

Introduced by Senator Polanco

December 22, 1998

An act to amend Section 3041 of the Penal Code, relating to imprisonment.

LEGISLATIVE COUNSEL'S DIGEST

SB 128, as amended, Polanco. Prisoners.

Existing law provides that, for persons sentenced to terms of imprisonment other than under the determinate sentencing law, *the Board of Prison Terms shall meet with the inmate during the 3rd year of incarceration to review the inmate's file, and to make recommendations.*

This bill would require the board to discuss with the inmate what the subsequent process will be for determining the inmate's eligibility for parole, and prepare an inmate performance plan for the inmate.

Existing law provides that one year prior to the inmate's minimum eligible parole release date, a panel of the Board of Prison Terms shall meet with each inmate and normally set a parole release date.

~~This bill would provide that in the case of a first-time offender who was convicted of only one crime, the panel or board shall not deny the offender a release date based solely on the gravity of the offense if he or she has served the minimum mandatory term, as prescribed by the court, and he or she can show exemplary performance in prison.~~

This bill would instead require the panel to review the inmate's suitability for parole, based upon the inmate's performance plan. The bill would provide that if the board determines that an inmate is not suitable for parole, it shall state in writing specifically why the inmate is being denied parole.

Existing law requires the panel or board to set a release date unless it makes certain determinations.

This bill would instead provide that the board shall set a release date if the board finds that the inmate is making satisfactory progress on his or her inmate performance plan, unless the board makes certain findings. The bill would require the board to specify in writing the reasons for its determination.

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 3041 of the Penal Code is
 2 amended to read:
 3 3041. (a) In the case of any prisoner sentenced
 4 pursuant to any provision of law, other than Chapter 4.5
 5 (commencing with Section 1170) of Title 7 of Part 2, the
 6 Board of Prison Terms shall meet with each of those
 7 inmates during the third year of incarceration for the
 8 purposes of reviewing the inmate's file, making
 9 recommendations, and documenting activities and
 10 conduct pertinent to granting or withholding
 11 postconviction credit. ~~One~~ *Specifically, the board shall*
 12 *discuss with the inmate what the subsequent process will*
 13 *be for determining the inmate's eligibility for parole,*
 14 *including the timeline and procedures of parole*
 15 *eligibility hearings, what the inmate's minimum eligible*
 16 *release date is and the significance of it, and what factors*
 17 *are important in finding an inmate eligible for parole. At*
 18 *that meeting, the board shall discuss and prepare an*
 19 *inmate performance plan for the inmate. The inmate*
 20 *performance plan shall consist of specific requirements*
 21 *that the board determines the inmate must meet in order*



1 *to be eligible for parole. These requirements may include*
2 *participation in educational classes, job skills training,*
3 *substance abuse classes, life skills classes, or other*
4 *activities that are relevant to the inmate's personal and*
5 *criminal history. The plan may emphasize the*
6 *importance of remaining free of discipline problems,*
7 *including abstention from involvement with prison gangs*
8 *or other activities that lead to rules violations. The*
9 *requirements shall be realistic, achievable, and relevant*
10 *to that inmate.*

11 *One year prior to the inmate's minimum eligible parole*
12 *release date a panel consisting of at least two*
13 *commissioners of the Board of Prison Terms shall again*
14 *meet with the inmate and shall normally set a parole*
15 *release date as provided in Section 3041.5. The release*
16 *date shall be set in a manner that will provide review the*
17 *inmate's suitability for parole, based upon the inmate's*
18 *performance plan, according to the procedures provided*
19 *in Section 3041.5. In the course of the review, the board*
20 *shall consider setting a date that reflects uniform terms*
21 *for offenses of similar gravity and magnitude in respect*
22 *to their threat to the public, and that will comply with the*
23 *sentencing rules that the Judicial Council may issue and*
24 *any sentencing information relevant to the setting of*
25 *parole release dates. The board shall establish criteria for*
26 *the setting of parole release dates and in doing so shall*
27 *consider the number of victims of the crime for which the*
28 *prisoner was sentenced and other factors in mitigation or*
29 *aggravation of the crime. If the board determines that an*
30 *inmate is not suitable for parole, it shall state in writing*
31 *specifically why the inmate is being denied parole, and*
32 *what he or she must do to become suitable, consistent*
33 *with his or her inmate performance plan. At least one*
34 *commissioner of the panel shall have been present at the*
35 *last preceding meeting, unless it is not feasible to do so or*
36 *where the last preceding meeting was the initial meeting.*
37 *Any person on the hearing panel may request review of*
38 *any decision regarding parole to the full board for an en*
39 *banc hearing. In case of such a review, a majority vote of*



1 the full Board of Prison Terms in favor of parole is
2 required to grant parole to any prisoner.

3 ~~(b) The panel or board shall set a release date unless
4 it determines that the gravity of the current convicted
5 offense or offenses, or the timing and gravity of current
6 or past convicted offense or offenses, is such that
7 consideration of the public safety requires a more lengthy
8 period of incarceration for this individual, and that a
9 parole date, therefore, cannot be fixed at this meeting. In
10 the case of a first-time offender who was convicted of only
11 one crime, the panel or board shall not deny the offender
12 a release date based solely on the gravity of the offense if
13 he or she has served the minimum mandatory term, as
14 prescribed by the court, and he or she can show
15 exemplary performance in prison. As used in this
16 subdivision, "exemplary performance" includes lack of
17 disciplinary violations, increasing one's education level or
18 job skills, and participating in appropriate programming,
19 as designated by the board or department.~~

20 *(b) The board shall set a release date if the board finds
21 that the inmate is making satisfactory progress on his or
22 her inmate performance plan, unless the board finds that
23 the inmate's release would pose an unreasonable risk of
24 danger to society, create a substantial risk that the inmate
25 will not conform to a condition or conditions of parole, or
26 depreciate the seriousness of the offense for which the
27 inmate was convicted and promote disrespect of the law.
28 The determination of suitability shall be based on the
29 record as a whole, including any performance or
30 psychological evaluations included in the inmate's file.
31 The board shall specify in writing the reasons for its
32 determination.*

33 (c) For the purpose of reviewing the suitability for
34 parole of those prisoners eligible for parole under prior
35 law at a date earlier than that calculated under Section
36 1170.2, the board shall appoint panels of at least two
37 persons to meet annually with each of those prisoners
38 until the time that the person is released pursuant to those



1 proceedings or reaches the expiration of his or her term
2 as calculated under Section 1170.2.

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