Approved as to Form and Legality

City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBERS DAN KALB AND REBECCA KAPLAN AND COUNCIL PRESIDENT PRO TEMPORE LARRY REID

RESOLUTION IN SUPPORT OF CALIFORNIA PROPOSITION 62 THAT WOULD REPEAL THE DEATH PENALTY AND IN OPPOSITION TO PROPOSITION 66 THAT WOULD MAKE VARIOUS CHANGES TO PROCEDURES IN DEATH PENALTY CASES

WHEREAS, Since 1978, California has spent more than $5 billion to carry out 13 executions at the cost of $384 per execution; and

WHEREAS, The death penalty creates an unavoidable risk of applying a permanent, irrevocable sentence on an innocent person who is wrongfully convicted; and

WHEREAS, Numerous jurisdictions around the world have moved to repeal the death penalty; and

WHEREAS, Proposition 62 would repeal the state death penalty and replace the maximum punishment for murder with life in prison without possibility of parole and would require all persons found guilty of murder to work while in state prison in order to pay debts to victims of the crime committed; and

WHEREAS, Propostion 62 would net ongoing reduction in state and county costs related to murder trials, legal challenges to death sentences, and prisons of around $150 million annually within a few years; and

WHEREAS, Proposition 62 is supported by the California Democratic Party, California NAACP, ACLU of Northern California, Ella Baker Center for Human Rights, and numerous other organizations and individuals; and

WHEREAS, Proposition 66 would change procedures governing state court appeals and petitions challenging death penalty convictions and sentences, designate the superior court for initial petitions and limit successive petitions, establishe a time frame for state court death penalty review, require appointed attorneys who take noncapital appeals to accept death penalty appeals, exempt prison officials from existing regulation process for developing execution methods, authorize death row inmate transfers among California prisons, increase the portion of

condemned inmates' wages that may be applied to victim restitution, and make Proposition 62 void if 66 receives more affirmative votes; and

WHEREAS, Proposition 66 would cost taxpayers millions of dollars unnecessarily, due to increased prison spending, legal defense, death row facility construction, would increase California's risk of executing an innocent person, and would remove important legal safeguards; and

WHEREAS, Proposition 62 is opposed by the California Democratic Party, California NAACP, ACLU of California, Ella Baker Center for Human Rights, and numerous other organizations and individuals; and

RESOLVED: That the Oakland City Council hereby endorses Proposition 62 and opposes Proposition 66.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, AND PRESIDENT GIBSON MCELHANEY

NOES –

ABSENT –

ABSTENTION –

ATTEST:_____

LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California

Councilmembers Dan Kalb, Rebecca Kaplan, and Larry Reid **CITY OF OAKLAND**

CITY HALL - ONE FRANK H. OGAWA PLAZA, 2ND FLOOR - OAKLAND - CALIFORNIA 94612

Agenda Memorandum

To: Rules & Legislation Committee

From: Councilmember Dan Kalb

Date: September 22, 2016

Subject: Resolution in Support of Prop 62 (Repeal the Death Penalty) and in Opposition to Prop 66 (Death Penalty Procedure)

Colleagues on the City Council and Members of the Public,

With our introduction of a Resolution in Support of Proposition 62 and in Opposition to Proposition 66, we are submitting, for Proposition 62, the attached the official argument in favor, the analysis by the state legislative analyst, and the full text of the proposition and, for Proposition 66, the attached official rebuttal to argument in favor, the analysis of the state legislative analyst, and the full text of the proposition.

Respectfully submitted,

Dan Kalb, Councilmember

Rebecca Kaplan, Councilmember

Larry Reid, Council President Pro Tempore

ARGUMENT IN FAVOR OF PROPOSITION 62

California's death penalty system has failed. Taxpayers have spent more than $5 billion since 1978 to carry out 13 executions—a cos of $384 million per execution.

The death penalty is an empty promise to victims' families and carries the unavoidable risk of executing an innocent person.

YES ON 62 REPLACES THIS COSTLY, FAILED SYSTEM WITH A STRICT LIFE SENTENCE AND ZERO CHANCE OF PAROLE

Under Prop. 62, the death penalty will be replaced with a strict life sentence. Those convicted of the worst crimes will NEVER be released. Instead of being housed in expensive private cells on death row, murderers will be kept with other maximum-security inmates.

WORK AND RESTITUTION

Criminals who would otherwise sit on death row and in courtrooms during the decades-long appeals guaranteed by the Constitution, will instead have to work and pay restitution to their victims' families.

REAL CLOSURE FOR VICTIMS' FAMILIES

"California's death penalty system is a long, agonizing ordeal for our family. As my sister's killer sits through countless hearings, we continually relive this tragedy. The death penalty is an empty promise of justice. A life sentence without parole would bring real closure."—*Beth Webb, whose sister was murdered with seven other people in a mass-shooting at an Orange County hair salon.*

HUGE COST SAVINGS CONFIRMED BY IMPARTIAL ANALYSIS

The state's independent Legislative Analyst confirmed Prop. 62 will save $150 million per year. A death row sentence costs 18 times more than life in prison. Resources can be better spent on education, public safety, and crime prevention that actually works.

DEATH PENALTY SYSTEM FLAWS RUN DEEP

California has not executed anyone in 10 years because of serious problems. For nearly 40 years, every attempted fix has failed to make the death penalty system work. It's simply unworkable.

"I prosecuted killers using California's death penalty law, but the high costs, endless delays and total ineffectiveness in deterring crim convinced me we need to replace the death penalty system with life in prison without parole."—*John Van de Kamp, former Los Angeles District Attorney and former California Attorney General.*

THE RISK OF EXECUTING AN INNOCENT PERSON IS REAL

DNA technology and new evidence have proven the innocence of more than 150 people on death row after they were sentenced to death. In California, 66 people had their murder convictions overturned because new evidence showed they were innocent.

Carlos DeLuna was executed in 1989, but an independent investigation later proved his innocence. Executing an innocent person is a mistake that can never be undone.

FORMER DEATH PENALTY ADVOCATES: YES ON 62

"I led the campaign to bring the death penalty back to California in 1978. It was a costly mistake. Now I know we just hurt the victim families we were trying to help and wasted taxpayer dollars. The death penalty cannot be fixed. We need to replace it, lock up murderers for good, make them work, and move on."—*Ron Briggs, led the campaign to create California's death penalty system.*

www.YesOn62.com

JEANNE WOODFORD, Former Death Row Warden

DONALD HELLER, Author of California's Death Penalty Law

BETH WEBB, Sister of Victim Murdered in 2011

PROP 62 DEATH PENALTY. INITIATIVE STATUTE.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Murder Punishable by Death

First degree murder is generally defined as the unlawful killing of a human being that (1) is deliberate and premeditated or (2) takes place while certain other crimes are committed, such as kidnapping. It is punishable by a life sentence in state prison with the possibility of being released by the state parole board after a minimum of 25 years. However, current state law makes first degree murder punishable by death or life imprisonment without the possibility of parole when "special circumstances" of the crime have been charged and proven in court. Existing state law identifies a number of special circumstances that can be charged, such as in cases when the murder was carried out for financial gain or when more than one murder was committed.

Death Penalty Proceedings

Death Penalty Trials Can Consist of Two Phases. The first phase of a murder trial where the prosecutor seeks a death sentence involves determining whether the defendant is guilty of murder and any special circumstances. If the defendant is found guilty and a special circumstance is proven, the second phase involves determining whether the death penalty or life without the possibility of parole should be imposed. These murder trials result in costs to the state trial courts. In addition, counties incur costs for the prosecution of these individuals as well as the defense of individuals who cannot afford legal representation. Since the current death penalty law was enacted in California in 1978, 930 individuals have received a death sentence. In recent years, an average of about 20 individuals annually have received death sentences.

Legal Challenges to Death Sentences. Under current state law, death penalty verdicts are automatically appealed to the California Supreme Court. In these "direct appeals," the defendants' attorneys argue that violations of state law or federal constitutional law took place during the trial, such as evidence improperly being included or excluded from the trial. If the California Supreme Court confirms the conviction and death sentence, the defendant can ask the U.S. Supreme Court to review the decision. In addition to direct appeals, death penalty cases ordinarily involve extensive legal challenges in both state and federal courts. These challenges, which are commonly referred to as "habeas corpus" petitions, involve factors of the case that are different from those considered in direct appeals (such as the claim that the defendant's attorney was ineffective). All of these legal challenges—measured from when the individual receives a death sentence to when the individual has completed all state and federal legal challenge proceedings—can take a couple of decades to complete in California.

The state currently spends about $55 million annually on the legal challenges that follow death sentences. This funding supports the California Supreme Court as well as attorneys employed by the state Department of Justice who seek to uphold death sentences while cases are being challenged in the courts. In addition, it also supports various state agencies that are tasked with providing representation to individuals who have received a sentence of death but cannot afford legal representation.

Implementation of the Death Penalty

Housing of Condemned Inmates. As of April 2016, of the 930 individuals who received a death sentence since 1978, 15 have been executed, 103 have died prior to being executed, 64 have had their sentences reduced by the courts, and 748 are in state prison with death sentences. The vast majority of the 748 condemned inmates are at various stages of the direct appeal or habeas corpus petition process. Condemned male inmates generally are required to be housed at San Quentin State Prison (on death row), while condemned female inmates are housed at the Central California Women's Facility in Chowchilla. The state currently has various security regulations and procedures that result in increased security costs for these inmates. For example, inmates under a death sentence generally are handcuffed and escorted at all times by one or two officers while outside their cells. In addition, unlike most offenders, condemned inmates are currently required to be placed in separate cells.

Executions Currently Halted by Courts. The state uses lethal injection to execute condemned inmates. Because of legal issues surrounding the state's lethal injection procedures, executions have not taken place since 2006. The state is currently in the process of developing procedures to allow for executions to resume.

PROPOSAL

Elimination of Death Penalty for First Degree Murder. Under this measure, no offender could be sentenced to death by the state for first degree murder. Instead, the most serious penalty available would be a prison term of life without the possibility of being released by the state parole board. (There is another measure on this ballot—Proposition 66—that would maintain the death penalty but seeks to shorten the time that the legal challenges to death sentences take.)

Resentencing of Inmates With Death Sentences to Life Without the Possibility of Parole. The measure also specifies that offenders currently sentenced to death would not be executed and instead would be resentenced to a prison term of life without the possibility of parole. This measure also allows the California Supreme Court to transfer all of its existing death penalty direct appeals and habeas corpus petitions to the state's Courts of Appeal or trial courts. These courts would resolve any remaining issues unrelated to the death sentence—such as claims of innocence.

Inmate Work and Payments to Crime Victim Requirements. Current state law generally requires that inmates—including murderers—work while they are in prison. State prison regulations allow for some exceptions to these work requirements, such as for inmates who pose too great a security risk to participate in work programs. In addition, inmates may be required by the courts to make payments to victims of crime. This measure specifies that every person found guilty of murder must work while in state prison and have their pay deducted for any debts they owe to victims of crime, subject to state regulations. Because the measure does not change state regulations, existing prison practices related to inmate work requirements would not necessarily be changed. In addition, the measure increases from 50 percent to 60 percent the maximum amount that may be deducted from the wages of inmates sentenced to life without the possibility of parole for any debts owed to victims of crime. This provision would also apply to individuals who are resentenced under the measure from death to life without the possibility of parole.

