

Date of Hearing: July 15, 2025
Chief Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

SB 356 (Jones) – As Amended April 9, 2025

REVISED

SUMMARY: Provides that the submitted statements and recommendations that must be considered in a parole hearing include, but are not limited to, crime scene photographs, autopsy photographs, and photographs of weapons used in the crime.

EXISTING LAW:

- 1) Provides that in the case of any incarcerated person sentenced pursuant to any law, except as specified, the Board of Parole Hearings (BPH) must meet with each incarcerated individual during the sixth year before the individual's minimum eligible parole date (MEPD) for the purposes of reviewing and documenting the individual's activities and conduct pertinent to parole eligibility. (Pen. Code, § 3041, subd. (a)(1).)
- 2) Requires that during the incarcerated individual's consultation, the BPH provide the person with information about the parole hearing process, legal factors relevant to his or her suitability or unsuitability for parole, and individualized recommendations for the person regarding his or her work assignments, rehabilitative programs, and institutional behavior. Requires the board, within 30 days following the consultation, to issue its positive and negative findings and recommendations to the person in writing. (Pen. Code, § 3041, subd. (a)(1).)
- 3) Requires a panel of two or more commissioners or deputy commissioners to meet with the incarcerated person one year before the person's MEPD and provides that the panel shall normally grant parole. (Pen. Code, § 3041, subd. (a)(2).)
- 4) Requires the person to be released upon a grant of parole, subject to all applicable review periods. Prohibits a person from being released before reaching his or her MEPD unless the person is eligible for earlier release, as specified. (Pen. Code, § 3041, subd. (a)(4).)
- 5) Provides that the panel or the BPH, sitting en banc, shall grant parole to an incarcerated individual unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual. (Pen. Code, § 3041, subd. (b)(1).)
- 6) Requires the BPH to conduct a parole hearing as a de novo hearing. Provides that findings made and conclusions reached in a prior parole hearing must be considered but are not deemed to be binding upon subsequent parole hearings for an individual. Specifies that

findings made and conclusions reached in a prior parole hearing are subject to reconsideration based upon changed facts and circumstances. (Pen. Code, § 3041.5, subd. (c).)

- 7) Requires the BPH, in considering parole for an individual, to consider all statements and recommendations which may have been submitted by the judge, district attorney, and sheriff, and recommendations of other persons interested in the granting or denying of parole. Requires BPH to enter on its order granting or denying parole to these individuals, the fact that the statements and recommendations have been considered by it. (Pen. Code, § 3046, subd. (d).)
- 8) Establishes the youth offender parole hearing process for eligible individuals who were convicted of a controlling offense that was committed when the person was 25 years of age or younger and after serving a minimum amount of time, as specified. Defines “youth parole eligible date” as the earliest date upon which a youth offender is eligible for release on parole at a youth offender parole hearing. (Pen. Code, § 3051, subs. (a) & (b).)
- 9) Requires the BPH, when considering the release of an individual via the youth offender parole process, to give great weight to the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual in accordance with relevant case law. (Pen. Code, § 4801, subd. (c).)
- 10) Establishes the Elderly Parole Program to be administered by the BPH for purposes of reviewing the parole suitability of any incarcerated person who is 50 years of age or older and has served a minimum of 20 years of continuous incarceration on the individual’s current sentence, serving either a determinate or indeterminate sentence. Defines “elderly parole eligible date” as the date on which an incarcerated individual who qualifies as an elderly offender is eligible for release from prison. (Pen. Code, § 3055, subs. (a) & (b).)
- 11) Requires the BPH, when considering the release of an individual via the Elderly Parole Program, to give special consideration to whether age, time served, and diminished physical condition, if any, have reduced the person’s risk for future violence. (Pen. Code, § 3055, subd. (c).)
- 12) Defines “unreasonable risk of danger to public safety” to mean an unreasonable risk that the individual will commit a new violent felony, as defined. (Pen. Code, § 1170.18, subd. (c).)
- 13) Requires the BPH, within 20 days following any decision denying parole, to send the incarcerated individual a written statement setting forth the reason or reasons for denying parole, and suggest activities in which he or she might participate that will benefit him or her while he or she is incarcerated. (Pen. Code, § 3041.5, subd. (b)(2).)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, “In January 2024, the Board of Parole Hearings (BPH) enacted a policy that prevents the submission of photographs deemed “graphic” for consideration at parole hearings. This change was implemented without public

notice, stakeholder input, or transparency, and it denies commissioners access to critical evidence when making parole suitability decisions.

