

Assembly Bill No. 487

Passed the Assembly August 27, 2015

Chief Clerk of the Assembly

Passed the Senate August 24, 2015

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 487, 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.

The people of the State of California do enact as follows:

SECTION 1. Section 3041.5 of the Penal Code is amended to read:

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

(1) At least 10 days prior to a hearing by the Board of Parole Hearings, the prisoner shall be permitted to review his or her file

that will be examined by the board and shall have the opportunity to enter a written response to any material contained in the file.

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

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

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

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

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

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

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

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

(A) Fifteen years after a hearing at which parole is denied, unless the board finds by clear and convincing evidence that the criteria relevant to the setting of parole release dates enumerated in subdivision (a) of Section 3041 are such that consideration of the

public and victim's safety does not require a more lengthy period of incarceration for the prisoner than 10 additional years.

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

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

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

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

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

(c) The board shall conduct a parole hearing pursuant to this section as a de novo hearing. Findings made and conclusions reached in a prior parole hearing shall be considered in, but shall not be deemed to be binding upon, subsequent parole hearings for an inmate, but shall be subject to reconsideration based upon changed facts and circumstances. When conducting a hearing, the board shall admit the prior recorded or memorialized testimony

or statement of a victim or witness, upon request of the victim or if the victim or witness has died or become unavailable. At each hearing the board shall determine the appropriate action to be taken based on the criteria set forth in subdivision (b) of Section 3041.

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

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

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

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

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

(1) At least 10 days before a hearing by the Board of Parole Hearings, the inmate shall be permitted to review the file that will be examined by the board and shall have the opportunity to enter a written response to any material contained in the file.

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

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

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

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

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

(b) (1) Within 10 days following a decision granting parole, the board shall send the inmate a written statement setting forth the reason or reasons for granting parole, the conditions he or she must meet in order to be released, and the consequences of failure to meet those conditions.

(2) Within 20 days following a decision denying parole, the board shall send the inmate a written statement setting forth the reason or reasons for denying parole, and suggest activities in which he or she might participate that will benefit him or her while he or she is incarcerated.

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

(A) Fifteen years after a hearing at which parole is denied, unless the board finds by clear and convincing evidence that the criteria relevant to the decision denying parole are such that consideration of the public and victim's safety does not require a more lengthy period of incarceration for the inmate than 10 additional years.

(B) Ten years after a hearing at which parole is denied, unless the board finds by clear and convincing evidence that the criteria relevant to the decision denying parole are such that consideration of the public and victim's safety does not require a more lengthy period of incarceration for the inmate than seven additional years.

(C) Three years, five years, or seven years after a hearing at which parole is denied, because the criteria relevant to the decision denying parole are such that consideration of the public and victim's safety requires a more lengthy period of incarceration for the inmate, but does not require a more lengthy period of incarceration for the inmate than seven additional years.

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

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

(c) The board shall conduct a parole hearing pursuant to this section as a de novo hearing. Findings made and conclusions reached in a prior parole hearing shall be considered in, but shall not be deemed to be binding upon, subsequent parole hearings for an inmate, but shall be subject to reconsideration based upon changed facts and circumstances. When conducting a hearing, the board shall admit the prior recorded or memorialized testimony or statement of a victim or witness, upon request of the victim or if the victim or witness has died or become unavailable. At each

hearing the board shall determine the appropriate action to be taken based on the criteria set forth in subdivision (b) of Section 3041.

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

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

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

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 3041.5 of the Penal Code proposed by both this bill and Senate Bill 230. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2016, (2)

each bill amends Section 3041.5 of the Penal Code, and (3) this bill is enacted after Senate Bill 230, in which case Section 1 of this bill shall not become operative.

Approved _____, 2015

Governor