FISCAL EFFECTS

The measure would have a number of fiscal effects on the state and local governments. The major fiscal effects of the measure are discussed below.

Murder Trials

Court Proceedings. This measure would reduce state and county costs associated with some murder cases that would otherwise have been eligible for the death penalty under current law. These cases would typically be less expensive if the death penalty was no longer an option, for two primary reasons. First, the duration of some trials would be shortened. This is because there would no longer be a separate phase to determine whether the death penalty is imposed. Other aspects of murder trials could also be shortened. For example, jury selection time for some trials could be reduced as it would no longer be necessary to remove potential jurors who are unwilling to impose the death penalty. Second, the elimination of the death penalty would reduce the costs incurred by counties for prosecutors and public defenders for some murder cases. This is because these agencies generally use more attorneys in cases where a death sentence is sought and incur greater expenses related to investigations and other preparations for the sentencing phase in such cases.

County Jails. County jail costs could also be reduced because of the measure's effect on murder trials. Persons held for trial on murder charges, particularly cases that could result in a death sentence, ordinarily remain in county jail until the completion of their trial and sentencing. As some murder cases are shortened due to the elimination of the death penalty, persons convicted of murder would be sent to state prison earlier than they otherwise would be. Such an outcome would reduce county jail costs and increase state prison costs.

Summary of Impacts Related to Murder Trials. In total, the measure could reduce annual state and county costs for murder trials by several tens of millions of dollars on a statewide basis. The actual reduction would depend on various factors, including the number of death penalty trials that would otherwise have occurred in the absence of the measure. In addition, the amount of this reduction could be partially offset to the extent that the elimination of the death penalty reduced the incentive for offenders to plead guilty in exchange for a lesser sentence in some murder cases. If additional cases went to trial instead of being resolved through plea agreements, the state and counties would experience additional costs for support of courts, prosecution, and defense attorneys, as well as county jails. The extent to which this would occur is unknown. In most cases, the state and counties would likely redirect available resources resulting from the above cost reductions to other court and law enforcement activities.

Legal Challenges to Death Sentences

Over time, the measure would reduce state expenditures by the California Supreme Court and the state agencies participating in the legal challenges to death sentences. These reduced costs would reach about $55 million annually. However, these reduced costs likely would be partially offset in the short run because some state expenditures would probably continue until the courts resolved all cases for inmates who previously received death sentences. In the long run, there would be relatively minor state and local costs—possibly totaling a couple million dollars annually—for hearing appeals from additional offenders receiving sentences of life without the possibility of parole.

State Prisons

The elimination of the death penalty would affect state prison costs in different ways. On the one hand, its elimination would result in a somewhat higher prison population and higher costs as formerly condemned inmates are sentenced to life without the possibility of parole. Given the length of time that inmates currently spend on death row, these costs would likely not be significant. On the other hand, these added costs likely would be more than offset by reduced costs from not housing hundreds of inmates on death row. As previously discussed, it is generally more expensive to house an inmate under a death sentence than an inmate subject to life without the possibility of parole, due to the higher security measures used to house and supervise inmates sentenced to death.

The combined effect of these fiscal impacts would likely result in net state savings for the operation of the state's prison system in the low tens of millions of dollars annually. These savings, however, could be higher or lower depending on the rate of executions that would have otherwise occurred.

Other Fiscal Effects

Prison Construction. The measure could also affect future prison construction costs by allowing the state to avoid future facility costs associated with housing an increasing number of death row inmates. The extent of any such savings would depend on the future growth in the condemned inmate population, how the state chose to house condemned inmates in the future, and the future growth in the general prison population.

Effect on Murder Rate. To the extent that the prohibition on the use of the death penalty has an effect on the incidence of murder in California, the measure could affect state and local government criminal justice expenditures. The resulting fiscal impact, if any, is unknown and cannot be estimated.

Summary of Fiscal Impacts

In total, we estimate that this measure would reduce net state and county costs related to murder trials, legal challenges to death sentences, and prisons. These reduced costs would likely be around $150 million annually within a few years. This reduction in costs could be higher or lower by tens of millions of dollars, depending on various factors.

Visit *http://www.sos.ca.gov/measure-contributions* (http://www.sos.ca.gov/campaign-lobbying/cal-access-resources/measure-contributions/) for a list of committees primarily formed to support or oppose this measure. Visit *http://www.fppc.ca.gov/transparency/top-contributors/nov-16-gen-v2.html* (http://www.fppc.ca.gov/transparency/top-contributors/nov-16-gen-v2.html) to access the committee's top 10 contributors.

15-0066

Mike Farrell
5 Third Street
Suite 724
San Francisco, CA 94103
(415) 243-0143

Ashley Johansson, Initiative Coordinator
Office of the Attorney General
1300 I Street, 17th Floor
Sacramento, CA 95814
(916) 445-4752

Re: Request for Title and Summary for *The Justice That Works Act of 2016*

Dear Ms. Johansson,

Pursuant to Article II, Section 10(d) of the Constitution of the State of California, I am proposing a statewide ballot initiative called ***The Justice That Works Act of 2016***. I respectfully request that the Attorney General prepare a Title and Summary for this measure as required by state law.

In accordance with Election Code sections 9001 and 9608 a check for $200 is enclosed and the required certifying statements are attached to this letter.

If you have any questions or require additional information, please contact me at your earliest convenience.

Sincerely,

Mike Farrell, Proponent

Dated this Fifteenth day of September, 2015.

This Act amends and repeals sections of the Penal Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

The Justice That Works Act of 2016

SECTION 1. Title

This initiative shall be known and may be cited as "The Justice That Works Act of 2016."

SEC. 2. Findings and Declarations

The People of the State of California do hereby find and declare all of the following:

1. Violent killers convicted of first degree murder must be separated from society and severely punished.

2. Under current law, California sentences many criminals to death who commit first degree murder, but the state rarely carries out executions. Instead, the state spends millions of taxpayer dollars providing lawyers for death row inmates, only to see the murderers it has sentenced to death by execution die of old age in prison.

3. Since 1978, California has spent more than $4 billion on a death penalty system that has sentenced nearly one thousand criminals to death by execution but has executed only 13 people. Even though there are over 700 inmates now on death row, California has not executed anyone in almost eleven years.

4. Violent murderers who are sentenced to serve life in prison without the possibility of parole in California are <u>never</u> eligible for parole. They spend the rest of their lives in prison and they die in prison.

5. Fewer than 1% of death row inmates work and pay their wages to compensate their victims. Murderers sentenced to life imprisonment without the possibility of parole are required to work in prison and use their wages to pay restitution to the victims of their crimes.

6. All convicted murderers sentenced to life imprisonment without the possibility of parole should be legally required to work while in prison and pay 60% of their wages to compensate their victims for the damage they caused.

7. While many think it is cheaper to execute murderers than to imprison them for life, in fact it is far more expensive. The death penalty system costs over $100 million more per year to maintain than a system that has life imprisonment without the possibility of parole as its harshest punishment, according to a study by former death penalty prosecutor and judge, Arthur Alarcon, and law professor Paula Mitchell. By replacing the death penalty with life imprisonment without

the possibility of parole, California taxpayers would save well over $100 million every year.

8. The death penalty is a failed government program that wastes taxpayer dollars and makes fatal mistakes. More than 150 innocent people have been sentenced to death in this country, and some innocent people have actually been executed. Wrongful convictions rob innocent people of decades of their lives, waste tax dollars, and re-traumatize the victims' families, while the real killers remain free to kill again.

9. Retroactive application of this act will end a costly and ineffective practice immediately and ensure that California never executes an innocent person.

10. California's death penalty is an empty promise. Death penalty cases drag on for decades. A sentence of life in prison without the possibility of parole provides swift and certain justice for grieving families.

11. Life in prison without the possibility of parole ensures that the worst criminals stay in prison forever and saves money. By replacing the death penalty with life in prison without the possibility of parole, we would save the state $1 billion in five years without releasing a single prisoner – $1 billion that could be invested in crime prevention strategies, services for victims, education, and keeping our communities and families safe.

SEC. 3. Purpose and Intent

The people of the State of California declare their purpose and intent in enacting the Act to be as follows:

1. To end California's costly and ineffective death penalty system and replace it with a common sense approach that sentences persons convicted of first degree murder with special circumstances to life imprisonment without the possibility of parole so they are permanently separated from society, and required to pay restitution to their victims.

2. To require everyone convicted of first degree murder and sentenced to life imprisonment without the possibility of parole to work while in prison, and to increase to 60% the portion of wages they must pay as restitution to their victims.

3. To eliminate the risk of executing an innocent person.

4. To end the decades-long appeals process in which grieving family members attending multiple hearings are forced to continually relive the trauma of their loss.

5. To achieve fairness and uniformity in sentencing, through retroactive application of this act to replace the death penalty with life in prison without the possibility of parole.

SEC. 4. Section 190 of the Penal Code is amended to read:

190. (a) Every person guilty of murder in the first degree shall be punished by ~~death~~, imprisonment in the state prison for life without the possibility of parole, or imprisonment in the state prison for a term of 25 years to life. The penalty to be applied shall be determined as provided in Sections ~~190.1~~, 190.2, ~~190.3~~, 190.4, and 190.5. Except as provided in subdivision (b), (c), or (d), every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 15 years to life.

(b) Except as provided in subdivision (c), every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 25 years to life if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a), (b), or (c) of Section 830.2, subdivision (a) of Section 830.33, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties.

(c) Every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of life without the possibility of parole if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a), (b), or (c) of Section 830.2, subdivision (a) of Section 830.33, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties, and any of the following facts has been charged and found true:

(1) The defendant specifically intended to kill the peace officer.
(2) The defendant specifically intended to inflict great bodily injury, as defined in Section 12022.7, on a peace officer.
(3) The defendant personally used a dangerous or deadly weapon in the commission of the offense, in violation of subdivision (b) of Section 12022.
(4) The defendant personally used a firearm in the commission of the offense, in violation of Section 12022.5.

(d) Every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 20 years to life if the killing was perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury.

(e) Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to reduce any minimum term of a sentence imposed pursuant to this section. A person sentenced pursuant to this section shall not be released on parole prior to serving the minimum term of confinement prescribed by this section.

(f) Every person found guilty of murder and sentenced or resentenced to a term of life imprisonment without the possibility of parole pursuant to this section shall be required to work within a high-security prison as many hours of faithful labor in each day and every day during his or her term of imprisonment as shall be prescribed by the rules and regulations of the Department of Corrections and Rehabilitation, pursuant to Section 2700. In any case where the

prisoner owes a restitution fine or restitution order, the Secretary of the Department of Corrections and Rehabilitation shall deduct money from the wages and trust account deposits of the prisoner and shall transfer those funds to the California Victim Compensation and Government Claims Board according to the rules and regulations of the Department of Corrections and Rehabilitation, pursuant to Sections 2085.5 and 2717.8.

