

AMENDED IN ASSEMBLY JUNE 16, 2016

AMENDED IN SENATE APRIL 26, 2016

SENATE BILL

No. 1070

Introduced by ~~Senator Hancock~~ *Senators Hancock and Lara*

February 16, 2016

An act to amend Sections 3051 and 4801 of the Penal Code, relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

SB 1070, as amended, Hancock. Youth offender parole hearings.

Existing law requires the Board of Parole Hearings to conduct a youth offender parole hearing for offenders sentenced to state prison who committed specified crimes when they were under 23 years of age. Existing law requires these hearings to be granted during specified years of incarceration. *Existing law, as added by initiative statute, imposes a term of confinement in the state prison for life without the possibility of parole or, at the discretion of the court, 25 years to life, on a defendant who was 16 years of age or older and under 18 years of age at the time of the commission of the crime for which he or she was found guilty of murder in the first degree, if specified special circumstances have been found true. Existing case law prohibits a juvenile convicted of a homicide offense from being sentenced to life in prison without parole absent consideration of the juvenile's special circumstances in light of the principles and purposes of juvenile sentencing.*

This bill would recast those provisions, and instead require the youth offender parole hearings following completion of the specified year of incarceration. This bill would provide that these hearings are not required for inmates serving a determinate sentence who will be released by operation of law pursuant to his or her determinate term less than

180 days from his or her scheduled hearing date. *This bill would make a person who was convicted of a controlling offense that was committed before the person had attained 18 years of age and for which a life sentence without the possibility of parole has been imposed eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing. The bill would require the board to complete all hearings for individuals who become eligible to have their parole suitability considered at a youth offender parole hearing by this bill by January 1, 2019. The bill would make other technical, nonsubstantive changes.*

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 3051 of the Penal Code is amended to
 2 read:
 3 3051. (a) (1) A youth offender parole hearing is a hearing by
 4 the Board of Parole Hearings for the purpose of reviewing the
 5 parole suitability of any prisoner who was under 23 years of age
 6 age, or as specified in paragraph (5) of subdivision (b) was under
 7 18 years of age, at the time of his or her controlling offense.
 8 (2) For the purposes of this section, the following definitions
 9 shall apply:
 10 (A) “Incarceration” means detention in a city or county jail, a
 11 local juvenile facility, a mental health facility, a Division of
 12 Juvenile Justice facility, or a Department of Corrections and
 13 Rehabilitation facility.
 14 (B) “Controlling offense” means the offense or enhancement
 15 for which any sentencing court imposed the longest term of
 16 imprisonment.
 17 (b) (1) Unless previously released pursuant to other statutory
 18 provisions or court orders, an inmate who was convicted of a
 19 controlling offense that was committed before the inmate had
 20 attained 23 years of age and for which the sentence is a determinate
 21 sentence shall be eligible for release on parole following
 22 completion of his or her 15th year of incarceration, upon being
 23 granted parole by the board, pursuant to paragraph (1) of
 24 subdivision (b) of Section 3041, at a youth offender parole hearing.

1 (2) Unless previously released or entitled to an earlier parole
2 consideration hearing pursuant to other statutory provisions or
3 court orders, an inmate who was convicted of a controlling offense
4 that was committed before the inmate had attained 23 years of age
5 and for which the sentence is a life term of less than 25 years to
6 life shall be eligible for release on parole following completion of
7 his or her 20th year of incarceration upon being granted parole by
8 the board, pursuant to paragraph (1) of subdivision (b) of Section
9 3041, at a youth offender parole hearing.

10 (3) Unless previously released or entitled to an earlier parole
11 consideration hearing pursuant to other statutory provisions or
12 court orders, an inmate who was convicted of a controlling offense
13 that was committed before the inmate had attained 23 years of age
14 and for which the sentence is a life term of 25 years to life shall
15 be eligible for release on parole following completion of his or her
16 25th year of incarceration upon being granted parole by the board,
17 pursuant to paragraph (1) of subdivision (b) of Section 3041, at a
18 youth offender parole hearing.

19 (4) This section shall not apply to an inmate serving a
20 determinate sentence if he or she will be released by operation of
21 law pursuant to his or her determinate term less than 180 days
22 from his or her scheduled hearing date.

23 (5) *A person who was convicted of a controlling offense that*
24 *was committed before the person had attained 18 years of age and*
25 *for which the sentence is life without the possibility of parole shall*
26 *be eligible for release on parole by the board during his or her*
27 *25th year of incarceration at a youth offender parole hearing,*
28 *unless previously released or entitled to an earlier parole*
29 *consideration hearing pursuant to other statutory provisions.*

30 (c) An individual subject to this section shall meet with the
31 board pursuant to subdivision (a) of Section 3041.

32 (d) The board shall conduct a youth offender parole hearing to
33 consider release. At the youth offender parole hearing, the board
34 shall release the individual on parole as provided in Section 3041,
35 except that the board shall act in accordance with subdivision (c)
36 of Section 4801.

37 (e) The youth offender parole hearing to consider release shall
38 provide for a meaningful opportunity to obtain release. The board
39 shall review and, as necessary, revise existing regulations and
40 adopt new regulations regarding determinations of suitability made

1 pursuant to this section, subdivision (c) of Section 4801, and other
2 related topics, consistent with relevant case law, in order to provide
3 that meaningful opportunity for release.

