

RESOLUTION 3-13-04

DIGEST

Parole Consideration for Minors

Amends Penal Code section 3046 to confer discretion on the Board of Prison Terms to parole minor offenders imprisoned under a life sentence after seven years imprisonment.

**RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE**

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 3046 to confer discretion on the Board of Prison Terms to parole minor offenders imprisoned under a life sentence after seven years imprisonment. This resolution should be disapproved because every existing law mandating a mandatory minimum sentence greater than seven years will be abrogated such that sentencing discretion will, in effect, be reposed with the Board of Prison Terms rather than with judges and prosecutors. Also, sentence enhancements, which judges have discretion to strike, may be abrogated by the proposed amendment.

Furthermore, the resolution should be disapproved because it provides that an under 21 offender who has not been previously convicted of any felony offense committed on a separate occasion shall be considered for parole. By implication, this resolution would permit a prisoner who committed a felony *subsequent* to the subject felony to gain parole consideration after seven years.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates recommends that legislation be sponsored to amend Penal Code section 3046 to read as follows:

- 1 § 3046
- 2 (a) Except as provided in subdivision (d), No prisoner imprisoned under a life
- 3 sentence may be paroled until he or she has served the greater of the following:
- 4 (1) A term of at least seven calendar years.
- 5 (2) A term as established pursuant to any other provision of law that establishes a
- 6 minimum term or minimum period of confinement under a life sentence before eligibility
- 7 for parole.
- 8 (b) If two or more life sentences are ordered to run consecutively to each other
- 9 pursuant to Section 669, no prisoner so imprisoned may be paroled until he or she has
- 10 served the term specified in subdivision (a) on each of the life sentences that are ordered to
- 11 run consecutively.
- 12 (c) The Board of Prison Terms shall, in considering a parole for a prisoner,
- 13 consider all statements and recommendations which may have been submitted by the judge,

14 district attorney, and sheriff, pursuant to Section 1203.01, or in response to notices given
15 under Section 3042, and recommendations of other persons interested in the granting or
16 denying of the parole. The board shall enter on its order granting or denying parole to
17 these prisoners, the fact that the statements and recommendations have been considered by
18 it.

19 (d) Notwithstanding subdivisions (a) and (b), or any other provision of law, a
20 prisoner who was under the age of 21 years at the time of commission of an offense
21 punishable under subdivision (a) or (b) and who has not been previously convicted of any
22 other felony offense committed on a separate occasion shall be considered for parole and
23 may be paroled as provided by subdivisions (a) and (c).]

(Proposed new language underlined; language to be stricken deleted)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

Existing Law: The minimum term a prisoner imprisoned under a life sentence must serve before being paroled is the greater of at least seven calendar years or the minimum term or minimum period of confinement under a life sentence established pursuant to any other provision of law. Thus, a person convicted of the crime of attempted willful, deliberate, and premeditated murder is punishable under Penal Code section 664 by life imprisonment with the possibility of parole. Section 3046 therefore specifies the minimum term of imprisonment that person must serve, at least seven calendar years. If, however, the person also is convicted of committing that offense for the benefit of or in association with any criminal street gang, as provided in Penal Code section 186.22, subdivision (b)(5), he may not be paroled until a minimum of 15 calendar years have been served. No other law permits reduction or amelioration of those prescribed minimum periods of incarceration.

This Resolution: Would confer discretion on the Board of Prison Terms to give early consideration to deserving youthful offenders whose cases justify an earlier parole date, but in no event sooner than the minimum seven calendar years now prescribed by Penal Code section 3046. In no way would it mandate early parole release, either individually or in a class of offenders; the parole release determination would remain a function of the parole board and subject to gubernatorial rejection.

The Problem: The initiative measure Proposition 21 approved at the March 7, 2000 election authorized prosecutors to bring specified charges against minors 14 years of age and older directly in criminal court, without a prior adjudication by the juvenile court that the minor was unfit for disposition and treatment under the juvenile court law. Proposition 21's constitutionality was upheld by the California Supreme Court in *Manduley v. Superior Court* (2002) 27 Cal.4th 537. Since its enactment, prosecutors throughout the state have aggressively exercised the discretion conferred in them and obtained lengthy sentences against minors as young as 14 years old, frequently without regard to the individual circumstances, background, and amenability to juvenile treatment that previously existed. When combined with the application of Penal Code section 186.22, subdivision (b)(5), the operation of Penal Code section 3046 forecloses parole consideration by the Board of

Prison Terms and Parole Eligibility for at least 15 calendar years. The lack of any statutory discretion to consider a minor's individual background and circumstances and his rehabilitative efforts in the prison system is inconsistent with the goals of proportionate punishment and rehabilitation that are especially applicable to youthful offenders who have not previously been convicted of other serious offenses, and fails to prepare these young persons for release into society some day. Such lengthy mandatory sentences also contribute to the enormous costs of maintaining California's prison system.

IMPACT STATEMENT

This proposed resolution would supersede the minimum parole dates provided by other penal statutes to the extent the minimum term of imprisonment is greater than seven calendar years. However, the requirement that the prisoner not have previously been convicted of a felony excludes the Three Strikes law and comparable statutes from application of this provision.

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