

AMENDED IN ASSEMBLY AUGUST 24, 1999

AMENDED IN SENATE MAY 19, 1999

AMENDED IN SENATE APRIL 26, 1999

AMENDED IN SENATE MARCH 4, 1999

**SENATE BILL**

**No. 128**

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**Introduced by Senator Polanco**  
*(Coauthor: Assembly Member Migden)*

December 22, 1998

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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 to 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 ~~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~~ *additionally* 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. The Legislature finds and declares as  
2 follows:

3 (a) The primary purpose of the Department of  
4 Corrections and the state prison system is to promote and  
5 enhance public safety.

6 (b) Providing inmates early advice and direction  
7 regarding how each of them can best prepare themselves  
8 for living safely upon parole will greatly diminish the  
9 probability that they will revictimize the public once  
10 released.

11 ~~SEC. 2. Section 3041 of the Penal Code is amended to~~  
12 ~~read:~~

13 ~~3041. (a) In the case of any prisoner sentenced~~  
14 ~~pursuant to any provision of law, other than Chapter 4.5~~  
15 ~~(commencing with Section 1170) of Title 7 of Part 2, the~~  
16 ~~Board of Prison Terms shall meet with each of those~~  
17 ~~inmates during the third year of incarceration for the~~  
18 ~~purposes of reviewing the inmate's file, making~~  
19 ~~recommendations, and documenting activities and~~  
20 ~~conduct pertinent to granting or withholding~~  
21 ~~postconviction credit. Specifically, the board shall discuss~~



1 ~~with the inmate what the subsequent process will be for~~  
2 ~~determining the inmate's eligibility for parole, including~~  
3 ~~the timeline and procedures of parole eligibility hearings,~~  
4 ~~what the inmate's minimum eligible release date is and~~  
5 ~~the significance of it, and what factors are important in~~  
6 ~~finding an inmate eligible for parole. At that meeting, the~~  
7 ~~board shall discuss and prepare an inmate performance~~  
8 ~~plan for the inmate. In the case of an inmate who has~~  
9 ~~already had the meeting required by this section, the~~  
10 ~~board shall prepare an inmate performance plan at the~~  
11 ~~next regularly scheduled parole hearing or other meeting~~  
12 ~~set for that inmate. The inmate performance plan shall~~  
13 ~~consist of specific requirements that the board~~  
14 ~~determines the inmate must meet in order to be eligible~~  
15 ~~for parole. These requirements may include participation~~  
16 ~~in educational classes, job skills training, substance abuse~~  
17 ~~classes, life skills classes, victim offender awareness~~  
18 ~~programs, or other activities that are relevant to the~~  
19 ~~inmate's personal and criminal history. The plan may~~  
20 ~~emphasize the importance of offender accountability,~~  
21 ~~victim restitution, and remaining free of discipline~~  
22 ~~problems, including abstention from involvement with~~  
23 ~~prison gangs or other activities that lead to rules~~  
24 ~~violations. The requirements shall be realistic,~~  
25 ~~achievable, and relevant to that inmate.~~

26 ~~One year prior to the inmate's minimum eligible parole~~  
27 ~~release date a panel consisting of at least two~~  
28 ~~commissioners of the Board of Prison Terms shall again~~  
29 ~~meet with the inmate and shall review the inmate's~~  
30 ~~suitability for parole, based upon the inmate's~~  
31 ~~performance plan, according to the procedures provided~~  
32 ~~in Section 3041.5. In the course of the review, the board~~  
33 ~~shall consider setting a date that reflects uniform terms~~  
34 ~~for offenses of similar gravity and magnitude in respect~~  
35 ~~to their threat to the public, and that will comply with the~~  
36 ~~sentencing rules that the Judicial Council may issue and~~  
37 ~~any sentencing information relevant to the setting of~~  
38 ~~parole release dates. If the board determines that an~~  
39 ~~inmate is not suitable for parole, it shall state in writing~~  
40 ~~specifically why the inmate is being denied parole, and~~



1 ~~what he or she must do to become suitable, consistent~~  
2 ~~with his or her inmate performance plan. At least one~~  
3 ~~commissioner of the panel shall have been present at the~~  
4 ~~last preceding meeting, unless it is not feasible to do so or~~  
5 ~~where the last preceding meeting was the initial meeting.~~  
6 ~~Any person on the hearing panel may request review of~~  
7 ~~any decision regarding parole to the full board for an en~~  
8 ~~bane hearing. In case of such a review, a majority vote of~~  
9 ~~the full Board of Prison Terms in favor of parole is~~  
10 ~~required to grant parole to any prisoner.~~

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

24 (c) ~~For the purpose of reviewing the suitability for~~  
25 ~~parole of those prisoners eligible for parole under prior~~  
26 ~~law at a date earlier than that calculated under Section~~  
27 ~~1170.2, the board shall appoint panels of at least two~~  
28 ~~persons to meet annually with each of those prisoners~~  
29 ~~until the time that the person is released pursuant to those~~  
30 ~~proceedings or reaches the expiration of his or her term~~  
31 ~~as calculated under Section 1170.2.~~

