

**Introduced by Senator Liu  
(Coauthor: Senator Leno)**

February 13, 2015

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An act to add Section 3055 to the Penal Code, relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

SB 224, as amended, Liu. Elderly Parole Program.

Existing law requires the Board of Parole Hearings to meet with an inmate during the 6th year prior to the inmate's minimum eligible parole release date to document the inmate's activities and conduct pertinent to parole eligibility. Existing law, the Victims' Bill of Rights Act of 2008: Marsy's Law, as added by Proposition 9 at the November 4, 2008, statewide general election, requires the panel, or the board if sitting en banc, to set a release date at the meeting, unless it determines that consideration of the public and victim's safety requires a more lengthy period of incarceration, and that a parole date cannot be fixed at the meeting. Existing law requires the board to schedule the next parole consideration hearing 15, 10, 7, 5, or 3 years after any hearing at which parole is denied. Existing law allows the board to advance a hearing set pursuant to these provisions 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 an additional period of incarceration.

This bill would establish the Elderly Parole Program, for prisoners who are 50 years of age or ~~older~~, *older and* who have served 15 years of their ~~sentence, and who have a reentry plan identifying residential, financial, and social integration plans.~~ *sentence*. When considering the

release of an inmate who meets this criteria, the bill would require the board to consider whether age, time served, and diminished physical condition, if any, have reduced the elderly prisoner's risk for future violence. The bill would also require the Board of Parole Hearings to consider whether a prisoner will qualify for the program when determining the prisoner's next parole suitability hearing.

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 all of the  
2 following:

3 (a) On February 10, 2014, the three-judge court overseeing the  
4 California prison overcrowding class action case (Coleman v.  
5 Brown (2013) 952 F.Supp.2d 901) issued an order that, among  
6 other things, requires the state to implement an Elderly Parole  
7 Program so that prisoners who are 60 years of age or older and  
8 who have been incarcerated at least 25 years on their current  
9 sentence will be referred to the Board of Parole Hearings (BPH)  
10 to determine suitability for parole. The BPH implemented this  
11 Elderly Parole Program on October 1, 2014.

12 (b) Under the existing Elderly Parole Program hearings,  
13 prisoners who are 60 years of age or older and who have been  
14 incarcerated 25 years or more on their current sentence serving  
15 either a determinate or indeterminate sentence, and who have not  
16 yet had an initial parole suitability hearing are referred by the  
17 California Department of Corrections and Rehabilitation (CDCR)  
18 to the BPH and scheduled for an Elderly Parole Program Suitability  
19 hearing.

20 (c) Under the existing Elderly Parole Program hearings,  
21 prisoners who are 60 years of age or older and who have been  
22 incarcerated 25 years or more on their current term and who have  
23 already been denied parole at the initial sustainability hearing are  
24 considered for a new hearing under the Elderly Parole Program.

25 (d) The BPH currently reviews all three-year denials annually  
26 to determine if a more prompt parole consideration hearing should  
27 be considered. Under the existing Elderly Parole Program, the  
28 BPH includes within that annual review whether any prisoner

1 meets the elder parole eligibility criteria, and if so whether to  
2 schedule a hearing.

3 (e) Under the existing Elderly Parole Program, prisoners who  
4 have lengthier denial periods can file petitions with the BPH asking  
5 that their hearing be advanced because they meet the eligibility  
6 criteria for elder parole.

7 (f) BPH may deny parole if an elderly prisoner's release would  
8 pose an unreasonable risk of danger to public safety. Parole  
9 suitability hearing decisions for elderly parole inmates are reviewed  
10 in the same manner as all other parolees under eligibility  
11 consideration, pursuant to criteria specified by Section 2281 of  
12 Title 15 of the California Code of Regulations. However, for all  
13 Elderly Parole Program hearings, the BPH risk assessments  
14 consider whether age, time served, and diminished physical  
15 condition, if any, reduce elderly prisoners' risk for future violence.

16 (g) The number of elderly prisoners in California state prisons  
17 will continue to increase exponentially. In 2013, the CDCR  
18 reported a population of prisoners 50 years of age and older as  
19 27,580 and the population of prisoners 55 years of age and older  
20 as 14,856.

21 (h) Costs associated with geriatric medical needs begin to  
22 accumulate at age 50, given that there is an overwhelming  
23 consensus that the age of 50 constitutes a point when prisoners are  
24 considered elderly. In 2010, the LAO estimated from other state  
25 projections that incarcerating elderly offenders costs two to three  
26 times more than for the general prison population. In 2010, the  
27 average cost of incarcerating an inmate was approximately \$51,000.

28 (i) Older persons have significantly low arrest rates. In 2001,  
29 the federal arrest rate for persons 40 to 44, inclusive, years of age  
30 was 0.73 percent. The rate decreases by about one-half every five  
31 years, dropping to 0.46 percent for persons 45 to 49, inclusive,  
32 years of age and 0.26 percent for persons 50 to 54, inclusive, years  
33 of age. For persons 50 to 59, inclusive, years of age, the arrest rate  
34 plummets to 0.14 percent.

35 (j) There is a lower risk of recidivism among elderly prisoners,  
36 according to CDCR statistics. In 2013, CDCR reported that only  
37 33.8 percent of persons who were 60 years of age and older,  
38 returned to prison after one year from being released from prison.  
39 Recidivism rates for persons 50 to 54, inclusive, years of age and

1 55 to 59, inclusive, years of age after one year from being released  
2 from prison were 39.9 and 38.3 percent, respectively.

3 SEC. 2. Section 3055 is added to the Penal Code, to read:

4 3055. (a) The Elderly Parole Program is hereby established,  
5 to be administered by the Board of Parole Hearings.

6 (b) A prisoner shall be considered for parole under the Elderly  
7 Parole Program if he or she meets~~all~~ *both* of the following  
8 conditions:

9 (1) The prisoner is 50 years of age or older.

10 (2) The prisoner has served 15 years of *continued incarceration*  
11 *on his or her sentence, including time served prior to sentencing.*

12 ~~(3) The prisoner has a reentry plan identifying residential,~~  
13 ~~financial, and social integration plans.~~

14 (c) When considering the release of a prisoner specified by  
15 subdivision (b) pursuant to Section 3041, the board shall give  
16 special consideration to whether age, time served, and diminished  
17 physical condition, if any, have reduced the elderly prisoner's risk  
18 for future violence.

19 (d) When scheduling a parole suitability hearing date pursuant  
20 to subdivision (b) of Section 3041.5 or when considering a request  
21 for an advance hearing pursuant to subdivision (d) of Section  
22 3041.5, the board shall consider whether the prisoner meets or will  
23 meet the criteria specified in subdivision (b).

24 (e) *This section does not apply to prisoners sentenced to death*  
25 *or to imprisonment for life without the possibility of parole.*