“Photographs of the crime scene and autopsy are essential to understanding the nature of the crime and evaluating an inmate’s credibility and insight. California law, under Title 15 of the Code of Regulations, requires that an inmate’s commitment offense be reviewed when determining parole suitability. The Board has an obligation to consider all relevant and reliable evidence in its decision-making process (Cal. Code Regs., tit. 15 § 2281(b)).

“Historically, commissioners have used photographic evidence to assess an inmate’s truthfulness, remorse, and rehabilitation. These images provide visual confirmation of case facts that written reports alone cannot convey. By excluding such evidence, the Board undermines public safety and disregards the voices of crime victims and their families.

“SB 356 ensures that the Board must accept all relevant materials, including photographs, for consideration at parole hearings. This bill restores fairness and transparency in the parole process, ensuring that victims’ families are heard and that commissioners have the necessary tools to make informed decisions.”

- 2) **Effect of the Bill:** The proponents of this bill assert that this bill was introduced in response to the Board’s policy prohibiting the submission of photographs prior to a parole hearing which they state was a departure from the Board’s prior practice. First, the Board no longer prohibits the submission of these photographs. In May, the California Office of Administrative Law determined that the Board’s policy prohibiting such submissions constituted an underground regulation, which means the Board can no longer enforce this policy.¹ As a result, the Board is now accepting such photographs.

Given that the Board is again accepting crime scene photographs, is this bill even necessary?

- 3) **Parole Hearings:** A parole hearing is a hearing to determine whether an incarcerated individual is suitable for release to parole supervision. Incarcerated individuals who are indeterminately sentenced must be granted parole by the BPH in order to be released from prison. An incarcerated individual is entitled to legal counsel at their parole hearing, which may be a private attorney or one appointed by the BPH, and a representative from the District Attorney’s office from the prosecuting county may make a presentation regarding the office’s position on the individual’s suitability for parole.

The Penal Code provides that the parole board “shall grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual.” (Pen. Code, § 3041, subd. (b).) The fundamental consideration when making a determination about an individual’s suitability for parole is whether the person *currently* poses an unreasonable risk of danger to society if released from prison. (*In re Shaputis* (2008) 44 Cal.4th 1241.) In deciding whether to grant parole, the BPH must consider all relevant and reliable information

¹ <https://danewscenter.com/news/da-succeeds-in-reversing-parole-board-policy-on-banning-crime-scene-and-autopsy-photos>

available. (Cal. Code Regs., tit. 15, §§ 2402, subd. (b), 2281, subd. (b).) Factors the BPH must consider include the nature of the commitment offense, including the circumstances of the person's social history; past and present mental state; past criminal history, including involvement in other criminal misconduct which is reliably documented; the base and other commitment offenses, including behavior before, during and after the crime; past and present attitude toward the crime; any conditions of treatment or control, including the use of special conditions under which the individual may safely be released to the community; and any other information which bears on the individual's suitability for release. (Cal. Code Regs., tit. 15, § 2281, subd. (b).) The regulations further state that "[c]ircumstances which taken alone may not firmly establish unsuitability for parole may contribute to a pattern which results in a finding of unsuitability." (*Ibid.*)

Although the parole board is required to consider the circumstances of the offense, the California Supreme Court has held that the parole board may not rely solely on the commitment offense when deciding to grant parole unless the circumstances of the offense "continue to be predictive of current dangerousness." (*In re Lawrence* (2008) 44 Cal.4th 1181, 1221.) The parole board is prohibited from requiring an admission of guilt to any crime for which an incarcerated person was committed to California Department of Corrections and Rehabilitation (CDCR) when considering whether to grant an inmate parole. (Pen. Code, § 5011, subd. (b).) However, "an implausible denial of guilt may support a finding of current dangerousness, without in any sense requiring the inmate to admit guilt as a condition of parole....it is not the failure to admit guilt that reflects a lack of insight, but the fact that the denial is factually unsupported or otherwise lacking in credibility." (*In re Shaputis* (2011) 53 Cal.4th 192, 216.) Although the term "insight" is not explicitly included in the regulations, the regulations "direct the Board to consider the inmate's 'past and present attitude toward the crime' and 'the presence of remorse,' expressly including indications that the inmate 'understands the nature and magnitude of the offense'... fit[ting] comfortably within the descriptive category of 'insight.'" (*Id.* at 218 (citations omitted).)