SEC. 5. Section 190.1 of the Penal Code is repealed.

~~190.1. A case in which the death penalty may be imposed pursuant to this chapter shall be tried in separate phases as follows:~~

~~(a) The question of the defendant's guilt shall be first determined. If the trier of fact finds the defendant guilty of first degree murder, it shall at the same time determine the truth of all special circumstances charged as enumerated in Section 190.2 except for a special circumstance charged pursuant to paragraph (2) of subdivision (a) of Section 190.2 where it is alleged that the defendant had been convicted in a prior proceeding of the offense of murder in the first or second degree.~~

~~(b) If the defendant is found guilty of first degree murder and one of the special circumstances is charged pursuant to paragraph (2) of subdivision (a) of Section 190.2 which charges that the defendant had been convicted in a prior proceeding of the offense of murder of the first or second degree, there shall thereupon be further proceedings on the question of the truth of such special circumstance.~~

~~(c) If the defendant is found guilty of first degree murder and one or more special circumstances as enumerated in Section 190.2 has been charged and found to be true, his sanity on any plea of not guilty by reason of insanity under Section 1026 shall be determined as provided in Section 190.4. If he is found to be sane, there shall thereupon be further proceedings on the question of the penalty to be imposed. Such proceedings shall be conducted in accordance with the provisions of Section 190.3 and 190.4.~~

SEC. 6. Section 190.2 of the Penal Code is amended to read:

190.2. (a) The penalty for a defendant who is found guilty of murder in the first degree is ~~death or~~ imprisonment in the state prison for life without the possibility of parole if one or more of the following special circumstances has been found under Section 190.4 to be true:

(1) The murder was intentional and carried out for financial gain.

(2) The defendant was convicted previously of murder in the first or second degree. For the purpose of this paragraph, an offense committed in another jurisdiction, which if committed in California would be punishable as first or second degree murder, shall be deemed murder in the first or second degree.

(3) The defendant, in this proceeding, has been convicted of more than one offense of murder in the first or second degree.

(4) The murder was committed by means of a destructive device, bomb, or explosive planted, hidden, or concealed in any place, area, dwelling, building, or structure, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to one or more human beings.

(5) The murder was committed for the purpose of avoiding or preventing a lawful arrest, or perfecting or attempting to perfect, an escape from lawful custody.

(6) The murder was committed by means of a destructive device, bomb, or explosive that the defendant mailed or delivered, attempted to mail or deliver, or caused to be mailed or delivered, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to one or more human beings.

(7) The victim was a peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties; or the victim was a peace officer, as defined in the above-enumerated sections, or a former peace officer under any of those sections, and was intentionally killed in retaliation for the performance of his or her official duties.

(8) The victim was a federal law enforcement officer or agent who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a federal law enforcement officer or agent engaged in the performance of his or her duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of his or her official duties.

(9) The victim was a firefighter, as defined in Section 245.1, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a firefighter engaged in the performance of his or her duties.

(10) The victim was a witness to a crime who was intentionally killed for the purpose of preventing his or her testimony in any criminal or juvenile proceeding, and the killing was not committed during the commission or attempted commission, of the crime to which he or she was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his or her testimony in any criminal or juvenile proceeding. As used in this paragraph, "juvenile proceeding" means a proceeding brought pursuant to Section 602 or 707 of the Welfare and Institutions Code.

(11) The victim was a prosecutor or assistant prosecutor or a former prosecutor or assistant prosecutor of any local or state prosecutor's office in this or any other state, or of a federal prosecutor's office, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(12) The victim was a judge or former judge of any court of record in the local, state, or federal system in this or any other state, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(13) The victim was an elected or appointed official or former official of the federal government, or of any local or state government of this or any other state, and the killing was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity. As used in this section, the phrase "especially heinous, atrocious, or cruel, manifesting exceptional depravity" means a conscienceless or pitiless crime that is unnecessarily torturous to the victim.

(15) The defendant intentionally killed the victim by means of lying in wait.

(16) The victim was intentionally killed because of his or her race, color, religion, nationality, or country of origin.

(17) The murder was committed while the defendant was engaged in, or was an accomplice in, the commission of, attempted commission of, or the immediate flight after committing, or attempting to commit, the following felonies:

(A) Robbery in violation of Section 211 or 212.5.
(B) Kidnapping in violation of Section 207, 209, or 209.5.
(C) Rape in violation of Section 261.
(D) Sodomy in violation of Section 286.
(E) The performance of a lewd or lascivious act upon the person of a child under the age of 14 years in violation of Section 288.
(F) Oral copulation in violation of Section 288a.
(G) Burglary in the first or second degree in violation of Section 460.
(H) Arson in violation of subdivision (b) of Section 451.
(I) Train wrecking in violation of Section 219.
(J) Mayhem in violation of Section 203.
(K) Rape by instrument in violation of Section 289.
(L) Carjacking, as defined in Section 215.

(M) To prove the special circumstances of kidnapping in subparagraph (B), or arson in subparagraph (H), if there is specific intent to kill, it is only required that there be proof of the elements of those felonies. If so established, those two special circumstances are proven even if the felony of kidnapping or arson is committed primarily or solely for the purpose of facilitating the murder.

(18) The murder was intentional and involved the infliction of torture.

(19) The defendant intentionally killed the victim by the administration of poison.

(20) The victim was a juror in any court of record in the local, state, or federal system in this or any other state, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(21) The murder was intentional and perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person or persons outside the vehicle with the intent to inflict death. For purposes of this paragraph, "motor vehicle" means any vehicle as defined in Section 415 of the Vehicle Code.

(22) The defendant intentionally killed the victim while the defendant was an active participant in a criminal street gang, as defined in subdivision (f) of Section 186.22, and the murder was carried out to further the activities of the criminal street gang.

(b) Unless an intent to kill is specially required under subdivision (a) for a special circumstance enumerated therein, an actual killer, as to whom the special circumstance has been found to be true under Section 190.4, need not have had any intent to kill at the time of the commission of the offense which is the basis of the special circumstance in order to suffer ~~death or~~ confinement in the state prison for life without the possibility of parole.

(c) Every person, not the actual killer, who, with the intent to kill, aids, abets, counsels, commands, induces, solicits, requests, or assists any actor in the commission of murder in the first degree shall be punished by ~~death or~~ imprisonment in the state prison for life without the possibility of parole if one or more of the special circumstances enumerated in subdivision (a) has been found to be true under Section 190.4.

(d) Notwithstanding subdivision (c), every person, not the actual killer, who, with reckless indifference to human life and as a major participant, aids, abets, counsels, commands, induces, solicits, requests, or assists in the commission of a felony enumerated in paragraph (17) of subdivision (a) which results in the death of some person or persons, and who is found guilty of murder in the first degree therefor, shall be punished by ~~death or~~ imprisonment in the state prison for life without the possibility of parole if a special circumstance enumerated in paragraph (17) of subdivision (a) has been found to be true under Section 190.4.

The penalty shall be determined as provided in this section and Sections ~~190.1, 190.3~~, 190.4~~,~~ and 190.5.

SEC. 7. Section 190.3 of the Penal Code is repealed.

~~190.3. If the defendant has been found guilty of murder in the first degree, and a special circumstance has been charged and found to be true, or if the defendant may be subject to the death penalty after having been found guilty of violating subdivision (a) of Section 1672 of the Military and Veterans Code or Sections 37, 128, 219, or 4500 of this code, the trier of fact shall determine whether the penalty shall be death or confinement in state prison for a term of life without the possibility of parole. In the proceedings on the question of penalty, evidence may be presented by both the people and the defendant as to any matter relevant to aggravation,~~

~~mitigation, and sentence including, but not limited to, the nature and circumstances of the present offense, any prior felony conviction or convictions whether or not such conviction or convictions involved a crime of violence, the presence or absence of other criminal activity by the defendant which involved the use or attempted use of force or violence or which involved the express or implied threat to use force or violence, and the defendant's character, background, history, mental condition and physical condition.~~

~~However, no evidence shall be admitted regarding other criminal activity by the defendant which did not involve the use or attempted use of force or violence or which did not involve the express or implied threat to use force or violence. As used in this section, criminal activity does not require a conviction.~~

~~However, in no event shall evidence of prior criminal activity be admitted for an offense for which the defendant was prosecuted and acquitted. The restriction on the use of this evidence is intended to apply only to proceedings pursuant to this section and is not intended to affect statutory or decisional law allowing such evidence to be used in any other proceedings.~~

~~Except for evidence in proof of the offense or special circumstances which subject a defendant to the death penalty, no evidence may be presented by the prosecution in aggravation unless notice of the evidence to be introduced has been given to the defendant within a reasonable period of time as determined by the court, prior to trial. Evidence may be introduced without such notice in rebuttal to evidence introduced by the defendant in mitigation.~~
~~The trier of fact shall be instructed that a sentence of confinement to state prison for a term of life without the possibility of parole may in future after sentence is imposed, be commuted or modified to a sentence that includes the possibility of parole by the Governor of the State of California.~~

~~In determining the penalty, the trier of fact shall take into account any of the following factors if relevant:~~
~~(a) The circumstances of the crime of which the defendant was convicted in the present proceeding and the existence of any special circumstances found to be true pursuant to Section 190.1.~~
~~(b) The presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or the express or implied threat to use force or violence.~~
~~(c) The presence or absence of any prior felony conviction.~~
~~(d) Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.~~
~~(e) Whether or not the victim was a participant in the defendant's homicidal conduct or consented to the homicidal act.~~
~~(f) Whether or not the offense was committed under circumstances which the defendant reasonably believed to be a moral justification or extenuation for his conduct.~~
~~(g) Whether or not defendant acted under extreme duress or under the substantial domination of another person.~~
~~(h) Whether or not at the time of the offense the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect, or the affects of intoxication.~~

~~(i) The age of the defendant at the time of the crime.~~
~~(j) Whether or not the defendant was an accomplice to the offense and his participation in the commission of the offense was relatively minor.~~
~~(k) Any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime.~~
~~After having heard and received all of the evidence, and after having heard and considered the arguments of counsel, the trier of fact shall consider, take into account and be guided by the aggravating and mitigating circumstances referred to in this section, and shall impose a sentence of death if the trier of fact concludes that the aggravating circumstances outweigh the mitigating circumstances. If the trier of fact determines that the mitigating circumstances outweigh the aggravating circumstances the trier of fact shall impose a sentence of confinement in state prison for a term of life without the possibility of parole.~~

SEC. 8. Section 190.4 of the Penal Code is amended to read:

190.4. (a) Whenever special circumstances as enumerated in Section 190.2 are alleged and the trier of fact finds the defendant guilty of first degree murder, the trier of fact shall also make a special finding on the truth of each alleged special circumstance. The determination of the truth of any or all of the special circumstances shall be made by the trier of fact on the evidence presented at the trial ~~or at the hearing held pursuant to Subdivision (b) of Section 190.1.~~
In case of a reasonable doubt as to whether a special circumstance is true, the defendant is entitled to a finding that is not true. The trier of fact shall make a special finding that each special circumstance charged is either true or not true. Whenever a special circumstance requires proof of the commission or attempted commission of a crime, such crime shall be charged and proved pursuant to the general law applying to the trial and conviction of the crime.
If the defendant was convicted by the court sitting without a jury, the trier of fact shall be a jury unless a jury is waived by the defendant and by the people, in which case the trier of fact shall be the court. If the defendant was convicted by a plea of guilty, the trier of fact shall be a jury unless a jury is waived by the defendant and by the people.

