



Overview of S.B. 260/261 (Hancock) Sentencing Review for Juveniles Tried as Adults in California

THE PROBLEM

California's prison system houses more than 6,000 people who were 14 to 17 years of age at the time of their offense. Many are serving sentences so long that, absent a change in the law, they would not qualify for parole during their expected lifetime.

The Supreme Court has recognized that "only a relatively small proportion of adolescents" who engage in illegal activity "develop entrenched patterns of problem behavior," and that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds," including "parts of the brain involved in behavior control." Youthfulness both lessens a juvenile's moral culpability and enhances the prospect that, as a youth matures into an adult and neurological development occurs, these individuals can become contributing members of society. (*Miller v. Alabama* (2012) 183 L.Ed.2d 407.)

Because of their lessened culpability and capacity for change both the United States Supreme Court and the California Supreme Court have called for juveniles tried as adults to be given the opportunity to obtain release upon a showing that they have demonstrated rehabilitation and gained maturity. (*People v. Caballero* (2012) 55 Cal.4th 262; *Graham v. Florida* (2010) 560 U.S. 48; and *Miller v. Alabama* (2012) 183 L.Ed.2d 407.)

Prisoners eligible for such review, however, failed to be heard in a timely manner or at all, because California had no mechanism for providing a hearing to consider parole based on such factors. Consequently, those challenging extremely long sentences were forced to litigate their right to review on a case by case basis in the courts. There were no guidelines to help courts to make the right decision, and no timelines as to when review should occur. There was no formal way for youth to know whether or when they qualified for review, or how to seek legal assistance.

As a result, advocates proposed S.B. 260, signed into law by Governor Jerry Brown on September 16, 2013, which established a "youth offender parole hearing" mechanism for state prisoners serving long sentences for crimes they committed prior to being 18 years of age. S.B. 261, signed into law on October 3, 2015, made this mechanism available for more youth offenders by increasing the cut-off age for committing an offense to 23 years of age.

THE S.B. 260/261 YOUTH OFFENDER PAROLE HEARING PROCESS

S.B. 260/261 provides a process by which growth and maturity of youth offenders can be assessed and a meaningful opportunity for release established.

The time of review for a youth offender depends on the “controlling offense” – that is, the offense or enhancement for which any sentencing court imposed the longest term of imprisonment. If the controlling offense is a determinate sentence, the person shall be eligible for release on parole during his or her 15th year of incarceration. If the controlling offense is a life term of less than 25 years to life the person shall be eligible for release on parole during his or her 20th year of incarceration. And if the controlling offense sentence is a life term of 25 years to life, the person shall be eligible for release on parole during his or her 25th year of incarceration. (Penal Code § 3051.)

Under the law, the Board of Parole Hearings must meet with youth offenders during the sixth year before their minimum parole eligibility to advise them about the hearing process, time credits, and relevant factors for parole. Individual recommendations must be made, in writing, regarding work assignments, rehabilitative programs, and institutional behavior. Then, one year prior to the minimum eligible parole release date, two or more commissioners or deputy commissioners again meet with the youth offender to conduct a parole consideration hearing. If the commissioners vote to grant parole, the youth shall be immediately eligible for parole, and the commissioners will normally set a parole release date. The panel’s decision is final unless the board finds that the panel made an error of law or fact or that new material information should be considered by the board. (Penal Code § 3041.) In deciding suitability for release, the Board must give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the youth offender in accordance with relevant case law. (Penal Code § 4801.)

Under the law, the Board will revise and adopt regulations regarding determinations of suitability for youth offender parole hearings to provide the required meaningful opportunity for release. Any psychological evaluations and risk assessment instruments used by the Board must consider the diminished culpability of juveniles as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual. Family members, friends, school personnel, faith leaders, and representatives from community-based organizations with knowledge about the individual may submit statements for review by the Board, and victims retain all existing rights at the hearings. (Penal Code § 3051.)

If parole is not granted, the Board must set a subsequent youth offender parole hearing as specified in Penal Code § 3041.5. The new law does not apply to “Three Strikes” cases, life without the possibility of parole cases, or cases in which the youth commits a subsequent crime after age 23 involving malice aforethought, and receives a life sentence.

Hearings for youth sentenced to indeterminate life terms who qualify for review on the effective date of S.B. 261 (October 3, 2015) must be completed by July 1, 2017. Hearings for youth sentenced to determinate terms who qualify for review on the effective date of the law must be completed by July 1, 2021. (Penal Code § 3051.)

The Board of Parole Hearings is required to draft regulations that will guide the actions of the commissioners in these hearings. While these regulations were projected to be complete by 2015, as of October 2016 they are still in the proposal stage. Proposed regulations were made available for public review in May 2015. They have not yet been filed with the Office of Administrative Law. According to a July 2015 bench guide the Board planned to release a bench guide, in the meantime, to train commissioners on how to conduct youth offender parole consideration hearings.

Both S.B. 260 and S.B. 261 were introduced by Senator Loni Hancock. S.B. 260 was co-sponsored by Human Rights Watch, Youth Law Center, the Friends Committee on Legislation of California, and the Post-Conviction Justice Project of the University of Southern California. S.B. 261 was co-sponsored by Human Rights Watch, Anti-Recidivism Coalition, National Center for Youth Law, and Youth Justice Coalition. Supporters included a broad coalition of advocates, family members of victims, law professors, faith community leaders, and youth who have served time and their family members.

This fact sheet is intended for informational purposes only, and is not intended to and does not provide legal advice. Youth offenders who may benefit from S.B. 260 and S.B. 261, and those helping them, should consult an attorney knowledgeable about the new laws and the parole process for advice about their individual situation.