32 *SEC. 2. Section 3041 of the Penal Code is amended to*  
33 *read:*

34 3041. (a) In the case of any prisoner sentenced  
35 pursuant to any provision of law, other than Chapter 4.5  
36 (commencing with Section 1170) of Title 7 of Part 2, the  
37 Board of Prison Terms shall meet with each ~~such inmate~~  
38 *of those inmates* during the third year of incarceration for  
39 the purposes of reviewing the inmate's file, making  
40 recommendations, and documenting activities and



1 conduct pertinent to granting or withholding  
2 ~~post-conviction~~ *postconviction* credit. Specifically, the  
3 board shall discuss with the inmate what the subsequent  
4 process will be for determining the inmate's eligibility for  
5 parole, including the timeline and procedures of parole  
6 eligibility hearings, what the inmate's minimum eligible  
7 release date is and the significance of it, and what factors  
8 are important in finding an inmate eligible for parole. At  
9 that meeting, the board shall discuss and prepare an  
10 inmate performance plan for the inmate. In the case of an  
11 inmate who has already had the meeting required by this  
12 section, the board shall prepare an inmate performance  
13 plan at the next regularly scheduled parole hearing or  
14 other meeting set for that inmate. The inmate  
15 performance plan shall consist of specific requirements  
16 that the board determines the inmate must meet in order  
17 to be eligible for parole. These requirements may include  
18 participation in educational classes, job skills training,  
19 substance abuse classes, life skills classes, victim offender  
20 awareness programs, or other activities that are relevant  
21 to the inmate's personal and criminal history. The plan  
22 may emphasize the importance of offender  
23 accountability, victim restitution, and remaining free of  
24 discipline problems, including abstention from  
25 involvement with prison gangs or other activities that  
26 lead to rules violations. The requirements shall be  
27 realistic, achievable, and relevant to that inmate. One  
28 year prior to the inmate's minimum eligible parole  
29 release date a panel consisting of at least two  
30 commissioners of the Board of Prison Terms shall again  
31 meet with the inmate and shall normally set a parole  
32 release date as provided in Section 3041.5. The release  
33 date shall be set in a manner that will provide uniform  
34 terms for offenses of similar gravity and magnitude in  
35 respect to their threat to the public, and that will comply  
36 with the sentencing rules that the Judicial Council may  
37 issue and any sentencing information relevant to the  
38 setting of parole release dates. The board shall establish  
39 criteria for the setting of parole release dates and in doing  
40 so shall consider the number of victims of the crime for



1 which the prisoner was sentenced and other factors in  
2 mitigation or aggravation of the crime. *If the board*  
3 *determines that an inmate is not suitable for parole, it*  
4 *shall state in writing specifically why the inmate is being*  
5 *denied parole, and what he or she must do to become*  
6 *suitable for parole, consistent with his or her inmate*  
7 *performance plan.* At least one commissioner of the panel  
8 shall have been present at the last preceding meeting,  
9 unless it is not feasible to do so or where the last preceding  
10 meeting was the initial meeting. Any person on the  
11 hearing panel may request review of any decision  
12 regarding parole to the full board for an en banc hearing.  
13 ~~In case of such~~ *If a review is requested,* a majority vote  
14 of the full Board of Prison Terms in favor of parole is  
15 required to grant parole to any prisoner.

16 (b) ~~The panel or~~ board shall set a release date *if the*  
17 *board finds that the inmate is making satisfactory*  
18 *progress on his or her inmate performance plan,* unless it  
19 determines that the gravity of the current convicted  
20 offense or offenses, or the timing and gravity of current  
21 or past convicted offense or offenses, is such that  
22 consideration of the public safety requires a more lengthy  
23 period of incarceration for this individual, and that a  
24 parole date, therefore, cannot be fixed at this meeting.  
25 *The determination of suitability for parole shall be based*  
26 *on the record as a whole, including any performance or*  
27 *psychological evaluations included in the inmate's file.*  
28 *The board shall specify in writing the reasons for its*  
29 *determination.*

30 (c) For the purpose of reviewing the suitability for  
31 parole of those prisoners eligible for parole under prior  
32 law at a date earlier than that calculated under Section  
33 1170.2, the board shall appoint panels of at least two  
34 persons to meet annually with each ~~such prisoner until~~  
35 ~~such time as~~ *of those prisoners until the time that the*  
36 *person is released pursuant to* ~~such~~ *those proceedings or*  
37 *reaches the expiration of his or her term as calculated*  
38 *under Section 1170.2.*

39 SEC. 3. It is not the intent of the Legislature, in  
40 enacting the amendments in Section 2 of this act, to



1 require any additional hearings for an inmate, or to  
2 require any additional personnel than are already  
3 assigned to perform the hearings. Rather, it is the intent  
4 of the Legislature that those inmate performance plans  
5 be one additional requirement in the process that is  
6 already occurring to evaluate an inmate's suitability for  
7 parole.

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