If the trier of fact finds that any one or more of the special circumstances enumerated in Section 190.2 as charged is true, ~~there shall be a separate penalty hearing~~ ***the defendant shall be punished by imprisonment in state prison for life without the possibility of parole.*** ~~and neither the finding that any of the remaining special circumstances charged is not true, nor if the trier of fact is a jury, the inability of the jury to agree on the issue of the truth or untruth of any of the remaining special circumstances charged, shall prevent the holding of a separate penalty hearing. In any case in which the defendant has been found guilty by a jury, and the jury has been unable to reach an unanimous verdict that one or more of the special circumstances charged are true, and does not reach a unanimous verdict that all the special circumstances charged are not true, the court shall dismiss the jury and shall order a new jury impaneled to try the issues, but the issue of guilt shall not be tried by such jury, nor shall such jury retry the issue of the truth of any of the special circumstances which were found by an unanimous verdict of the previous jury to be untrue. If such new jury is unable to reach the unanimous verdict that one or more of the special circumstances it is trying are true, the court shall dismiss the jury and in the court's discretion shall either order a new jury impaneled to try the issues the previous jury was unable to reach the unanimous verdict on, or impose a punishment of confinement in state prison for a~~

~~term of 25 years.~~

~~(b) If defendant was convicted by the court sitting without a jury the trier of fact at the penalty hearing shall be a jury unless a jury is waived by the defendant and the people, in which case the trier of fact shall be the court. If the defendant was convicted by a plea of guilty, the trier of fact shall be a jury unless a jury is waived by the defendant and the people.~~
~~If the trier of fact is a jury and has been unable to reach a unanimous verdict as to what the penalty shall be, the court shall dismiss the jury and shall order a new jury impaneled to try the issue as to what the penalty shall be. If such new jury is unable to reach a unanimous verdict as to what the penalty shall be, the court in its discretion shall either order a new jury or impose a punishment of confinement in state prison for a term of life without the possibility of parole.~~

~~(c)~~ ***(b)*** If the trier of fact which convicted the defendant of a crime for which he may be subject to ***imprisonment in state prison for life without the possibility of parole*** ~~the death penalty~~ was a jury, the same jury shall consider any plea of not guilty by reason of insanity pursuant to Section 1026, ***and*** the truth of any special circumstances which may be alleged~~, and the penalty to be applied~~, unless for good cause shown the court discharges that jury in which case a new jury shall be drawn. The court shall state facts in support of the finding of good cause upon the record and cause them to be entered into the minutes.

~~(d) In any case in which the defendant may be subject to the death penalty, evidence presented at any prior phase of the trial, including any proceeding under a plea of not guilty by reason of insanity pursuant to Section 1026 shall be considered an any subsequent phase of the trial, if the trier of fact of the prior phase is the same trier of fact at the subsequent phase.~~
~~(e) In every case in which the trier of fact has returned a verdict or finding imposing the death penalty, the defendant shall be deemed to have made an application for modification of such verdict or finding pursuant to Subdivision 7 of Section 11. In ruling on the application, the judge shall review the evidence, consider, take into account, and be guided by the aggravating and mitigating circumstances referred to in Section 190.3, and shall make a determination as to whether the jury's findings and verdicts that the aggravating circumstances outweigh the mitigating circumstances are contrary to law or the evidence presented. The judge shall state on the record the reasons for his findings.~~

~~The judge shall set forth the reasons for his ruling on the application and direct that they be entered on the Clerk's minutes. The denial of the modification of the death penalty verdict pursuant to subdivision (7) of Section 1181 shall be reviewed on the defendant's automatic appeal pursuant to subdivision (b) of Section 1239. The granting of the application shall be reviewed on the People's appeal pursuant to paragraph (6).~~

SEC. 9. Section 2085.5 of the Penal Code is amended to read:

2085.5. (a) *(1)* In any case in which a prisoner owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4, the Secretary of the Department of Corrections and Rehabilitation shall deduct a minimum of 20 percent or the balance owing on the fine amount,

whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(2) In any case in which a prisoner sentenced or resentenced on or after the effective date of this act to a term of life imprisonment without the possibility of parole owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4, the Secretary of the Department of Corrections and Rehabilitation shall deduct a minimum of 20 percent or the balance owing on the fine amount, whichever is less, up to a maximum of 60 percent from the wages and up to a maximum of 50 percent from the trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(b) (1) When a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, in any case in which a prisoner owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4, the agency designated by the board of supervisors in the county where the prisoner is incarcerated is authorized to deduct a minimum of 20 percent or the balance owing on the fine amount, whichever is less, up to a maximum of 50 percent from the county jail equivalent of wages and trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(2) If the board of supervisors designates the county sheriff as the collecting agency, the board of supervisors shall first obtain the concurrence of the county sheriff.

(c) *(1)* In any case in which a prisoner owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (f) of Section 1202.4, the Secretary of the Department of Corrections and Rehabilitation shall deduct a minimum of 20 percent or the balance owing on the order amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law. The secretary shall transfer that amount to the California Victim Compensation and Government Claims Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program. The sentencing court shall be provided a record of the payments made to victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.

(2) In any case in which a prisoner sentenced or resentenced on or after the effective date of this act to a term of life imprisonment without the possibility of parole owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (f) of Section 1202.4, the Secretary of the Department of Corrections and Rehabilitation shall deduct a minimum of 20 percent or the balance owing on the order amount, whichever is less, up to a maximum of 60 percent from the wages and up to a maximum of 50 percent from the trust account deposits of a prisoner, unless prohibited by federal law. The secretary shall transfer that amount to the California Victim Compensation and Government Claims Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program. The sentencing court shall be provided a record of the payments made to victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.

(d) When a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, in any case in which a prisoner owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4, the agency designated by the board of supervisors in the county where the prisoner is incarcerated is authorized to deduct a minimum of 20 percent or the balance owing on the order amount, whichever is less, up to a maximum of 50 percent from the county jail equivalent of wages and trust account deposits of a prisoner, unless prohibited by federal law. The agency shall transfer that amount to the California Victim Compensation and Government Claims Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program, or may pay the victim directly. The sentencing court shall be provided a record of the payments made to the victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.

(e) The secretary shall deduct and retain from the wages and trust account deposits of a prisoner, unless prohibited by federal law, an administrative fee that totals 10 percent of any amount transferred to the California Victim Compensation and Government Claims Board pursuant to subdivision (a) or (c). The secretary shall deduct and retain from any prisoner settlement or trial award, an administrative fee that totals 5 percent of any amount paid from the settlement or award to satisfy an outstanding restitution order or fine pursuant to subdivision (n), unless prohibited by federal law. The secretary shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the Department of Corrections and Rehabilitation. The secretary, at his or her discretion, may retain any excess funds in the special deposit account for future reimbursement of the department's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(f) When a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated is authorized to deduct and retain from the county jail equivalent of wages and trust account deposits of a prisoner, unless prohibited by federal law, an

administrative fee that totals 10 percent of any amount transferred to the California Victim Compensation and Government Claims Board pursuant to subdivision (b) or (d). The agency is authorized to deduct and retain from a prisoner settlement or trial award, an administrative fee that totals 5 percent of any amount paid from the settlement or award to satisfy an outstanding restitution order or fine pursuant to subdivision (n), unless prohibited by federal law. Upon release from custody pursuant to subdivision (h) of Section 1170, the agency is authorized to charge a fee to cover the actual administrative cost of collection, not to exceed 10 percent of the total amount collected. The agency shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the agency. The agency is authorized to retain any excess funds in the special deposit account for future reimbursement of the agency's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.
(g) In any case in which a parolee owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4, the secretary, or, when a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated, may collect from the parolee or, pursuant to Section 2085.6, from a person previously imprisoned in county jail any moneys owing on the restitution fine amount, unless prohibited by federal law. The secretary or the agency shall transfer that amount to the California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(h) In any case in which a parolee owes a direct order of restitution, imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or paragraph (3) of subdivision (a) of Section 1202.4, the secretary, or, when a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated or a local collection program, may collect from the parolee or, pursuant to Section 2085.6, from a person previously imprisoned in county jail any moneys owing, unless prohibited by federal law. The secretary or the agency shall transfer that amount to the California Victim Compensation and Government Claims Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program, or the agency may pay the victim directly. The sentencing court shall be provided a record of the payments made by the offender pursuant to this subdivision.

(i) The secretary, or, when a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated, may deduct and retain from moneys collected from parolees or persons previously imprisoned in county jail an administrative fee that totals 10 percent of any amount transferred to the California Victim Compensation and Government Claims Board pursuant to subdivision (g) or (h), unless prohibited by federal law. The secretary shall deduct and retain from any settlement or trial award of a parolee an administrative fee that totals 5 percent of an amount paid from the settlement or award to satisfy an outstanding restitution

order or fine pursuant to subdivision (n), unless prohibited by federal law. The agency is authorized to deduct and retain from any settlement or trial award of a person previously imprisoned in county jail an administrative fee that totals 5 percent of any amount paid from the settlement or award to satisfy an outstanding restitution order or fine pursuant to subdivision (n). The secretary or the agency shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the Department of Corrections and Rehabilitation or the agency, as applicable. The secretary, at his or her discretion, or the agency may retain any excess funds in the special deposit account for future reimbursement of the department's or agency's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(j) When a prisoner has both a restitution fine and a restitution order from the sentencing court, the Department of Corrections and Rehabilitation shall collect the restitution order first pursuant to subdivision (c).

(k) When a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 and that prisoner has both a restitution fine and a restitution order from the sentencing court, if the agency designated by the board of supervisors in the county where the prisoner is incarcerated collects the fine and order, the agency shall collect the restitution order first pursuant to subdivision (d).

(l) When a parolee has both a restitution fine and a restitution order from the sentencing court, the Department of Corrections and Rehabilitation, or, when the prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated, may collect the restitution order first, pursuant to subdivision (h).

(m) If an inmate is housed at an institution that requires food to be purchased from the institution canteen for unsupervised overnight visits, and if the money for the purchase of this food is received from funds other than the inmate's wages, that money shall be exempt from restitution deductions. This exemption shall apply to the actual amount spent on food for the visit up to a maximum of fifty dollars ($50) for visits that include the inmate and one visitor, seventy dollars ($70) for visits that include the inmate and two or three visitors, and eighty dollars ($80) for visits that include the inmate and four or more visitors.

