

AMENDED IN ASSEMBLY APRIL 16, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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 amended, 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.~~ *require, if notice is not provided, any action on a hearing advancement to be postponed until notice is properly made.*

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~~ *are* 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

1 she must meet in order to be released on the date set, and the
2 consequences of failure to meet those conditions.

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

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

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

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

23 (C) Three years, five years, or seven years after any hearing at
24 which parole is denied, because the criteria relevant to the setting
25 of parole release dates enumerated in subdivision (a) of Section
26 3041 are such that consideration of the public and victim's safety
27 requires a more lengthy period of incarceration for the prisoner,
28 but does not require a more lengthy period of incarceration for the
29 prisoner than seven additional years.

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

38 (5) Within 10 days of any board action resulting in the
39 postponement of a previously set parole date, the board shall send
40 the prisoner a written statement setting forth a new date and the

1 reason or reasons for that action and shall offer the prisoner an
2 opportunity for review of that action.

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

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

19 (d) (1) An inmate may request that the board exercise its
20 discretion to advance a hearing set pursuant to paragraph (3) of
21 subdivision (b) to an earlier date, by submitting a written request
22 to the board, ~~with notice, upon request, and a copy to the district~~
23 ~~attorney of the county in which the offense was committed, or his~~
24 ~~or her representative, and to the victim~~ which shall set forth the
25 change in circumstances or new information that establishes a
26 reasonable likelihood that consideration of the public safety does
27 not require the additional period of incarceration of the inmate.
28 ~~The notice shall be forwarded to the district attorney and the victim~~
29 ~~within 30 days of receipt of the inmate's request. The board shall~~
30 *provide notice of the request to the district attorney and the victim,*
31 *if the victim has previously requested notification of all board*
32 *actions, no less than 30 days before the board may grant the*
33 *inmate's request. Notice shall be satisfied by mailing copies of the*
34 *inmate's request to the office of the district attorney and, if*
35 *applicable, to the last address provided by the victim to the Office*
36 *of Victim and Survivor Rights and Services.*

37 (2) The board shall have sole jurisdiction, after considering the
38 views and interests of the district attorney of the county in which
39 the offense was committed, or his or her representative, and the
40 victim to determine whether to grant or deny a written request

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

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

17 (4) ~~Failure to notify the district attorney of the county in which~~
18 ~~the offense was committed, or his or her representative, or the~~
19 ~~victim of a hearing advancement described in paragraph (4) of~~
20 ~~subdivision (b) or paragraph (1) of this subdivision shall post pone~~
21 ~~any action being taken on the hearing advancement until the notice~~
22 ~~is properly made. *provide notification as required in paragraph*~~
23 ~~(1) shall postpone any action being taken on the hearing~~
24 ~~advancement until the notice is properly made.~~