Additional guidance for making parole suitability determinations is provided in the regulations which list circumstances tending to show suitability and those tending to show unsuitability. The following circumstances tend to show unsuitability for release:

- The person committed the offense in an especially heinous, atrocious or cruel manner. The factors to be considered include:
 - Multiple victims were attacked, injured or killed in the same or separate incidents.
 - The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder.
 - The victim was abused, defiled or mutilated during or after the offense.
 - The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering.
 - The motive for the crime is inexplicable or very trivial in relation to the offense.
- The person on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the incarcerated person demonstrated serious assaultive behavior at an early age.
- The person has a history of unstable or tumultuous relationships with others.
- The person has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.

- The person has a lengthy history of severe mental problems related to the offense.
- The person has engaged in serious misconduct in prison or jail. (Cal. Code of Regs., tit. 15, § 2281, subd. (c).)

The following are circumstances tending to show suitability for release:

- The person does not have a record of assaulting others as a juvenile or committing crimes with a potential of personal harm to victims.
- The person has experienced reasonably stable relationships with others.
- The person performed acts which tend to indicate the presence of remorse, such as attempting to repair the damage, seeking help for or relieving suffering of the victim, or indicating that he understands the nature and magnitude of the offense.
- The person committed his or her crime as the result of significant stress in his or her life, especially if the stress has built over a long period of time.
- At the time of the commission of the crime, the person suffered from Battered Woman Syndrome, as defined, and it appears the criminal behavior was the result of that victimization.
- The person lacks any significant history of violent crime.
- The person's present age reduces the probability of recidivism.
- The person has made realistic plans for release or has developed marketable skills that can be put to use upon release.
- Institutional activities indicate an enhanced ability to function within the law upon release. (Cal. Code of Regs., tit. 15, § 2281, subd. (d).)

The circumstances which tend to show suitability and unsuitability for parole are set forth as general guidelines, and the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel. (Cal. Code of Regs., tit. 15, § 2281, subds. (c) & (d).)

- 4) **Submission of Documents Prior to a Parole Hearing:** The BPH's Parole Hearing Process Handbook provides guidance pertaining to documents that may be submitted by a prosecutor's office prior to a parole suitability hearing. It provides:

Prosecutors have a right to attend a parole hearing, and the Board welcomes prosecutors' input. To comply with the law and to ensure the input is submitted timely to the hearing panel, the Board proposes these general guidelines. Prosecutors are not required to submit documents to the Board for a parole hearing, but they may do so if they have documents that are reliable and relevant to a parole suitability determination. Most relevant law enforcement and court documents such as arrest reports, minute orders, abstracts of judgment, and probation officer reports are submitted to CDCR when a person is first admitted to state prison so they are already in the person's central file. Prosecutors are expected to review the incarcerated person's central file and the Board's hearing packet to determine if a document they believe is relevant has already been

submitted to CDCR. Any additional documents submitted should be brief, clearly written, and relevant to the person's suitability for parole.²

The handbook specifies that prosecutors submitting documents prior to a parole hearing should not submit documents that are already contained in the incarcerated person's central file, documents that are lengthy, or documents that were previously submitted by the prosecutor's office or the courts.³

The BPH's parole handbook states the following as it relates to its policy on the submission of photographs prior to a parole hearing:

The Board is tasked with determining whether the person before them poses a current, unreasonable risk of danger to society. In making this determination, the Board must consider all relevant, reliable evidence and uses the SDMF (Structured Decision-Making Framework), which is consistent with empirical research, governing statutes, regulations, and case law. Determining the manner in which factors relevant to parole suitability are considered lies within the discretion of the Board. Relevant information for a parole hearing is defined as "evidence which proves or disproves an issue or fact in dispute."

The Board accepts the incarcerated person's conviction as true and is not re-litigating the commitment offense at a parole hearing. Accordingly, hearing panels do not need to consider every piece of evidence presented at trial, including photographic materials. The Board already receives many documents containing information about the crime, which includes documents from courts, prosecutors, probation officers, the incarcerated person, and victims and their family members. Hearing panels review these documents for the hearing and are familiar with the facts of the commitment offense. If there are disputes regarding the commitment offense that need to be resolved, such as an incarcerated person's implausible denial of the crime, the hearing panel is usually able to resolve these disputes based on materials already in the record. If the hearing panel determines that photographs or other documents are necessary for them to reach a decision on the incarcerated person's parole suitability, they can postpone or continue the hearing so the additional information can be gathered.

Photographic materials, such as crime scene or autopsy photos, are often very graphic and may contain images of a deceased victim's unclothed body. When these items are received, they may be scanned and uploaded to the person's central file, which is accessible to the incarcerated person and CDCR employees statewide. Crime scene and autopsy photos are also generally duplicative of evidence already contained in the record.

