

AMENDED IN SENATE JULY 15, 2015

AMENDED IN SENATE JUNE 30, 2015

AMENDED IN ASSEMBLY APRIL 16, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 487

Introduced by Assembly Member Gonzalez
(Coauthor: Senator Anderson)

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.

This bill would incorporate additional changes to Section 3041.5 of the Penal Code proposed by SB 230 that would become operative if this bill and SB 230 are both chaptered and this bill is chaptered last.

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~~ a hearing by the Board of Parole
8 Hearings, the prisoner shall be permitted to review his or her file
9 ~~which~~ *that* will be examined by the board and shall have the
10 opportunity to enter a written response to any material contained
11 in the file.

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

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

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

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

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

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

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

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

13 (A) Fifteen years after a 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 10 additional years.

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

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

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

1 (5) Within 10 days of a board action resulting in the
2 postponement of a previously set parole date, the board shall send
3 the prisoner a written statement setting forth a new date and the
4 reason or reasons for that action and shall offer the prisoner an
5 opportunity for review of that action.

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

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

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

36 (2) The board shall have sole jurisdiction, after considering the
37 views and interests of the district attorney of the county in which
38 the offense was committed, or his or her representative, and the
39 victim to determine whether to grant or deny a written request
40 made pursuant to paragraph (1), and its decision shall be subject

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

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

16 *SEC. 1.5. Section 3041.5 of the Penal Code is amended to*
17 *read:*

18 3041.5. (a) At all hearings for the purpose of reviewing a
19 ~~prisoner's~~ *an inmate's* parole suitability, or the setting, postponing,
20 or rescinding of ~~parole dates,~~ *parole*, with the exception of en banc
21 review of tie votes, the following shall apply:

22 (1) At least 10 days ~~prior to any~~ *before* a hearing by the Board
23 of Parole Hearings, the ~~prisoner inmate~~ *inmate* shall be permitted to review
24 ~~his or her the file which~~ *that* will be examined by the board and
25 shall have the opportunity to enter a written response to any
26 material contained in the file.

27 (2) The ~~prisoner inmate~~ *inmate* shall be permitted to be present, to ask
28 and answer questions, and to speak on his or her own behalf.
29 Neither the ~~prisoner inmate~~ *inmate* nor the attorney for the ~~prisoner inmate~~
30 shall be entitled to ask questions of ~~any~~ *a* person appearing at the
31 hearing pursuant to subdivision (b) of Section 3043.

32 (3) Unless legal counsel is required by ~~some other provision of~~
33 *another* law, a person designated by the Department of Corrections
34 and Rehabilitation shall be present to ensure that all facts relevant
35 to the decision ~~be~~ *are* presented, including, if necessary,
36 contradictory assertions as to matters of fact that have not been
37 resolved by departmental or other procedures.

38 (4) The ~~prisoner inmate~~ *inmate* and ~~any~~ *a* person described in
39 subdivision (b) of Section 3043 shall be permitted to request and
40 receive a stenographic record of all proceedings.

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

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

9 (b) (1) Within 10 days following ~~any meeting where a parole~~
10 ~~date has been set, a decision granting parole,~~ the board shall send
11 the ~~prisoner inmate~~ a written statement setting forth ~~his or her~~
12 ~~parole date, the reason or reasons for granting parole,~~ the
13 conditions he or she must meet in order to be ~~released on the date~~
14 ~~set, released,~~ and the consequences of failure to meet those
15 conditions.

16 (2) Within 20 days following ~~any meeting where a parole date~~
17 ~~has not been set, a decision denying parole,~~ the board shall send
18 the ~~prisoner inmate~~ a written statement setting forth the reason or
19 reasons for ~~refusal to set a parole date, denying parole,~~ and suggest
20 activities in which he or she might participate that will benefit him
21 or her while he or she is incarcerated.

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

24 (A) Fifteen years after ~~any a~~ hearing at which parole is denied,
25 unless the board finds by clear and convincing evidence that the
26 criteria relevant to the ~~setting of parole release dates enumerated~~
27 ~~in subdivision (a) of Section 3041~~ *decision denying parole* are
28 such that consideration of the public and victim's safety does not
29 require a more lengthy period of incarceration for the ~~prisoner~~
30 *inmate* than 10 additional years.

31 (B) Ten years after ~~any a~~ hearing at which parole is denied,
32 unless the board finds by clear and convincing evidence that the
33 criteria relevant to the ~~setting of parole release dates enumerated~~
34 ~~in subdivision (a) of Section 3041~~ *decision denying parole* are
35 such that consideration of the public and victim's safety does not
36 require a more lengthy period of incarceration for the ~~prisoner~~
37 *inmate* than seven additional years.

