

## RESOLUTION 11-09-2002

### DIGEST

#### Sentencing: Minimum Term for Youthful Offenders

This resolution adds section 1202b to the Penal Code to allow the court to reduce the minimum term of felony imprisonment to six months for defendants twenty-three or younger.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### APPROVE IN PRINCIPLE

#### Reasons:

This resolution adds section 1202b to the Penal Code to allow the court to reduce the minimum term of felony imprisonment to six months for defendants twenty-three or younger. This resolution should be approved in principle because it recognizes that youthful offenders may benefit from earlier parole, while at the same time leaving maximum sentences intact for those cases that do not merit special consideration.

Under existing law, a felon serving an indeterminate term becomes eligible for parole after serving a statutorily specified minimum time in confinement. This resolution would permit the sentencing judge to lower that minimum time to six months for youthful offenders who are deemed likely to benefit from early release. The sentencing judge would be expected to consider the defendant's background, the circumstances of the offense, and any indicia of potential for reformation. (*In re Andrews* (1976) 18 Cal.3d 208, 217.) The defendant would not be automatically entitled to early release; the Board of Prison Terms would still make the final decision on whether and when to release after determining whether the defendant's conduct and effort toward reformation confirms the sentencing court's hopes.

This resolution reinstates a statute that was originally enacted in 1959. It was repealed in 1977, when indeterminate sentencing was replaced with determinate sentencing. Now that indeterminate sentencing has made a comeback, it is time to reinstate this statute as well.

### TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that the legislation be sponsored to add Section 1202b to the Penal Code to read as follows:

1        §1202b  
2        In any criminal proceeding in which defendant is convicted of a felony or felonies and is  
3        committed to the custody of the Department of Corrections, if defendant was at the time of  
4        commission of the offense or offenses, under the age of twenty three, the court may,  
5        notwithstanding any other provisions of law fixing or affecting the penalty for the offense or  
6        offenses, specify that the minimum term of imprisonment for the offense or the offenses  
7        cumulatively shall be six months. This section does not apply to any offense punishable by

8 death.

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

PROPONENT: James McWilliams, Howard Harpham, Phil Goldsmith, Margo George, Jody Nunez, William Locke, Robert Brown, Allison Walker, Judith Browne, Michael Richer

Existing Law: None. Parole is available to those prisoners sentenced to an indeterminate term after certain statutory minimum commitment time has been served. There is not provision such as this that would permit early release consideration to youthful offenders sentenced to a determinate or indeterminate term.

This Resolution: This provision would permitted sentencing judges to set a minimum release for youthful offenders where appropriate, and leave the release decision with the Board of Prison Terms, which can be expected to continue to give considerations of public safety as the primary consideration in making a decision to parole.

This section does not reduced the possible maximum sentence. The state would save money if some prisoners were released early. This would not apply to offenses not subject to parole, such as an imprisonment for life without parole or death.

This Problem: This section was originally in effect in 1959, in almost an identical format. After approximately twenty years without modification, it was repealed with the adoption of a determinate sentencing in 1977. Now twenty four years later, there has been a significant return to indeterminate sentencing often with twenty or more years of minimum time of parole consideration.

#### IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

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RESPONSIBLE FLOOR DELEGATE: James McWilliams, or Other to Be Designated Later