

**Introduced by Senator Hueso**

February 19, 2016

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

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1341, as introduced, Hueso. Parole

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, authorizes the Board of Parole Hearings, after considering the views and interests of the victim, to advance a parole hearing that was set after a hearing at which parole was denied 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 prisoner to serve the additional period of incarceration required as a result of the previously set hearing date. Marsy's Law authorizes the Legislature to amend its provisions by passing a statute with  $\frac{3}{4}$  of the membership of each house concurring, unless the amendments expand the scope of Marsy's Law's provisions, recognize additional rights of crime victims, or further the rights of crime victims, in which case the Legislature may amend its provisions by passing a statute with a majority vote of membership of each house concurring.

This bill would prohibit the board from advancing a parole hearing to a date less than 2 years after a hearing at which parole was denied.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*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 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 any hearing by the Board of Parole Hearings, the inmate shall be permitted to review the file which 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 any person appearing at the hearing pursuant to subdivision (b) of Section 3043.

(3) Unless legal counsel is required by some other law, a person designated by the Department of Corrections and Rehabilitation shall be present to ensure that all facts relevant to the decision be 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 any 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 any 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 any decision denying parole, the board shall send the inmate a written statement setting forth the

1 reason or reasons for denying parole, and suggest activities in  
2 which he or she might participate that will benefit him or her while  
3 he or she is incarcerated.

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

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

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

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

23 (4) The board may in its discretion, after considering the views  
24 and interests of the victim, advance a hearing set pursuant to  
25 paragraph (3) to an earlier date, *but not less than two years after*  
26 *a hearing at which parole was denied*, when a change in  
27 circumstances or new information establishes a reasonable  
28 likelihood that consideration of the public and victim's safety does  
29 not require the additional period of incarceration of the inmate  
30 provided in paragraph (3).

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

36 (c) The board shall conduct a parole hearing pursuant to this  
37 section as a de novo hearing. Findings made and conclusions  
38 reached in a prior parole hearing shall be considered in but shall  
39 not be deemed to be binding upon subsequent parole hearings for  
40 an inmate, but shall be subject to reconsideration based upon

1 changed facts and circumstances. When conducting a hearing, the  
2 board shall admit the prior recorded or memorialized testimony  
3 or statement of a victim or witness, upon request of the victim or  
4 if the victim or witness has died or become unavailable. At each  
5 hearing the board shall determine the appropriate action to be taken  
6 based on the criteria set forth in paragraph (1) of subdivision (b)  
7 of Section 3041.

8 (d) (1) An inmate may request that the board exercise its  
9 discretion to advance a hearing set pursuant to paragraph (3) of  
10 subdivision (b) to an earlier date, by submitting a written request  
11 to the board, with notice, upon request, and a copy to the victim  
12 which shall set forth the change in circumstances or new  
13 information that establishes a reasonable likelihood that  
14 consideration of the public safety does not require the additional  
15 period of incarceration of the inmate.

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

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