(n) Compensatory or punitive damages awarded by trial or settlement to any inmate, parolee, person placed on postrelease community supervision pursuant to Section 3451, or defendant on mandatory supervision imposed pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170, in connection with a civil action brought against a federal, state, or local jail, prison, or correctional facility, or any official or agent thereof, shall be paid directly, after payment of reasonable attorney's fees and litigation costs approved by the court, to satisfy any outstanding restitution orders or restitution fines against that person. The balance of the award shall be forwarded to the payee after full payment of all outstanding restitution orders and restitution fines, subject to subdivisions (e) and (i). The Department of Corrections and Rehabilitation shall make all reasonable efforts to notify the victims of the crime for which that

person was convicted concerning the pending payment of any compensatory or punitive damages. For any prisoner punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency is authorized to make all reasonable efforts to notify the victims of the crime for which that person was convicted concerning the pending payment of any compensatory or punitive damages.

(o) (1) Amounts transferred to the California Victim Compensation and Government Claims Board for payment of direct orders of restitution shall be paid to the victim within 60 days from the date the restitution revenues are received by the California Victim Compensation and Government Claims Board. If the restitution payment to a victim is less than fifty dollars ($50), then payment need not be forwarded to that victim until the payment reaches fifty dollars ($50) or until 180 days from the date the first payment is received, whichever occurs sooner. (2) If a victim cannot be located, the restitution revenues received by the California Victim Compensation and Government Claims Board on behalf of the victim shall be held in trust in the Restitution Fund until the end of the state fiscal year subsequent to the state fiscal year in which the funds were deposited or until the time that the victim has provided current address information, whichever occurs sooner. Amounts remaining in trust at the end of the specified period of time shall revert to the Restitution Fund.

(3) (A) A victim failing to provide a current address within the period of time specified in paragraph (2) may provide documentation to the Department of Corrections and Rehabilitation, which shall verify that moneys were collected on behalf of the victim. Upon receipt of that verified information from the Department of Corrections and Rehabilitation, the California Victim Compensation and Government Claims Board shall transmit the restitution revenues to the victim in accordance with the provisions of subdivision (c) or (h).

(B) A victim failing to provide a current address within the period of time specified in paragraph (2) may provide documentation to the agency designated by the board of supervisors in the county where the prisoner punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 is incarcerated, which may verify that moneys were collected on behalf of the victim. Upon receipt of that verified information from the agency, the California Victim Compensation and Government Claims Board shall transmit the restitution revenues to the victim in accordance with the provisions of subdivision (d) or (h).

SEC. 10. Retroactive Application of Act

(a) In order to best achieve the purpose of this act as stated in Section 3 and to achieve fairness, equality and uniformity in sentencing, this act shall be applied retroactively.

(b) In any case where a defendant or inmate was sentenced to death prior to the effective date of this act, the sentence shall automatically be converted to imprisonment in the state prison for life without the possibility of parole under the terms and conditions of this act. The State of California shall not carry out any execution following the effective date of this act.

(c) Following the effective date of this act, the Supreme Court may transfer all death penalty appeals and habeas petitions pending before the Supreme Court to any district of the Court of

Appeal or superior court, in the Supreme Court's discretion.

SEC. 11. Effective Date

This act shall become effective on the day following the election pursuant to subdivision (a) of Section 10 of Article II of the California Constitution.

SEC. 12. Severability

The provisions of this act are severable. If any provision of this act or its application is held invalid, including but not limited to Section 10, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 66

Prop. 66 is a poorly-written and COSTLY EXPERIMENT that would INCREASE CALIFORNIA'S RISK OF EXECUTING AN INNOCENT PERSON, add new layers of government bureaucracy and create even more legal delays in death penalty cases.

**Read the measure for yourself: According to the state's nonpartisan Legislative Analyst's Office, this measure could cost taxpayers TENS of MILLIONS of DOLLARS.

Prop. 66 is not real reform. Here's what EXPERTS SAY Prop. 66 WOULD ACTUALLY DO:

- INCREASE the chance that California executes an innocent person
- INCREASE TAXPAYER FUNDED legal defense for death row inmates
- REQUIRE the state to hire and pay for hundreds of new lawyers
- LEAD TO CONSTRUCTION of new TAXPAYER FUNDED DEATH ROW facilities
- CLOG county courts, forcing death penalty cases on inexperienced judges
- Lead to EXPENSIVE LITIGATION by lawyers who will challenge a series of confusing provisions

Prop. 66 is a perfect example of SPECIAL INTEREST GROUPS abusing their power and pushing an agenda while claiming to seek reform. Look who's behind Prop. 66: the prison guards' union which has an interest in funneling more money into the prison system and opportunistic politicians using the initiative to advance their careers.

Experts agree: Prop. 66 is a POORLY WRITTEN, CONFUSING initiative that will only add MORE DELAY and MORE COSTS to California's death penalty.

Remember, MORE THAN 150 INNOCENT PEOPLE HAVE BEEN SENTENCED TO DEATH, and some have been executed because of poorly written laws like this.

Californians deserve real reform. Prop. 66 is not the answer. ***www.NOonCAProp66.org***

GIL GARCETTI, District Attorney

Los Angeles County, 1992–2000

JUDGE LADORIS CORDELL, (Retired)

Santa Clara County Superior Court

HELEN HUTCHISON, President

League of Women Voters of California

PROP 66 DEATH PENALTY. PROCEDURES. INITIATIVE STATUTE.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Death Sentences

First degree murder is generally defined as the unlawful killing of a human being that (1) is deliberate and premeditated or (2) takes place while certain other crimes are committed, such as kidnapping. It is punishable by a life sentence in state prison with the possibility of being released by the state parole board after a minimum of 25 years. However, current state law makes first degree murder punishable by death or life imprisonment without the possibility of parole when "special circumstances" of the crime have been charged and proven in court. Existing state law identifies a number of special circumstances that can be charged, such as in cases when the murder was carried out for financial gain or when more than one murder was committed. In addition to first degree murder, state law also specifies a few other crimes, such as treason against the state of California, that can also be punished by death. Since the current death penalty law was enacted in California in 1978, 930 individuals have received a death sentence. In recent years, an average of about 20 individuals annually have received death sentences.

Legal Challenges to Death Sentences

Two Ways to Challenge Death Sentences. Following a death sentence, defendants can challenge the sentence in two ways:

- **Direct Appeals.** Under current state law, death penalty verdicts are automatically appealed to the California Supreme Court. In these "direct appeals," the defendants' attorneys argue that violations of state law or federal constitutional law took place during the trial, such as evidence improperly being included or excluded from the trial. These direct appeals focus on the records of the court proceedings that resulted in the defendant receiving a death sentence. If the California Supreme Court confirms the conviction and death sentence, the defendant can ask the U.S. Supreme Court to review the decision.
- **Habeas Corpus Petitions.** In addition to direct appeals, death penalty cases ordinarily involve extensive legal challenges—first in the California Supreme Court and then in federal courts. These challenges, which are commonly referred to as "habeas corpus" petitions, involve factors of the case that are different from those considered in direct appeals. Examples of such factors include claims that (1) the defendant's attorney was ineffective or (2) if the jury had been aware of additional information (such as biological, psychological, or social factors faced by the defendant), it would not have sentenced the defendant to death.

Attorneys Appointed to Represent Condemned Inmates in Legal Challenges. The California Supreme Court appoints attorneys to represent individuals who have been sentenced to death but cannot afford legal representation. These attorneys must meet qualifications established by the Judicial Council (the governing and policymaking body of the judicial branch). Some of these attorneys are employed by state agencies—specifically, the Office of the State Public Defender or the Habeas Corpus Resource Center. The remainder are private attorneys who are paid by the California Supreme Court. Different attorneys generally are appointed to represent individuals in direct appeals and habeas corpus petitions.

State Incurs Legal Challenge Costs. The state pays for the California Supreme Court to hear these legal challenges and for attorneys to represent condemned inmates. The state also pays for the attorneys employed by the state Department of Justice who seek to uphold death sentences while cases are being challenged in the courts. In total, the state currently spends about $55 million annually on the legal challenges to death sentences.

Legal Challenges Can Take a Couple of Decades. Of the 930 individuals who have received a death sentence since 1978, 15 have been executed, 103 have died prior to being executed, 64 have had their sentences reduced by the courts, and 748 are in state prison with death sentences. The vast majority of the 748 condemned inmates are at various stages of the direct appeal or habeas corpus petition process. These legal challenges—measured from when the individual receives a death sentence to when the individual has completed all state and federal legal challenge proceedings—can take a couple of decades to complete in California due to various factors. For example, condemned inmates can spend significant amounts of time waiting for the California Supreme Court to appoint attorneys to represent them. As of April 2016, 49 individuals were waiting for attorneys to be appointed for their direct appeals and 360 individuals were waiting for attorneys

to be appointed for their habeas corpus petitions. In addition, condemned inmates can spend a significant amount of time waiting for their cases to be heard by the courts. As of April 2016, an estimated 337 direct appeals and 263 state habeas corpus petitions were pending in the California Supreme Court.

Implementation of the Death Penalty

Housing of Condemned Inmates. Condemned male inmates generally are required to be housed at San Quentin State Prison (on death row), while condemned female inmates are housed at the Central California Women's Facility in Chowchilla. The state currently has various security regulations and procedures that result in increased security costs for these inmates. For example, inmates under a death sentence generally are handcuffed and escorted at all times by one or two officers while outside their cells. In addition, unlike most inmates, condemned inmates are currently required to be placed in separate cells.

Executions Currently Halted by Courts. The state uses lethal injection to execute condemned inmates. However, because of different legal issues surrounding the state's lethal injection procedures, executions have not taken place since 2006. For example, the courts ruled that the state did not follow the administrative procedures specified in the Administrative Procedures Act when it revised its execution regulations in 2010. These procedures require state agencies to engage in certain activities to provide the public with a meaningful opportunity to participate in the process of writing state regulations. Draft lethal injection regulations have been developed and are currently undergoing public review.

PROPOSAL

This measure seeks to shorten the time that the legal challenges to death sentences take. Specifically, it (1) requires that habeas corpus petitions first be heard in the trial courts, (2) places time limits on legal challenges to death sentences, (3) changes the process for appointing attorneys to represent condemned inmates, and (4) makes various other changes. (There is another measure on this ballot—Proposition 62—that also relates to the death penalty. Proposition 62 would eliminate the death penalty for first degree murder.)

Requires Habeas Corpus Petitions First Be Heard in Trial Courts

The measure requires that habeas corpus petitions first be heard in trial courts instead of the California Supreme Court. (Direct appeals would continue to be heard in the California Supreme Court.) Specifically, these habeas corpus petitions would be heard by the judge who handled the original murder trial unless good cause is shown for another judge or court to hear the petition. The measure requires trial courts to explain in writing their decision on each petition, which could be appealed to the Courts of Appeal. The decisions made by the Courts of Appeal could then be appealed to the California Supreme Court. The measure allows the California Supreme Court to transfer any habeas corpus petitions currently pending before it to the trial courts.

Places Time Limits on Legal Challenges to Death Sentences

Requires Completion of Direct Appeal and Habeas Corpus Petition Process Within Five Years. The measure requires that the direct appeal and the habeas corpus petition process be completed within five years of the death sentence. The measure also requires the Judicial Council to revise its rules to help ensure that direct appeals and habeas corpus petitions are completed within this time frame. The five-year requirement would apply to new legal challenges, as well as those currently pending in court. For challenges currently pending, the measure requires that they be completed within five years from when Judicial Council adopts revised rules. If the process takes more than five years, victims or their attorneys could request a court order to address the delay.

