

AMENDED IN SENATE JUNE 2, 2015
AMENDED IN SENATE MARCH 19, 2015

SENATE BILL

No. 224

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

February 13, 2015

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.

Existing law, as added by Proposition 184, adopted November 8, 1994, and amended by Proposition 36, adopted November 6, 2012, commonly known as the Three Strikes Law, imposes increased penalties

for certain recidivist offenders. In particular, it requires that, in addition to any other enhancement or penalty provisions that may apply, if a defendant has 2 or more prior felony convictions, the term for the current felony conviction shall be an indeterminate term of imprisonment in the state prison for life with a minimum term of the greatest of 3 times the term otherwise provided as punishment for each current felony conviction subsequent to the 2 or more prior felony convictions, imprisonment in the state prison for 25 years, or the term determined by the court for the underlying conviction, including any applicable enhancement or punishment provisions. The initiative measure enacting the Three Strikes Law prohibits the Legislature from amending the act except by a statute passed by a $\frac{2}{3}$ vote or by a statute that becomes effective only when approved by the electors.

This bill would establish the Elderly Parole Program, for prisoners who are ~~50~~ 60 years of age or older and who have served ~~15~~ a minimum of 25 years of their 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. *If the prisoner is found suitable for parole under the Elderly Parole Program, the bill would require the board to release the individual on parole, as specified.*

Vote: ~~majority~~ $\frac{2}{3}$. 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.

1 (b) Under the existing Elderly Parole Program hearings,
2 prisoners who are 60 years of age or older and who have been
3 incarcerated 25 years or more on their current sentence serving
4 either a determinate or indeterminate sentence, and who have not
5 yet had an initial parole suitability hearing are referred by the
6 California Department of Corrections and Rehabilitation (CDCR)
7 to the BPH and scheduled for an Elderly Parole Program Suitability
8 hearing.

9 (c) Under the existing Elderly Parole Program hearings,
10 prisoners who are 60 years of age or older and who have been
11 incarcerated 25 years or more on their current term and who have
12 already been denied parole at the initial ~~sustainability~~ *suitability*
13 hearing are considered for a new hearing under the Elderly Parole
14 Program.

15 (d) The BPH currently reviews all three-year denials annually
16 to determine if a more prompt parole consideration hearing should
17 be considered. Under the existing Elderly Parole Program, the
18 BPH includes within that annual review whether any prisoner
19 meets the elder parole eligibility criteria, and if so whether to
20 schedule a hearing.

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

25 (f) *The* BPH may deny parole if an elderly prisoner's release
26 would pose an unreasonable risk of danger to public safety. Parole
27 suitability hearing decisions for elderly parole inmates are reviewed
28 in the same manner as all other parolees under eligibility
29 consideration, pursuant to criteria specified by Section 2281 of
30 Title 15 of the California Code of Regulations. However, for all
31 Elderly Parole Program hearings, the BPH risk assessments
32 consider whether age, time served, and diminished physical
33 condition, if any, reduce elderly prisoners' risk for future violence.

34 ~~(g) The number of elderly prisoners in California state prisons~~
35 ~~will continue to increase exponentially. In 2013, the CDCR~~
36 ~~reported a population of prisoners 50 years of age and older as~~
37 ~~27,580 and the population of prisoners 55 years of age and older~~
38 ~~as 14,856.~~

39 ~~(h) Costs associated with geriatric medical needs begin to~~
40 ~~accumulate at age 50, given that there is an overwhelming~~

1 consensus that the age of 50 constitutes a point when prisoners are
2 considered elderly. In 2010, the LAO estimated from other state
3 projections that incarcerating elderly offenders costs two to three
4 times more than for the general prison population. In 2010, the
5 average cost of incarcerating an inmate was approximately \$51,000.

6 (i) ~~Older persons have significantly low arrest rates. In 2001,~~
7 ~~the federal arrest rate for persons 40 to 44, inclusive, years of age~~
8 ~~was 0.73 percent. The rate decreases by about one-half every five~~
9 ~~years, dropping to 0.46 percent for persons 45 to 49, inclusive,~~
10 ~~years of age and 0.26 percent for persons 50 to 54, inclusive, years~~
11 ~~of age. For persons 50 to 59, inclusive, years of age, the arrest rate~~
12 ~~plummets to 0.14 percent.~~

13 (j) ~~There is a lower risk of recidivism among elderly prisoners,~~
14 ~~according to CDCR statistics. In 2013, CDCR reported that only~~
15 ~~33.8 percent of persons who were 60 years of age and older,~~
16 ~~returned to prison after one year from being released from prison.~~
17 ~~Recidivism rates for persons 50 to 54, inclusive, years of age and~~
18 ~~55 to 59, inclusive, years of age after one year from being released~~
19 ~~from prison were 39.9 and 38.3 percent, respectively.~~

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

21 3055. (a) The Elderly Parole Program is hereby established,
22 to be administered by the Board of Parole Hearings.

23 (b) A prisoner shall be considered for parole under the Elderly
24 Parole Program if he or she meets both of the following conditions:

25 (1) The prisoner is ~~50~~ 60 years of age or older.

26 (2) The prisoner has served ~~15~~ *a minimum of 25* years of
27 continued incarceration on his or her *current* sentence, ~~including~~
28 ~~time served prior to sentencing. serving either a determinate or~~
29 ~~indeterminate sentence.~~

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

35 (d) When scheduling a parole suitability hearing date pursuant
36 to subdivision (b) of Section 3041.5 or when considering a request
37 for an advance hearing pursuant to subdivision (d) of Section
38 3041.5, the board shall consider whether the prisoner meets or will
39 meet the criteria specified in subdivision (b).

1 *(e) If the prisoner is found suitable for parole under the Elderly*
2 *Parole Program, the board shall release the individual on parole*
3 *as provided in Section 3041.*

4 ~~(e)~~

5 *(f) This section does not apply to prisoners sentenced to death*
6 *or to imprisonment for life without the possibility of parole.*

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