² BPH, *The California Parole Hearing Process Handbook* (Mar. 8, 2024), p. 27 available at <<https://www.crcd.ca.gov/bph/wp-content/uploads/sites/161/2024/03/pv-CA-Parole-Hearing-Process-Handbook-For-Publication-03-08-24.pdf>>.

³ *Id.* at p. 27.

For these reasons, the Board will not accept photographs, including crime scene and autopsy pictures. The Board continues to welcome prosecutors' submission of written documents in compliance with this section.⁴

In support of its statement that it has the discretion to weigh relevant factors in making a parole suitability determination, the Board cites a case which provides:

Resolution of any conflicts in the evidence and the weight to be given the evidence are matters within the authority of [the Board or] the Governor. ... [T]he precise manner in which the specified factors relevant to parole suitability are considered and balanced lies within the discretion of [the Board or] the Governor ... (internal citations omitted.) (*In re Shaputis*, 53 Cal.4th 192, 210.)

As previously noted, the Board is again accepting crime scene and autopsy photographs after the Office of Administrative Law (OAL) determined that its decision to prohibit submission of such documents amounted to an underground regulation. The Board retains discretion consider these items when necessary to make a decision as to an incarcerated person's suitability for parole. Given that the issue this bill seeks to address was the prohibition on submission of such photographs and not the discretion of the Board to review them in appropriate circumstances, and in light of the Board's change in policy, this bill appears to be an excessive remedy to a resolved issued.

- 5) **Argument in Support:** According to *Crime Victims United of California*, "In January 2024, BPH implemented a policy that prohibits commissioners from reviewing crime scene, autopsy, and other graphic photographs during parole suitability hearings. This policy change limits the information available to commissioners, undermining their ability to make fully informed decisions about whether an inmate still poses a threat to public safety. Victims and their families are being retraumatized, not only by the parole process but by the exclusion of critical evidence that conveys the true impact of the crime.

"Victims and their families do not choose to be involved in the criminal justice system, yet they are forced to relive their trauma when advocating for justice. SB 356 corrects this unfair practice by requiring the Board to accept and consider all relevant photographs at parole hearings, ensuring that commissioners have access to the full scope of evidence needed to determine whether an inmate is fit for release.

"This bill restores fairness, transparency, and justice to parole hearings and upholds the rights of victims."

- 6) **Argument in Opposition:** According to *Californians for Safety and Justice*, "**Parole hearings are not the appropriate setting to relitigate the facts of someone's commitment offense.** These determinations take place during trial and sentencing in the presence of a judge. Rather, the central determination in a parole hearing as defined by the California Supreme Court in *In re Lawrence*, is whether someone poses a *current* "unreasonable risk of danger to society if released from prison."¹ The court explicitly limited BPH's ability to deny parole based entirely on "immutable circumstances," such as the heinous nature of the

⁴ *Id.* at pg. 28.

offense, instead, directing the Board to consider “only the factors relevant to predicting whether the incarcerated person “will be able to live in society without committing additional antisocial acts.”² In accordance with the governing case law, the hearing panel clearly states on the record at the beginning of every hearing, “We are not here to reconsider or retry your original case. We accept as true the findings of the previous court. The purpose of today’s hearing is to find out who you are today and whether you pose an unreasonable risk of danger to society.” By forcing graphic crime scene photos to be considered in a parole hearing, SB 356 jeopardizes the intent and legal framework of a parole hearing.

“Perhaps most importantly, the incorporation of graphic crime scene and autopsy photos into parole hearings jeopardizes dignity for victims, many of whom are no longer alive. Crime scene photos depict survivors, often women and sometimes young children, in deeply vulnerable and traumatizing conditions. Victims are often brutally wounded, unclothed or deceased in these photos. For these reasons among others outlined below, BPH does not accept photographs. The nonconsensual sharing of graphic photos is an inevitable consequence of SB 356, the devastating impacts of which cannot be overstated. This is particularly troubling when considering deceased victims who no longer have a say regarding the use of photos depicting them, including those depicting their death.