Requires Filing of Habeas Corpus Petitions Within One Year of Attorney Appointment. The measure requires that attorneys appointed to represent condemned inmates in habeas corpus petitions file the petition with the trial courts within one year of their appointment. The trial court generally would then have one year to make a decision on the petition. If a petition is not filed within this time period, the trial court must dismiss the petition unless it determines that the defendant is likely either innocent or not eligible for the death sentence.

Places Other Limitations. In order to help meet the above time frames, the measure places other limits on legal challenges to death sentences. For example, the measure does not allow additional habeas corpus petitions to be filed after the first petition is filed, except in those cases where the court finds that the defendant is likely either innocent or not eligible for the death sentence.

Changes Process for Appointing Attorneys

The measure requires the Judicial Council and the California Supreme Court to consider changing the qualifications that attorneys representing condemned inmates must meet. According to the measure, these qualifications should (1) ensure competent representation and (2) expand the number of attorneys that can represent condemned inmates so that legal challenges to death sentences are heard in a timely manner. The measure also requires trial courts—rather than the California Supreme Court—to appoint attorneys for habeas corpus petitions.

In addition, the measure changes how attorneys are appointed for direct appeals under certain circumstances. Currently, the California Supreme Court appoints attorneys from a list of qualified attorneys it maintains. Under the measure, certain attorneys could also be appointed from the lists of attorneys maintained by the Courts of Appeal for non-death penalty cases. Specifically, those attorneys who (1) are qualified for appointment to the most serious non-death penalty appeals and (2) meet the qualifications adopted by the Judicial Council for appointment to death penalty cases would be required to accept appointment to direct appeals if they want to remain on the Courts of Appeal's appointment lists.

Makes Other Changes

Habeas Corpus Resources Center Operations. The measure eliminates the Habeas Corpus Resources Center's five-member board of directors and requires the California Supreme Court to oversee the center. The measure also requires that the center's attorneys be paid at the same level as attorneys at the Office of the State Public Defender, as well as limits its legal activities.

Inmate Work and Payments to Victims of Crime Requirements. Current state law generally requires that inmates work while they are in prison. State prison regulations allow for some exceptions to these requirements, such as for inmates who pose too great a security risk to participate in work programs. In addition, inmates may be required by the courts to make payments to victims of crime. Up to 50 percent of any money inmates receive is used to pay these debts. This measure specifies that every person under a sentence of death must work while in state prison, subject to state regulations. Because the measure does not change state regulations, existing prison practices related to inmate work requirements would not necessarily be changed. In addition, the measure requires that 70 percent of any money condemned inmates receive be used to pay any debts owed to victims.

Enforcement of Death Sentence. The measure allows the state to house condemned inmates in any prison. The measure also exempts the state's execution procedures from the Administrative Procedures Act. In addition, the measure makes various changes regarding the method of execution used by the state. For example, legal challenges to the method could only be heard in the court that imposed the death sentence. In addition, if such challenges were successful, the measure requires the trial court to order a valid method of execution. In cases where federal court orders prevent the state from using a given method of execution, the state prisons would be required to develop a method of execution that meets federal requirements within 90 days. Finally, the measure exempts various health care professionals that assist with executions from certain state laws and disciplinary actions by licensing agencies, if those actions are imposed as a result of assisting with executions.

FISCAL EFFECTS

State Court Costs

Impact on Cost Per Legal Challenge Uncertain. The fiscal impact of the measure on state court-related costs of each legal challenge to a death sentence is uncertain. This is because the actual cost could vary significantly depending on four key factors: (1) the complexity of the legal challenges filed, (2) how state courts address existing and new legal challenges, (3) the availability of attorneys to represent condemned inmates, and (4) whether additional attorneys will be needed to process each legal challenge.

On the one hand, the measure could reduce the cost of each legal challenge. For example, the requirement that each challenge generally be completed in five years, as well as the limits on the number of habeas corpus petitions that can be filed, could result in the filing of fewer, shorter legal documents. Such a change could result in each legal challenge taking less time and state resources to process.

On the other hand, some of the measure's provisions could increase state costs for each legal challenge. For example, the additional layers of review required for a habeas corpus petition could result in additional time and resources for the courts to process each legal challenge. In addition, there could be additional attorney costs if the state determines that a new attorney must be appointed when a habeas corpus petition ruling by the trial courts is appealed to the Courts of Appeal.

In view of the above, the ongoing annual fiscal impact of the measure on state costs related to legal challenges to death sentences is unknown.

Near-Term Annual Cost Increases From Accelerated Spending on Existing Cases. Regardless of how the measure affects the cost of each legal challenge, the measure would accelerate the amount the state spends on legal challenges to death sentences. This is because the state would incur annual cost increases in the near term to process hundreds of pending legal challenges within the time limits specified in the measure. The state would save similar amounts in future years as some or all of these costs would have otherwise occurred over a much longer term absent this measure. Given the significant number of pending cases that would need to be addressed, the actual amount and duration of these accelerated costs in the near term is unknown. It is possible, however, that such costs could be in the tens of millions of dollars annually for many years.

State Prisons

To the extent that the state changes the way it houses condemned inmates, the measure could result in state prison savings. For example, if male inmates were transferred to other prisons instead of being housed in single cells at San Quentin, it could reduce the cost of housing and supervising these inmates. In addition, to the extent the measure resulted in additional executions that reduced the number of condemned inmates, the state would also experience additional savings. In total, such savings could potentially reach the tens of millions of dollars annually.

Other Fiscal Effects

To the extent that the changes in this measure have an effect on the incidence of murder in California or how often prosecutors seek the death penalty in murder trials, the measure could affect state and local government expenditures. The resulting fiscal impact, if any, is unknown and cannot be estimated.

Visit *http://www.sos.ca.gov/measure-contributions* (http://www.sos.ca.gov/campaign-lobbying/cal-access-resources/measure-contributions/) for a list of committees primarily formed to support or oppose this measure. Visit *http://www.fppc.ca.gov/transparency/top-contributors/nov-16-gen-v2.html* (http://www.fppc.ca.gov/transparency/top-contributors/nov-16-gen-v2.html) to access the committee's top 10 contributors.

15-0096

October 16, 2015

Initiative Coordinator
Office of the Attorney General
State of California
PO Box 994255
Sacramento, CA 94244-25550

Re: Request for Preparation of Circulating Title and Summary for Proposed Initiative

Dear Initiative Coordinator:

Pursuant to Article II, Section 10(d) of the California Constitution, we submit the enclosed proposed statewide ballot measure ("*Death Penalty Reform and Savings Act of 2016*") to your office and request that you prepare a circulating title and summary of the measure as provided by law. Also enclosed are the required statements signed by each proponent pursuant to California Elections Code sections 9001 and 9608, and a check in the amount of $200. The address of each proponent as registered to vote is shown on Attachment 'A' to this letter.

Please direct inquiries from the media and the public to:

Charles H. Bell, Jr.
BELL, McANDREWS & HILTACHK, LLP
455 Capitol Mall, Suite 600
Sacramento, CA 95814

Thank you for your time and attention to this important matter.

SUBMITTED BY:

KERMIT ALEXANDER

(Language added is designated in *italicized* type and language deleted is designated in ~~strikeout~~ type)

SEC 1. SHORT TITLE.

This Act shall be known and may be cited as the Death Penalty Reform and Savings Act of 2016.

SEC. 2. FINDINGS AND DECLARATIONS.

1. California's death penalty system is ineffective because of waste, delays, and inefficiencies. Fixing it will save California taxpayers millions of dollars every year. These wasted taxpayer dollars would be better used for crime prevention, education, and services for the elderly and disabled.

2. Murder victims and their families are entitled to justice and due process. Death row killers have murdered over 1000 victims, including 229 children and 43 police officers; 235 victims were raped and 90 victims were tortured.

3. Families of murder victims should not have to wait decades for justice. These delays further victimize the families who are waiting for justice. For example, serial killer Robert Rhoades, who kidnapped, raped, tortured, and murdered 8-year-old Michael Lyons and also raped and murdered Bay Area high school student Julie Connell, has been sitting on death row for over 16 years. Hundreds of killers have sat on death row for over 20 years.

4. In 2012, the Legislative Analyst's Office found that eliminating special housing for death row killers will save tens of millions of dollars every year. These savings could be invested in our schools, law enforcement, and communities to keep us safer.

5. Death row killers should be required to work in prison and pay restitution to their victims' families consistent with the Victims' Bill of Rights (Marsy's law). Refusal to work and pay restitution should result in loss of special privileges.

6. Reforming the existing inefficient appeals process for death penalty cases will ensure fairness for both defendants and victims. Right now, capital defendants wait five years or more for appointment of their appellate lawyer. By providing prompt appointment of attorneys, the defendants' claims will be heard sooner.

7. A defendant's claim of actual innocence should not be limited, but frivolous and unnecessary claims should be restricted. These tactics have wasted taxpayer dollars and delayed justice for decades.

8. The state agency that is supposed to expedite secondary review of death penalty cases is operating without any effective oversight, causing long-term delays and wasting taxpayer dollars. California Supreme Court oversight of this state agency will ensure accountability.

9. Bureaucratic regulations have needlessly delayed enforcement of death penalty verdicts. Eliminating wasteful spending on repetitive challenges to these regulations will result in the fair and effective implementation of justice.

10. The California Constitution gives crime victims the right to timely justice. A capital case can be fully and fairly reviewed by both the state and federal courts within ten years. By adopting state rules and procedures, victims will receive timely justice and taxpayers will save hundreds of millions of dollars.

11. California's Death Row includes serial killers, cop killers, child killers, mass murderers, and hate crime killers. The death penalty system is broken, but it can and should be fixed. This initiative will ensure justice for both victims and defendants, and will save hundreds of millions of taxpayer dollars.

SEC. 3. Section 190.6 of the Penal Code is amended to read:

(a) The Legislature finds that the sentence in all capital cases should be imposed expeditiously.

(b) Therefore, in all cases in which a sentence of death has been imposed on or after January 1, 1997, the opening appellate brief in the appeal to the State Supreme Court shall be filed no later than seven months after the certification of the record for completeness under subdivision (d) of Section 190.8 or receipt by the appellant's counsel of the completed record, whichever is later, except for good cause. However, in those cases where the trial transcript exceeds 10,000 pages, the briefing shall be completed within the time limits and pursuant to the procedures set by the rules of court adopted by the Judicial Council.

(c) In all cases in which a sentence of death has been imposed on or after January 1, 1997, it is the Legislature's goal that the appeal be decided and an opinion reaching the merits be filed within 210 days of the completion of the briefing. However, where the appeal and a petition for writ of habeas corpus is heard at the same time, the petition should be decided and an opinion reaching the merits should be filed within 210 days of the completion of the briefing for the petition.