38 (C) Three years, five years, or seven years after ~~any a~~ hearing
39 at which parole is denied, because the criteria relevant to the ~~setting~~
40 ~~of parole release dates enumerated in subdivision (a) of Section~~

1 ~~3041~~ *decision denying parole* are such that consideration of the
 2 public and victim’s safety requires a more lengthy period of
 3 incarceration for the ~~prisoner~~, *inmate*, but does not require a more
 4 lengthy period of incarceration for the ~~prisoner~~ *inmate* than seven
 5 additional years.

6 (4) The board ~~may~~ *may*, in its discretion, after considering the
 7 views and interests of the ~~victim~~, *victim and the district attorney*
 8 *of the county in which the offense was committed*, advance a
 9 hearing set pursuant to paragraph (3) to an earlier date, when a
 10 change in circumstances or new information establishes a
 11 reasonable likelihood that consideration of the public and victim’s
 12 safety does not require the additional period of incarceration of
 13 the prisoner provided *for* in paragraph (3).

14 ~~(5) Within 10 days of any board action resulting in the~~
 15 ~~postponement of a previously set parole date, the board shall send~~
 16 ~~the prisoner a written statement setting forth a new date and the~~
 17 ~~reason or reasons for that action and shall offer the prisoner an~~
 18 ~~opportunity for review of that action.~~

19 ~~(6)~~

20 (5) Within 10 days of ~~any~~ *a* board action resulting in the
 21 rescinding of a ~~previously set parole date~~, *parole*, the board shall
 22 send the ~~prisoner~~ *inmate* a written statement setting forth the reason
 23 or reasons for that action, and shall schedule the ~~prisoner’s~~ *inmate’s*
 24 next hearing in accordance with paragraph (3).

25 (c) The board shall conduct a parole hearing pursuant to this
 26 section as a de novo hearing. Findings made and conclusions
 27 reached in a prior parole hearing shall be considered ~~in~~ *in*, but shall
 28 not be deemed to be binding ~~upon~~ *upon*, subsequent parole hearings
 29 for an inmate, but shall be subject to reconsideration based upon
 30 changed facts and circumstances. When conducting a hearing, the
 31 board shall admit the prior recorded or memorialized testimony
 32 or statement of a victim or witness, upon request of the victim or
 33 if the victim or witness has died or become unavailable. At each
 34 hearing the board shall determine the appropriate action to be taken
 35 based on the criteria set forth in ~~paragraph (3) of subdivision (a)~~
 36 *subdivision (b)* of Section 3041.

37 (d) (1) An inmate may request that the board exercise its
 38 discretion to advance a hearing set pursuant to paragraph (3) of
 39 subdivision (b) to an earlier date, by submitting a written request
 40 to the board, ~~with notice, upon request, and a copy to the victim~~

1 which shall set forth the change in circumstances or new
2 information that establishes a reasonable likelihood that
3 consideration of the public safety does not require the additional
4 period of incarceration of the inmate. *The board shall provide*
5 *notice of the request to the district attorney and the victim, if the*
6 *victim has previously requested notification of all board actions,*
7 *no less than 30 days before the board may grant the inmate's*
8 *request. Notice shall be satisfied by mailing copies of the inmate's*
9 *request to the office of the district attorney and, if applicable, to*
10 *the last address provided by the victim to the Office of Victim and*
11 *Survivor Rights and Services.*

12 (2) The board shall have sole jurisdiction, after considering the
13 views and interests of the *district attorney of the county in which*
14 *the offense was committed, or his or her representative, and the*
15 *victim to determine whether to grant or deny a written request*
16 *made pursuant to paragraph (1), and its decision shall be subject*
17 *to review by a court or magistrate only for a manifest abuse of*
18 *discretion by the board. The board shall have the power to*
19 *summarily deny a request that does not comply with the provisions*
20 *of this subdivision or that does not set forth a change in*
21 *circumstances or new information as required in paragraph (1) that*
22 *in the judgment of the board is sufficient to justify the action*
23 *described in paragraph (4) of subdivision (b).*

24 (3) An inmate may make only one written request as provided
25 in paragraph (1) during each three-year period. Following either
26 a summary denial of a request made pursuant to paragraph (1), or
27 the decision of the board after a hearing described in subdivision
28 (a) ~~to not set a parole date, deny parole,~~ the inmate shall not be
29 entitled to submit another request for a hearing pursuant to
30 subdivision (a) until a three-year period of time has elapsed from
31 the summary denial or decision of the board.

32 *SEC. 2. Section 1.5 of this bill incorporates amendments to*
33 *Section 3041.5 of the Penal Code proposed by both this bill and*
34 *Senate Bill 230. It shall only become operative if (1) both bills are*
35 *enacted and become effective on or before January 1, 2016, (2)*
36 *each bill amends Section 3041.5 of the Penal Code, and (3) this*
37 *bill is enacted after Senate Bill 230, in which case Section 1 of this*
38 *bill shall not become operative.*

O