“The negative impact on victims, survivors and next of kin, who frequently attend parole board hearings, is not considered in this bill. In 2008, the Victim’s Bill of Rights Act of 2008 (also known as “Marsy’s Law”) amended the California Constitution to provide additional rights to victims, resulting in more than sufficiently guarantees that victims have full participation in parole hearings. Under the law, victims, survivors and next of kin are included in the parole hearing process to ensure that parole hearings are fair and that victims and survivors are acknowledged and treated with understanding, dignity, and respect.⁴ Parole hearings are often very difficult for victims, survivors and their families and BPH cites respect for victims, survivors and next of kin as a key reason for their policy decision *to not* accept graphic crime photos.⁵ The current policy helps to preserve respect and dignity for crime victims, survivors and their loved ones, who deserve not to have sensitive photos viewed and circulated unnecessarily. Parole hearings are already emotionally intense and retraumatizing—SB 356 would make hearings significantly more traumatic for everyone involved as commissioners, administrative staff, and legal teams would all be subjected to graphic depictions of violence. In addition, SB 356 opens the door for prosecutors to submit graphic crime scene photographs even without the consent of survivors and their loved ones. In fact, District Attorneys have already been doing so, consistent with their practice of providing written and oral comments at parole hearings without coordinating with registered victims/survivors and their wishes, sometimes even opposing parole when the victim/survivor supports parole. Victims/survivors deserve dignity and access to healing support, not subjugation to a further traumatizing hearing culture.

“SB 356 is unnecessary because parole commissioners already have access to ample relevant information regarding the commitment offense. Prior to a hearing, the panel receives many documents with detailed information about the commitment offense including probation officer reports, sentencing transcripts, autopsy reports, written statements from prosecutors, as well as statements submitted by victims and their family members. As the Board has stated in their California Parole Hearing Process Handbook, “crime scene and autopsy photographs are generally duplicative of evidence already contained in the record”⁶ and are not necessary for commissioners to understand the commitment offense. In the rare

occasion that a crime scene or autopsy photograph is helpful or useful in resolving a disputed issue to determine a person's current risk of danger, the Board has the discretion to work with law enforcement to obtain the photographs for consideration in a parole hearing."

7) Prior Legislation:

- a) AB 47 (Nguyen) would have provided that a person sentenced for a one-strike sex offense or as a habitual sex offender is ineligible for elderly parole until the person is 60 years old or older and has served a minimum of 25 years of continuous incarceration on their current sentence. AB 47 was held in suspense in the Assembly Appropriations Committee.
- b) SB 286 (Jones) was substantially similar to AB 47 above. SB 286 was held in suspense in the Senate Appropriations Committee.
- c) SB 537 (Archuleta), of the 2025-2026 Legislative Session, would have excluded a person sentenced to first- or second-degree murder with a maximum term of life imprisonment from the required 3-year parole period applicable to any person released from state prison on or after July 1, 2020. SB 537 was held in suspense in the Senate Appropriations Committee.
- d) SB 445 (Jones), of the 2021-2022 Legislative Session, would have excluded "One Strike" sex offenses from the Elderly Parole Program. SB 445 failed passage in the Senate Public Safety Committee.
- e) AB 3234 (Ting), Chapter 334, Statutes of 2020, lowered the minimum age limitation for the Elderly Parole Program to inmates who are 50 years of age and who have served a minimum of 20 years.
- f) SB 411 (Jones), of the 2019-2020 Legislative Session, was nearly identical to SB 445 above. SB 411 did not receive a hearing in the Senate Public Safety Committee.
- g) AB 1448 (Weber), Chapter 676, Statutes of 2017, codified the Elderly Parole Program, to be administered by the Board of Parole Hearings.
- h) SB 224 (Liu), of the 2015-2016 Legislative Session, was substantially similar to AB 1448 above. SB 224 was ordered to the Inactive File on the Senate Floor.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
California Protective Parents Association
California Sexual Assault Investigators Association
California State Lodge Fraternal Order of Police
Crime Victims Alliance
Crime Victims United of California

Los Angeles County District Attorney's Office
Los Angeles County Professional Peace Officers Association
Riverside County District Attorney
San Diego County District Attorney's Office

Oppose

ACLU California Action
All of US or None
Asian Law Alliance
California Public Defenders Association
Californians for Safety and Justice
Californians United for a Responsible Budget
Coalition for Justice and Accountability
Communities United for Restorative Youth Justice
Courage California
Ella Baker Center for Human Rights
Felony Murder Elimination Project
Friends Committee on Legislation of California
Initiate Justice
Initiate Justice Action
Justice2jobs Coalition
LA Defensa
Legal Services for Prisoners With Children
Peace and Justice Law Center
Rubicon Programs
San Francisco Public Defender
Sister Warriors Freedom Coalition
Smart Justice California, a Project of Tides Advocacy
The Change Parallel Project
The Mend Collaborative
Uncommon Law
University of San Francisco School of Law, Racial Justice Clinic

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