(d) The right of victims of crime to a prompt and final conclusion, as provided in subdivision (b)(9) of section 28, of the Constitution, includes the right to have judgments of death carried out within a reasonable time. Within 18 months of the effective date of this initiative, the Judicial Council shall adopt initial rules and standards of administration designed to expedite the processing of capital appeals and state habeas corpus review. Within five years of the adoption of the initial rules or the entry of judgment, whichever is later, the state courts shall complete the state appeal and the initial state habeas corpus review in capital cases. The Judicial Council shall continuously monitor the timeliness of review of capital cases and shall amend the rules and standards as necessary to complete the state appeal and initial state habeas corpus proceedings within the five-year period provided in this subsection.

~~(d)~~ *(e)* The failure of the parties or ~~the Supreme Court to meet or comply with the time limit provided by this section shall not be a ground for granting relief from a judgment of conviction or sentence of death~~ *of a court to comply with the time limit in subdivision (b) of this section shall not affect the validity of the*

judgment or require dismissal of an appeal or habeas corpus petition. If a court fails to comply without extraordinary and compelling reasons justifying the delay, either party or any victim of the offense may seek relief by petition for writ of mandate. The court in which the petition is filed shall act on it within 60 days of filing. Subdivision (c)(1) of section 28 of the Constitution, regarding standing to enforce victims' rights, applies to this subdivision and subdivision (d) of this section.

SEC. 4. Section 1227 of the Penal Code is amended to read:

(a) If for any reason other than the pendency of an appeal pursuant to subdivision (b) of Section 1239 of this code a judgment of death has not been executed, and it remains in force, the court in which the conviction was had shall, on application of the district attorney, or may upon its own motion, make and cause to be entered an order ~~appointing a day upon~~ *specifying a period of 10 days during which* the judgment shall be executed~~, which must not be less than 30 days nor more than 60 days from the time of making such order; and immediately thereafter~~. *The 10-day period shall begin no less than 30 days after the order is entered and shall end no more than 60 days after the order is entered. Immediately after the order is entered,* a certified copy of ~~such~~ *the* order, attested by the clerk, under the seal of the court, shall, for the purpose of execution, be transmitted by registered mail to the warden of the state prison having the custody of the defendant; provided, that if the defendant be at large, a warrant for his apprehension may be issued, and upon being apprehended, he shall be brought before the court, whereupon the court shall make an order directing the warden of the state prison to whom the sheriff is instructed to deliver the defendant to execute the judgment ~~at a specified time~~ *within a period of 10 days,* which shall not ~~be~~ *begin* less than 30 days nor *end* more than 60 days from the time of making such order.

(b) From an order fixing the time for and directing the execution of such judgment as herein provided, there shall be no appeal.

SEC. 5. Section 1239.1 is added to the Penal Code to read:

1239.1. (a) It is the duty of the Supreme Court in a capital case to expedite the review of the case. The court shall appoint counsel for an indigent appellant as soon as possible. The court shall only grant extensions of time for briefing for compelling or extraordinary reasons.

(b) When necessary to remove a substantial backlog in appointment of counsel for capital cases, the Supreme Court shall require attorneys who are qualified for appointment to the most serious non-capital appeals and who meet the qualifications for capital appeals to accept appointment in capital cases as a condition for remaining on the court's appointment list. A substantial backlog exists for this purpose when the time from entry of judgment in the trial court to appointment of counsel for appeal exceeds six months over a period of twelve consecutive months.

SEC. 6. Section 1509 is added to the Penal Code to read:

1509. (a) This section applies to any petition for writ of habeas corpus filed by a person in custody pursuant to a judgment of death. A writ of habeas corpus pursuant to this section is the exclusive procedure for collateral attack on a judgment of death. A petition filed in any court other than the court which imposed the sentence should be promptly transferred to that court unless good cause is shown for the petition to be heard by another court. A petition filed in or transferred to the court which imposed the sentence shall be assigned to the original trial judge unless that judge is unavailable or there is other good cause to assign the case to a different judge.

(b) After the entry of a judgment of death in the trial court, that court shall offer counsel to the prisoner as provided in section 68662 of the Government Code.

(c) Except as provided in subdivisions (d) and (g), the initial petition must be filed within one year of the order entered under section 68662 of the Government Code.

(d) An initial petition which is untimely under subdivision (c) or a successive petition whenever filed shall be dismissed unless the court finds, by the preponderance of all available evidence, whether or not admissible at trial, that the defendant is actually innocent of the crime of which he or she was convicted or is ineligible for the sentence. A stay of execution shall not be granted for the purpose of considering a successive or untimely petition unless the court finds that the petitioner has a substantial claim of actual innocence or ineligibility. Ineligible for the sentence of death means that circumstances exist placing that sentence outside the range of the sentencer's discretion. Claims of ineligibility include a claim that none of the special circumstances in subdivision (a) of section 190.2 is true, a claim that the defendant was under the age of 18 at the time of the crime, or a claim that the defendant has an intellectual disability as defined in

section 1376. A claim relating to the sentencing decision under section 190.3 is not a claim of actual innocence or ineligibility for the purpose of this section.

(e) A petitioner claiming innocence or ineligibility under subdivision (d) of this section shall disclose all material information relating to guilt or eligibility in the possession of the petitioner or present or former counsel for petitioner. If the petitioner willfully fails to make the disclosure required by this subdivision and authorize disclosure by counsel, the petition may be dismissed.

(f) Proceedings under this section shall be conducted as expeditiously as possible consistent with a fair adjudication. The superior court shall resolve the initial petition within one year of filing unless the court finds that a delay is necessary to resolve a substantial claim of actual innocence, but in no instance shall the court take longer than two years to resolve the petition. On decision of an initial petition, the court shall issue a statement of decision explaining the factual and legal basis for its decision.

(g) If a habeas corpus petition is pending on the effective date of this section, the court may transfer the petition to the court which imposed the sentence. In a case where a judgment of death was imposed prior to the effective date of this section but no habeas corpus petition has been filed prior to the effective date of this section, a petition that would otherwise be barred by subdivision (c) of this section may be filed within one year of the effective date or within the time allowed under prior law, whichever is earlier.

SEC. 7. Section 1509.1 is added to the Penal Code to read:

1509.1. (a) Either party may appeal the decision of a superior court on an initial petition under section 1509 to the court of appeal. An appeal shall be taken by filing a notice of appeal in the superior court within 30 days of the court's decision granting or denying the habeas petition. A successive petition shall not be used as a means of reviewing a denial of habeas relief.

(b) The issues considered on an appeal under subdivision (a) of this section shall be limited to the claims raised in the superior court, except that the court of appeal may also consider a claim of ineffective assistance of trial counsel if the failure of habeas counsel to present that claim to the superior court constituted ineffective assistance. The court of appeal may, if additional findings of fact are required, make a limited remand to the superior court to consider the claim.

(c) The people may appeal the decision of the superior court granting relief on a successive petition. The petitioner may appeal the decision of the superior court denying relief on a successive petition only if the superior court or the court of appeal grants a certificate of appealability. A certificate of appealability may issue under this subdivision only if the petitioner has shown both a substantial claim for relief, which shall be indicated in the certificate, and a substantial claim that the requirements of subdivision (d) of section 1509 have been met. An appeal under this subdivision shall be taken by filing a notice of appeal in the superior court within 30 days of the court's decision. The superior court shall grant or deny a certificate of appealability concurrently with a decision denying relief on the petition. The court of appeal shall grant or deny a request for a certificate of appealability within 10 days of an application for a certificate. The jurisdiction of the court of appeal is limited to the claims identified in the certificate and any additional claims added by the court of appeal within 60 days of the notice of appeal. An appeal under this subdivision shall have priority over all other matters and be decided as expeditiously as possible.

SEC. 8. Section 2700.1 of the Penal Code is added to read:

2700.1. Section 2700 applies to inmates sentenced to death except as otherwise provided in this section.

Every person found guilty of murder, sentenced to death, and held by the Department of Corrections and Rehabilitation pursuant to sections 3600 to 3602 shall be required to work as many hours of faithful labor each day he or she is so held as shall be prescribed the rules and regulations of the Department.

Physical education and physical fitness programs shall not qualify as work for purposes of this section. The Department of Corrections and Rehabilitation may revoke the privileges of any condemned inmate who refuses to work as required by this section.

In any case where the condemned inmate owes a restitution fine or restitution order, the Secretary of the Department of Corrections and Rehabilitation shall deduct 70% or the balance owing, whichever is less, from the condemned inmate's wages and trust account deposits, regardless of the source of the income, and shall transfer those funds to the California Victim Compensation and Government Claims Board according to the rules and regulations of the Department of Corrections and Rehabilitation, pursuant to sections 2085.5 and 2717.8 of the Penal Code.

SEC. 9. Section 3600 of the Penal Code is amended to read:

3600. ~~(a)~~ Every male person, upon whom has been imposed the judgment of death, shall be delivered to the warden of the California state prison designated by the ~~department~~ Department for the execution of the death penalty~~, there to be kept until the execution of the judgment, as provided in subdivision (b)~~. *The inmate shall be kept in a California prison until execution of the judgment. The Department may transfer the inmate to another prison which it determines to provide a level of security sufficient for that inmate. The inmate shall be returned to the prison designated for execution of the death penalty after an execution date has been set.*

~~(b) Notwithstanding any other provision of law:~~

~~(1) A condemned inmate who, while in prison, commits any of the following offenses, or who, as a member of a gang or disruptive group, orders others to commit any of these offenses, may, following disciplinary sanctions and classification actions at San Quentin State Prison, pursuant to regulations established by the Department of Corrections, be housed in secure condemned housing designated by the Director of Corrections, at the California State Prison, Sacramento:~~

~~(A) Homicide.~~

~~(B) Assault with a weapon or with physical force capable of causing serious or mortal injury.~~

~~(C) Escape with force or attempted escape with force.~~

~~(D) Repeated serious rules violations that substantially threaten safety or security.~~

~~(2) The condemned housing program at California State Prison, Sacramento, shall be fully operational prior to the transfer of any condemned inmate.~~

~~(3) Specialized training protocols for supervising condemned inmates shall be provided to those line staff and supervisors at the California State Prison, Sacramento, who supervise condemned inmates on a regular basis.~~

~~(4) An inmate whose medical or mental health needs are so critical as to endanger the inmate or others may, pursuant to regulations established by the Department of Corrections, be housed at the California Medical Facility or other~~

~~appropriate institution for medical or mental health treatment. The inmate shall be returned to the institution from which the inmate was transferred when the condition has been adequately treated or is in remission.~~

~~(c) When housed pursuant to subdivision (b) the following shall apply: Those local procedures relating to privileges and classification procedures provided to Grade B condemned inmates at San Quentin State Prison shall be similarly instituted at California State Prison, Sacramento, for condemned inmates housed pursuant to paragraph (1) of subdivision (b) of Section 3600. Those classification procedures shall include the right to the review of a classification no less than every 90 days and the opportunity to petition for a return to San Quentin State Prison.~~

~~(2) Similar attorney client access procedures that are afforded to condemned inmates housed at San Quentin State Prison shall be afforded to condemned inmates housed in secure condemned housing designated by the Director of Corrections, at the California State Prison, Sacramento. Attorney client access for condemned inmates housed at an institution for medical or mental health treatment shall be commensurate with the institution's visiting procedures and appropriate treatment protocols.~~

~~(3) A condemned inmate housed in secure condemned housing pursuant to subdivision (b) shall be returned to San Quentin State Prison at least 60 days prior to his scheduled date of execution.~~

~~(4) No more than 15 condemned inmates may be rehoused pursuant to paragraph (1) of subdivision (b).~~

~~(d) Prior to any relocation of condemned row from San Quentin State Prison, whether proposed through legislation or any other means, all maximum security Level IV, 180 degree housing unit facilities with an electrified perimeter shall be evaluated by the Department of Corrections for suitability for the secure housing and execution of condemned inmates.~~

SEC. 10. Section 3604 of the Penal Code is amended to read:

(a) The punishment of death shall be inflicted by the administration of a lethal gas or by an intravenous injection of a substance or substances in a lethal quantity sufficient to cause death, by standards established under the direction of the Department of Corrections and Rehabilitation.

