

Enclosed is a 3-page proposed digest for your review. It is a bill which I am bringing forth on behalf of the 543 term-to-life sentenced prisoners who were granted parole by California's parole board over the previous six years, only to have their grant reversed by the State's Governor.

In the previous six years, the Board of Parole Hearings (BPH) has had an annual parole grant rate of about 15%. This means that the above mentioned 543 prisoners have successfully risen above the 85% of prisoners who are annually denied parole. The vast majority of prisoners found suitable for release by the BPH, and subsequently had their grant of parole reversed by the Governor, were usually cases where the victim, or victim's relatives, have gone to the media or organized a letter campaign in opposition of release. The rest of these cases where the Governor has elected to reverse the grant normally involve a victim that was considered vulnerable in some way, i.e., a mental or physical disability, a female victim, or the victim was very young or very old.

All of these factors are commonly known to the courts as "static factors." -They will never change no matter how much time is served. Such static factors tell us nothing about the prisoner's current threat to public safety. These kinds of prejudicial facts are rightly used by the BPH as aggravating factors for the purpose of calculating the prisoner's base term, but beyond that they can not, and should not, be utilized in determining a person's current state of threat to public safety. This is clearly established law which is frequently trampled within the Governor's written reversal statements.

The enclosed bill would provide a process, short of costly litigations, that could permit the BPH (those who are regularly educated on the court imposed limits) to make a determination as to whether the Governor's decision has remained within the scope of his/her review.

This bill is merely a draft of what is proposed. I realize, in order to gain the needed support of the Legislature, it may require amendment. This could be done by altering its en banc review criteria, changing the time frames, or even narrowing what type of parole decisions it applies to, i.e., Youthful Offender hearings, Elderly hearings, etc.. Many of these prisoners are being reversed mutiple times and have already served 30, 40, and 50 years, yet have a base term set by the BPH at only 20 years.

The above class members, and the many families who support them, are only looking for an equitable and just parole process that has the built-in safeguards necessary to ensure a parole determination is free of bias and prejudicial factors not within the scope of the BPH, or Governor's review. I think the enclosed bill can provide that. I ask that you please give it a careful read and hope you will agree to support it. Thank you for your time and interest.

Research in drafting bill: Prop. 89 (1988)
PC §§ 3041, 3042, 3043
Title 15, Div. II
Scope of Governor's
Review (Shepherds)

An act to add Section 3041.2(c) to the Penal Code, relating to parole.

PROPOSED DIGEST

Existing law provides that the Board of Parole Hearings shall review any proposed decision referred by a member of the hearing panel who requests the full Board to consider the case, or per a request for review by the Governor under the provisions of Penal Code section 3041.1. In reviewing a decision upon the request of the Governor, a vote in favor of parole by a majority of the current Board members shall be required to grant parole. If a majority of the Board agrees with the decision reached by a majority of the parole panel, it shall approve the decision.

Existing law allows the full Board to affirm, modify, or reverse any hearing panel decision upon a referral for en banc review requested by the Governor, or by a hearing panel member. Existing law does not provide for a full Board review of parole decisions made by the Governor. Existing law does provide that, in reviewing a determination of the Board of Parole Hearings, the Governor is limited to considering only that evidence which was before the Board when it made its determination. There is currently no provision under California law which provides for the review of a Governor's parole decision. In the interest of having an equitable and just Governor's review process, this bill states the Legislature's intent to create a process by which a determination can be made as to whether the Governor's parole decision comports with established review criteria, as is required, and have remained within the scope of the Governor's review, short of direct litigation.

This bill would state legislative intent regarding the following provisions, and would require the Board of Parole Hearings to hold a hearing to review any Governor's decision to affirm, modify, or reverse a hearing panel's determination. Upon review of the Governor's decision, if the Board of Parole Hearings, by majority vote, has determined that the Governor's decision does not comport with established review criteria as set forth in section 2042 of the Board's regulations, this bill would authorize the Board to vacate the Governor's decision and schedule the matter for a new hearing, or reinstate the original panel's decision. This bill shall not infringe upon the right of the Governor to request review of any decision by a parole authority.

The people of the State of California do enact as follows:

(Next Page)

1 Section 1. It is the intent of the Legislature to provide a system of review
2 in matters of parole decisions requested for review by the Governor. The Board
3 of Parole Hearings is authorized to review any Governor's parole decisions to
4 ensure they comport with established parole authority's review criteria.

5 Section 2. Penal Code section 3041.2(c) is added to read:

6 (c) The Governor's decision is subject to review by the Board of Parole Hearings
7 within 30 days of the finalized written statement. At all hearings for the purpose
8 of reviewing a Governor's decision, the following shall apply:

9 (1) Disapproval of a decision may include a determination by the Board that the
10 Governor's decision reflects an error of law, or that the Governor's decision
11 was based on an error of fact.

12 (2) In deciding if a decision should be approved, the Board staff shall determine
13 if the Governor's decision was based entirely upon the same factors that restrict
14 the Board of Parole Hearings in rendering its parole decisions, and the same
15 factors made available to the originating panel.

16 (3) If the Board determines that the decision is based on an error of law, or an
17 error of fact, exceeds the parameters of established review criteria, or clearly
18 exceeds the scope of the Governor's review process, the Board shall vacate the
19 decision.

20 (4) Any decision to vacate a Governor's review decision shall become final in
21 30 days, commencing on the date that the Governor is notified of the Board's
22 decision.

23 (5) An inmate or an attorney representing the inmate may petition the Board of
24 Parole Hearings for an en banc review of the Governor's parole decision. This
25 petition must be submitted within 30 days of notification that the Governor has
26 altered a parole decision.

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1 (6) When the Board receives a petition to review any Governor's decision, a
2 randomly selected committee comprised of nine commissioners specifically appointed
3 to hear adult parole matters and who are holding office at the time, shall review
4 the Governor's parole decision.

5 (7) In case of a review, a vote in favor of affirming, modifying, or reversing
6 a Governor's decision must be by a majority of the commissioners. In carrying
7 out any decision review, the Board shall comply with the provisions of this
8 chapter.

9 (8) The Governor's office shall be notified in any case where his/her decision
10 has been modified or reversed. The Governor may respond to the Board's en banc
11 decision within 30 days, commencing on the date of his/her notification.

12 (9) The Department of Corrections and Rehabilitation and the Board of Parole
13 Hearings shall adopt any regulations necessary to carry out the provisions of
14 this article.

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