victim are not notified.

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 3041.5 of the Penal Code is amended to
2 read:

3 3041.5. (a) At all hearings for the purpose of reviewing a
4 prisoner's parole suitability, or the setting, postponing, or
5 rescinding of parole dates, with the exception of en banc review
6 of tie votes, the following shall apply:

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

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

16 (3) Unless legal counsel is required by some other provision of
17 law, a person designated by the Department of Corrections and
18 Rehabilitation shall be present to ensure that all facts relevant to
19 the decision be presented, including, if necessary, contradictory
20 assertions as to matters of fact that have not been resolved by
21 departmental or other procedures.

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

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

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

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

37 (2) Within 20 days following any meeting where a parole date
38 has not been set, the board shall send the prisoner a written

1 statement setting forth the reason or reasons for refusal to set a
2 parole date, and suggest activities in which he or she might
3 participate that will benefit him or her while he or she is
4 incarcerated.

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

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

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

19 (C) Three years, five years, or seven years after any hearing at
20 which parole is denied, because the criteria relevant to the setting
21 of parole release dates enumerated in subdivision (a) of Section
22 3041 are such that consideration of the public and victim's safety
23 requires a more lengthy period of incarceration for the prisoner,
24 but does not require a more lengthy period of incarceration for the
25 prisoner than seven additional years.

26 (4) The board may in its discretion, after considering the views
27 and interests of the victim *and the district attorney of the county*
28 *in which the offense was committed*, advance a hearing set pursuant
29 to paragraph (3) to an earlier date, when a change in circumstances
30 or new information establishes a reasonable likelihood that
31 consideration of the public and victim's safety does not require
32 the additional period of incarceration of the prisoner provided in
33 paragraph (3).

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

39 (6) Within 10 days of any board action resulting in the
40 rescinding of a previously set parole date, the board shall send the

1 prisoner a written statement setting forth the reason or reasons for
2 that action, and shall schedule the prisoner's next hearing in
3 accordance with paragraph (3).

4 (c) The board shall conduct a parole hearing pursuant to this
5 section as a de novo hearing. Findings made and conclusions
6 reached in a prior parole hearing shall be considered in but shall
7 not be deemed to be binding upon subsequent parole hearings for
8 an inmate, but shall be subject to reconsideration based upon
9 changed facts and circumstances. When conducting a hearing, the
10 board shall admit the prior recorded or memorialized testimony
11 or statement of a victim or witness, upon request of the victim or
12 if the victim or witness has died or become unavailable. At each
13 hearing the board shall determine the appropriate action to be taken
14 based on the criteria set forth in ~~paragraph (3)~~ of subdivision ~~(a)~~
15 *(b)* of Section 3041.

16 (d) (1) An inmate may request that the board exercise its
17 discretion to advance a hearing set pursuant to paragraph (3) of
18 subdivision (b) to an earlier date, by submitting a written request
19 to the board, with notice, upon request, and a copy to the *district*
20 *attorney of the county in which the offense was committed, or his*
21 *or her representative, and to the victim* which shall set forth the
22 change in circumstances or new information that establishes a
23 reasonable likelihood that consideration of the public safety does
24 not require the additional period of incarceration of the inmate.
25 *The notice shall be forwarded to the district attorney and the victim*
26 *within 30 days of receipt of the inmate's request.*

27 (2) The board shall have sole jurisdiction, after considering the
28 views and interests of the *district attorney of the county in which*
29 *the offense was committed, or his or her representative, and the*
30 victim to determine whether to grant or deny a written request
31 made pursuant to paragraph (1), and its decision shall be subject
32 to review by a court or magistrate only for a manifest abuse of
33 discretion by the board. The board shall have the power to
34 summarily deny a request that does not comply with the provisions
35 of this subdivision or that does not set forth a change in
36 circumstances or new information as required in paragraph (1) that
37 in the judgment of the board is sufficient to justify the action
38 described in paragraph (4) of subdivision (b).

39 (3) An inmate may make only one written request as provided
40 in paragraph (1) during each three-year period. Following either

1 a summary denial of a request made pursuant to paragraph (1), or
2 the decision of the board after a hearing described in subdivision
3 (a) to not set a parole date, the inmate shall not be entitled to submit
4 another request for a hearing pursuant to subdivision (a) until a
5 three-year period of time has elapsed from the summary denial or
6 decision of the board.

7 *(4) Failure to notify the district attorney of the county in which*
8 *the offense was committed, or his or her representative, or the*
9 *victim of a hearing advancement described in paragraph (4) of*
10 *subdivision (b) or paragraph (1) of this subdivision shall post pone*
11 *any action being taken on the hearing advancement until the notice*
12 *is properly made.*