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Governor's Parole Review.

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Official Title and Summary Prepared by the Attorney General

GOVERNOR'S PAROLE REVIEW. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Provides that no decision of the parole authority which grants, denies, revokes, or suspends the parole of a person sentenced to an indeterminate term upon conviction of murder shall become effective for a period of 30 days. Permits Governor to review the decision during this period subject to statutory procedures. States that the Governor may only affirm, modify, or reverse a parole authority decision on the basis of the same factors which the parole authority may consider. Requires Governor to report to the Legislature the pertinent facts and reasons for each parole action. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: The fiscal impact of this measure is unknown and depends on the actions of the Governor. Grants of parole would result in relatively minor savings. Denials of parole could result in relatively minor costs.

Final Vote Cast by the Legislature on SCA 9 (Proposition 89)

Assembly: Ayes 63
Noes 11

Senate: Ayes 29
Noes 5

Analysis by the Legislative Analyst

Background

Under California statutes, adults who commit murder are sentenced to an indeterminate term in state prison or, in the case of first degree murder, death. A minor who commits murder when he or she is 16 years of age or older may be dealt with under the juvenile court law or may be tried as an adult and sentenced accordingly. If tried as an adult, however, the death penalty may not be imposed if the person was under the age of 18 at the time of the commission of the crime. Other minors who commit murder may be committed to the Department of the Youth Authority for an indeterminate period, although they may be confined only until the age of 25 unless an order or petition for further detention has been made.

The parole release date for state prison inmates serving an indeterminate term is set by the Board of Prison Terms. The date of release on parole for minors committed to the Youth Authority is set by the Youthful Offender Parole Board. In making parole decisions, the Board of Prison Terms and the Youthful Offender Parole Board are required to consider many factors, including the following: the seriousness of the inmate's offense; the safety of the public; and statements from the public.

Under the California Constitution, the Governor may grant a reprieve, pardon, or commutation after a person is sentenced. The Governor may not grant a pardon or commutation to a person who has been twice convicted

of a felony, unless the action is recommended by four members of the State Supreme Court.

Proposal

This constitutional amendment would allow the Governor to approve, modify, or reverse any decision by the parole authority (Board of Prison Terms or Youthful Offender Parole Board) regarding the parole of persons who are sentenced to an indeterminate term for committing murder. The Governor, subject to specified procedures, would have 30 days from the date of the board's parole action to review the decision. In reviewing parole decisions, the Governor could consider only that information which the Board of Prison Terms and the Youthful Offender Parole Board are required to consider in making their parole decisions.

Fiscal Effect

The fiscal impact of this constitutional amendment is unknown and would depend on the actions of the Governor. The measure could result in relatively minor state savings if the Governor decided to release a person from prison or the Youth Authority after the person's parole had been denied by the Board of Prison Terms or the Youthful Offender Parole Board. The measure could, however, result in relatively minor state costs if the Governor decided to deny parole to a person who would have been granted parole by the Board of Prison Terms or the Youthful Offender Parole Board.

Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment 9 (Statutes of 1988, Resolution Chapter 63) expressly amends the Constitution by amending a section thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE V, SECTION 8

SEC. 8. (a) Subject to application procedures provided by statute, the Governor, on conditions the Governor deems proper, may grant a reprieve, pardon, and commutation, after sentence, except in case of impeachment. The Governor shall report to the Legislature each reprieve, pardon, and commutation granted, stating the pertinent facts and the reasons for granting it. The Governor may not grant a pardon or commutation to a person twice convicted of a felony except on recommendation of the Supreme Court, 4 judges concurring.

(b) No decision of the parole authority of this state with respect to the granting, denial, revocation, or suspension of parole of a person sentenced to an indeterminate term upon conviction of murder shall become effective for a period of 30 days, during which the Governor may review the decision subject to procedures provided by statute. The Governor may only affirm, modify, or reverse the decision of the parole authority on the basis of the same factors which the parole authority is required to consider. The Governor shall report to the Legislature each parole decision affirmed, modified, or reversed, stating the pertinent facts and reasons for the action.

Argument in Favor of Proposition 89

Proposition 89 provides that no decision of the parole board releasing a convicted murderer shall become effective until it is first reviewed by the Governor. Under Proposition 89, the Governor, for the first time, will have the power to block the parole of convicted murderers.

Proposition 89 is based on a simple premise—namely, that the public has a right to be protected against the early release of murderers from state prison by having as much scrutiny and as many levels of examination as possible before a convicted murderer is paroled. Surely, everyone would agree that any decision to parole a convicted killer should be carefully scrutinized.

In 1983, Governor Deukmejian tried to block the parole of convicted rapist-murderer William Archie Fain. The court declared the Governor didn't have that authority and Fain was set free. Proposition 89 will correct the situation created by that court decision by expressly giving the Governor the power to block the early release of convicted murderers.

Proposition 89 is needed because current law does not protect the public. Consider the following:

- First-degree murderers who were paroled last year averaged less than 14 years in state prison.
- Between 1973 and 1986, 365 murderers who had been paroled were sent back to prison because they violated parole or committed another felony.
- In the next three years, over 500 convicted killers are due for parole hearings and possible release, including Hillside Strangler Kenneth Bianchi, mass murderer Juan Corona, Golden Dragon Massacre killer Peter Ng, Manson Family followers Tex Watson, Bobby Beausoliel, Leslie Van Houten and Patricia

Krenwinkle, as well as Robert Kennedy assassin Sirhan Sirhan.

We have already seen many tragic examples of the instances where a convicted killer has been paroled from prison only to commit further crimes.