4 (f) (1) In assessing growth and maturity, psychological
5 evaluations and risk assessment instruments, if used by the board,
6 shall be administered by licensed psychologists employed by the
7 board and shall take into consideration the diminished culpability
8 of youth as compared to that of adults, the hallmark features of
9 youth, and any subsequent growth and increased maturity of the
10 individual.

11 (2) Family members, friends, school personnel, faith leaders,
12 and representatives from community-based organizations with
13 knowledge about the individual before the crime or his or her
14 growth and maturity since the time of the crime may submit
15 statements for review by the board.

16 (3) ~~Nothing in this section is~~ *This section is not* intended to alter
17 the rights of victims at parole hearings.

18 (g) If parole is not granted, the board shall set the time for a
19 subsequent youth offender parole hearing in accordance with
20 paragraph (3) of subdivision (b) of Section 3041.5. In exercising
21 its discretion pursuant to paragraph (4) of subdivision (b) and
22 subdivision (d) of Section 3041.5, the board shall consider the
23 factors in subdivision (c) of Section 4801. ~~Not~~ A subsequent youth
24 offender parole hearing shall *not* be necessary if the offender is
25 released pursuant to other statutory provisions prior to the date of
26 the subsequent hearing.

27 (h) This section shall not apply to cases in which sentencing
28 occurs pursuant to Section 1170.12, subdivisions (b) to (i),
29 inclusive, of Section 667, or Section 667.61, or *to cases* in which
30 an individual ~~was~~ *is* sentenced to life in prison without the
31 possibility of ~~parole~~. *parole for a controlling offense that was*
32 *committed after the person had attained 18 years of age.* This
33 section shall not apply to an individual to whom this section would
34 otherwise apply, but who, subsequent to attaining 23 years of age,
35 commits an additional crime for which malice aforethought is a
36 necessary element of the crime or for which the individual is
37 sentenced to life in prison.

38 (i) (1) The board shall complete all youth offender parole
39 hearings for individuals who became entitled to have their parole
40 suitability considered at a youth offender parole hearing prior to

1 the effective date of the act that added paragraph (2) by July 1,
2 2015.

3 (2) (A) The board shall complete all youth offender parole
4 hearings for individuals who were sentenced to indeterminate life
5 terms and who become entitled to have their parole suitability
6 considered at a youth offender parole hearing on the effective date
7 of the act that added this paragraph by July 1, 2017.

8 (B) The board shall complete all youth offender parole hearings
9 for individuals who were sentenced to determinate terms and who
10 become entitled to have their parole suitability considered at a
11 youth offender parole hearing on the effective date of the act that
12 added this paragraph by July 1, 2021. The board shall, for all
13 individuals described in this subparagraph, conduct the consultation
14 described in subdivision (a) of Section 3041 before July 1, 2017.

15 (3) *The board shall complete, by July 1, 2019, all youth offender*
16 *parole hearings for individuals who were sentenced to terms of*
17 *life without the possibility of parole who became entitled to have*
18 *their parole suitability considered at a youth offender parole*
19 *hearing on January 1, 2017.*

20 SEC. 2. Section 4801 of the Penal Code is amended to read:

21 4801. (a) The Board of Parole Hearings may report to the
22 Governor, from time to time, the names of any and all persons
23 imprisoned in any state prison who, in its judgment, ought to have
24 a commutation of sentence or be pardoned and set at liberty on
25 account of good conduct, or unusual term of sentence, or any other
26 cause, including evidence of intimate partner battering and its
27 effects. For purposes of this section, “intimate partner battering
28 and its effects” may include evidence of the nature and effects of
29 physical, emotional, or mental abuse upon the beliefs, perceptions,
30 or behavior of victims of domestic violence if it appears the
31 criminal behavior was the result of that victimization.

32 (b) (1) The board, in reviewing a prisoner’s suitability for parole
33 pursuant to Section 3041.5, shall give great weight to any
34 information or evidence that, at the time of the commission of the
35 crime, the prisoner had experienced intimate partner battering, but
36 was convicted of an offense that occurred prior to August 29, 1996.
37 The board shall state on the record the information or evidence
38 that it considered pursuant to this subdivision, and the reasons for
39 the parole decision. The board shall annually report to the
40 Legislature and the Governor on the cases the board considered

1 pursuant to this subdivision during the previous year, including
2 the board's decisions and the specific and detailed findings of its
3 investigations of these cases.

4 (2) The report for the Legislature to be submitted pursuant to
5 paragraph (1) shall be submitted pursuant to Section 9795 of the
6 Government Code.

7 (3) The fact that a prisoner has presented evidence of intimate
8 partner battering cannot be used to support a finding that the
9 prisoner lacks insight into his or her crime and its causes.

10 (c) When a prisoner committed his or her controlling offense,
11 as defined in subdivision (a) of Section 3051, prior to attaining 23
12 years of age, the board, in reviewing a prisoner's suitability for
13 parole pursuant to Section 3041.5, shall give great weight to the
14 diminished culpability of youth as compared to adults, the hallmark
15 features of youth, and any subsequent growth and increased
16 maturity of the prisoner in accordance with relevant case law.