For example, Robert Nicolaus was sentenced to death in 1964 for killing his three children. After his death sentence was overturned in 1967, he was subsequently paroled in 1977. In 1985 he murdered his former wife.

Robert L. Massie murdered a woman in a robbery in 1965 and was sentenced to death. His death sentence was overturned in 1972. He was paroled in 1978 and killed a store clerk in 1979.

In Sacramento County alone since 1978, there have been eight cases where a previously convicted murderer was paroled from prison only to murder again!

Murder is the most serious of crimes contemplated by our society. For this reason, the trial of a murder defendant is a difficult and closely monitored process. Even if the defendant is convicted, the Governor still has the power to grant reprieves, pardons and commutations. The procedural safeguards of the system are designed to protect defendants. The Governor can act on behalf of more lenient treatment of convicted criminals. We believe the state's top elected official should *also* be given the power to protect the public from the early release of still dangerous killers.

We urge a "Yes" vote on Proposition 89.

DANIEL E. BOATWRIGHT
State Senator, 7th District

GARY A. CONDIT
Member of the Assembly, 27th District

IRA REINER
Los Angeles County District Attorney

Rebuttal to Argument in Favor of Proposition 89

Proposition 89 will require the Governor to act within 30 days of the granting of a parole date or it will become final. He will not have any different information than his nine-member parole board would have had. It will simply allow him to grant or deny a parole date when it is politically expedient.

Proposition 89 would have made no difference in the William Fain Case. The Governor tried to block Fain's parole years after his parole date was granted by the Board of Prison Terms.

Under current law, a person convicted of first degree murder must serve a minimum of 17 and three quarters years of actual time in prison before parole. The Board of

Prison Terms guidelines call for much longer time.

The law does not require that any parole date be set for a murderer. Public safety is the primary consideration of the parole board. The person has to be found suitable for parole. The Board of Prison Terms commissioners are prosecutors, sheriffs, police officers, and probation officers. They represent hundreds of years of experience in law enforcement. Their main job is to protect the public. If they give a parole date it is only when all doubt has been removed. Any question about the advisability of a parole date is cause for them to take it away. Proposition 89 will only politicize the parole process.

REVEREND PAUL W. COMISKEY S.J.
on behalf of the Prisoners Rights Union

Argument Against Proposition 89

Proposition 89 in effect makes the Governor of the state another parole board with the same powers and the duty to apply the same rules. The only plausible reason for change is to give the Governor power to veto the parole board if the parole board makes a politically unpopular decision. Examples would be giving someone a parole date when large parts of the public did not approve or denying someone a parole date when it is politically unpopular to do so. The Board of Prison Terms is composed of a group of nine commissioners who are appointed by the Governor with the consent of the Senate. They apply a very technical set of rules when they make decisions about setting a parole date. They are trained and experienced and conduct hundreds of hearings each year for prisoners all over the state. They are former police officers, prosecuting attorneys, and probation officers. They grant a parole release date in about 2 percent of the hearings they conduct. Persons convicted of murder are only eligible to be released on parole after serving 10 years in prison and typical release dates are given for 20 years or more. A prisoner given a release date today will have gone before the parole board a number of times. All relevant facts are considered in great detail from the day the person is born to the day of the hearing. This means considering the person's family background, education, crimes, psychological and physical health, job history, prison behavior, and plans for the future. Parole release dates are only set after a person is found suitable

for parole. The actual release date is usually set for years away. If any information develops during those years that makes a parole date inadvisable, the parole board has full authority to take the date away. At the hearing to set a parole date the prisoner is present with his attorney, the district attorney from the county is there, and three parole board members conduct the hearing. If the three parole board members cannot agree on a decision they can refer the matter to the entire panel of nine members to make a decision. Most of the persons in prison now have not been found suitable for parole and it is likely that many never will be. The parole board is under no obligation to set a parole date if there is any risk to society. To require prisoners to go through the extremely rigid process they must go through to get a parole date and then leave the decision up to the whim of the Governor is to make a farce and mockery of justice and the rule of law. The parole board members are appointed by the Governor and paid a handsome salary. If they are not competent to make a decision, how can we expect the Governor who appointed them to do any better?

Proposition 89 will politicize decisions about whether to grant or deny parole. Unpopular persons will be denied parole dates because governors will sacrifice the interests of justice for votes. The criminal justice system will appear even more hypocritical than it is at present.

REVEREND PAUL W. COMISKEY S.J.
on behalf of the Prisoners Rights Union

Rebuttal to Argument Against Proposition 89

Protecting public safety is a legitimate responsibility of the Governor and other elected officials. Proposition 89 will not politicize the parole process, but it will provide an extra measure of safety to law-abiding citizens by giving the Governor the authority to block the parole of criminals who still pose a significant threat to society.

Proposition 89 will help ensure that the rights of crime victims and their families are protected, and it represents a positive step in maintaining law and order in our state.

The opponents of Proposition 89 contend that the law would encourage more public outcry, but the evidence suggests otherwise. Since 1984, the Board of Prison Terms has been able to consider public views in connection with

their decisions to grant parole dates to prisoners. But in virtually every case there has been no significant degree of public outcry. In most instances, the families of the murder victims wish to put those tragic events behind them and have no desire to become involved in public campaigns associated with the murder of a loved one.

Proposition 89 will correct a weakness in the state's parole system and further strengthen California's system of justice.

VOTE YES ON PROPOSITION 89.

GEORGE DEUKMEJIAN
Governor

DANIEL BOATWRIGHT
State Senator, 7th District