(b) Persons sentenced to death prior to or after the operative date of this subdivision shall have the opportunity to elect to have the punishment imposed by lethal gas or lethal injection. This choice shall be made in writing and shall be submitted to the warden pursuant to regulations established by the Department of Corrections. If a person under sentence of death does not choose either lethal gas or lethal injection within 10 days after the warden's service upon the inmate of an execution warrant issued following the operative date of this subdivision, the penalty of death shall be imposed by lethal injection.

(c) Where the person sentenced to death is not executed on the date set for execution and a new execution date is subsequently set, the inmate again shall have the opportunity to elect to have punishment imposed by lethal gas or lethal injection, according to the procedures set forth in subdivision (b).

(d) Notwithstanding subdivision (b), if either manner of execution described in subdivision (a) is held invalid, the punishment of death shall be imposed by the alternative means specified in subdivision (a).

(e) The Department of Corrections and Rehabilitation, or any successor agency with the duty to execute judgments of death, shall maintain at all times the ability to execute such judgments.

SEC. 11. Section 3604.1 is added to the Penal Code to read:

3604.1. (a) The Administrative Procedure Act shall not apply to standards, procedures, or regulations promulgated pursuant to section 3604. The Department shall make the standards adopted under subdivision (a) of that section available to the public and to inmates sentenced to death. The Department shall promptly notify the Attorney General, the State Public Defender, and counsel for any inmate for whom an execution date has been set or for whom a motion to set an execution date is pending of any adoption or amendment of the standards. Noncompliance with this subdivision is not a ground for stay of an execution or an injunction against carrying out an execution unless the noncompliance has actually prejudiced the inmate's ability to challenge the standard, and in that event the stay shall be limited to a maximum of ten days.

(b) Notwithstanding subdivision (a) of section 3604, an execution by lethal injection may be carried out by means of an injection other than intravenous if the warden determines that the condition of the inmate makes intravenous injection impractical.

(c) The court which rendered the judgment of death has exclusive jurisdiction to hear any claim by the condemned inmate that the method of execution is unconstitutional or otherwise invalid. Such a claim shall be dismissed if the court finds its presentation was delayed without good cause. If the method is found invalid, the court shall order the use of a valid method of execution. If the use of a method of execution is enjoined by a federal court, the Department of Corrections and Rehabilitation shall adopt, within 90 days, a method that conforms to federal requirements as found by that court. If the Department fails to perform any duty needed to enable it to execute the judgment, the court which rendered the judgment of death shall order it to perform that duty on its own motion, on motion of the District Attorney or Attorney General, or on motion of any victim of the crime as defined in article I, section 28, subdivision (c) of the Constitution.

SEC. 12. Section 3604.3 is added to the Penal Code to read:

3604.3. (a) A physician may attend an execution for the purpose of pronouncing death and may provide advice to the Department for the purpose of developing an execution protocol to minimize the risk of pain to the inmate.

(b) The purchase of drugs, medical supplies or medical equipment necessary to carry out an execution shall not be subject to the provisions of Chapter 9 (commencing with section 4000) of Division 2 of the Business and Professions Code, and any pharmacist, or supplier, compounder, or manufacturer of pharmaceuticals is authorized to dispense drugs and supplies to the Secretary or the Secretary's designee, without prescription, for carrying out the provisions of this chapter.

(c) No licensing board, Department, commission, or accreditation agency which oversees or regulates the practice of health care or certifies or licenses health care professionals may deny or revoke a license or certification, censure, reprimand, suspend, or take any other disciplinary action against any licensed health care professional for any action authorized by this section.

SEC. 13. Section 68660.5 is added to the Government Code to read:

68660.5. The purposes of this chapter are to qualify the State of California for the handling of federal habeas corpus petitions under chapter 154 of title 28 of the United States Code, to expedite the completion of state habeas corpus proceedings

in capital cases, and to provide quality representation in state habeas corpus for inmates sentenced to death. This chapter shall be construed and administered consistently with those purposes.

SEC. 14. Section 68661 of the Government Code is amended to read:

68661. There is hereby created in the judicial branch of state government the California Habeas Corpus Resource Center, which shall have all of the following general powers and duties:

(a) To employ up to 34 attorneys who may be appointed ~~by the Supreme Court~~ *pursuant to section 68662* to represent any person convicted and sentenced to death in this state who is without counsel, and who is determined by a court of competent jurisdiction to be indigent, for the purpose of instituting and prosecuting ~~postconviction actions~~ *habeas corpus petitions* in the state and federal courts, challenging the legality of the judgment or sentence imposed against that person, *subject to the limitations in section 68661.1,* and preparing petitions for executive clemency. Any such appointment may be concurrent with the appointment of the State Public Defender or other counsel for purposes of direct appeal under Section 11 of Article VI of the California Constitution.

(b) To seek reimbursement for representation and expenses pursuant to Section 3006A of Title 18 of the United States Code when providing representation to indigent persons in the federal courts and process those payments via the Federal Trust Fund.

(c) To work with the ~~Supreme Court~~ *courts* in recruiting members of the private bar to accept death penalty habeas case appointments.

(d) To ~~establish and periodically update~~ *recommend attorneys to the Supreme Court for inclusion in* a roster of attorneys qualified as counsel in ~~postconviction~~ *habeas corpus* proceedings in capital cases, *provided that the final determination of whether to include an attorney in the roster shall be made by the Supreme Court and not delegated to the center.*

(e) To establish and periodically update a roster of experienced investigators and experts who are qualified to assist counsel in ~~postconviction~~ *habeas corpus* proceedings in capital cases.

(f) To employ investigators and experts as staff to provide services to

appointed counsel upon request of counsel, provided that when the provision of those services is to private counsel ~~under appointment by the Supreme Court~~, those services shall be pursuant to contract between appointed counsel and the center.

(g) To provide legal or other advice ~~or, to the extent not otherwise available, any other assistance~~ to appointed counsel in ~~postconviction~~ *habeas corpus* proceedings as is appropriate when not prohibited by law.

(h) To develop a brief bank of pleadings and related materials on significant, recurring issues that arise in ~~postconviction~~ *habeas corpus* proceedings in capital cases and to make those briefs available to appointed counsel.

(i) To evaluate cases and recommend assignment by the court of appropriate attorneys.

(j) To provide assistance and case progress monitoring as needed.

(k) To timely review case billings and recommend compensation of members of the private bar to the court.

(l) The center shall report annually to *the people,* the Legislature, the Governor, and the Supreme Court on the status of the appointment of counsel for indigent persons in ~~postconviction~~ *habeas corpus* capital cases, and on the operations of the center. ~~On or before January 1, 2000, the office of the Legislative Analyst shall evaluate the available reports~~. *The report shall list all cases in which the center is providing representation. For each case that has been pending more than one year in any court, the report shall state the reason for the delay and the actions the center is taking to bring the case to completion.*

SEC. 15. Section 68661.1 is added to the Government Code to read:

68661.1. (a) The center may represent a person sentenced to death on a federal habeas corpus petition if and only if (1) the center was appointed to represent that person on state habeas corpus, (2) the center is appointed for that purpose by the federal court, and (3) the executive director determines that compensation from the federal court will fully cover the cost of representation. Neither the center nor any other person or entity receiving state funds shall spend state funds to attack in federal court any judgment of a California court in a capital case, other than review in the Supreme Court pursuant to 28 U.S.C. §1257.

(b) The center is not authorized to represent any person in any action other than habeas corpus which constitutes a collateral attack on the judgment or seeks to delay or prevent its execution. The center shall not engage in any other litigation or expend funds in any form of advocacy other than as expressly authorized by this section or section 68661.

SEC. 16. Section 68662 of the Government Code is amended to read:

68662. The ~~Supreme Court~~ *superior court which imposed the sentence* shall offer to appoint counsel to represent ~~all~~ a state ~~prisoners~~ prisoner subject to a capital sentence for purposes of state postconviction proceedings, and shall enter an order containing one of the following:

(a) The appointment of one or more counsel to represent the prisoner in ~~postconviction~~ ~~state~~ proceedings *pursuant to section 1509 of the Penal Code* upon a finding that the person is indigent and has accepted the offer to appoint counsel or is unable to competently decide whether to accept or reject that offer.

(b) A finding, after a hearing if necessary, that the prisoner rejected the offer to appoint counsel and made that decision with full understanding of the legal consequences of the decision.

(c) The denial to appoint counsel upon a finding that the person is not indigent.

SEC. 17. Section 68664 of the Government Code is amended to read:

68664. (a) The center shall be managed by an executive director who shall be responsible for the day-to-day operations of the center.

(b) The executive director shall be chosen by ~~a five member board of directors and confirmed by the Senate. Each Appellate Project shall appoint one board member, all of whom shall be attorneys. However, no attorney who is employed as a judge, prosecutor, or in a law enforcement capacity shall be eligible to serve on the board~~ *the Supreme Court.* The executive director shall serve at the will of the ~~board~~ *Supreme Court.*

(c) ~~Each member of the board shall be appointed to serve a four year term, and vacancies shall be filled in the same manner as the original appointment. Members of~~

~~the board shall receive no compensation, but shall be reimbursed for all reasonable and necessary expenses incidental to their duties. The first members of the board shall be appointed no later than February 1, 1998.~~ *The executive director shall insure that all matters in which the center provides representation are completed as expeditiously as possible consistent with effective representation.*

(d) The executive director shall meet the appointment qualifications of the State Public Defender as specified in Section 15400.

(e) The executive director shall receive the salary that shall be specified for ~~the executive director~~ *State Public Defender* in Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2. *All other attorneys employed by the center shall be compensated at the same level as comparable positions in the Office of the State Public Defender.*

SEC. 18. Section 68665 of the Government Code is amended to read:

68665. *(a)* The Judicial Council and the Supreme Court shall adopt, by rule of court, binding and mandatory competency standards for the appointment of counsel in death penalty direct appeals and habeas corpus proceedings, *and they shall reevaluate the standards as needed to ensure that they meet the criteria in subdivision (b) of this section.*

(b) In establishing and reevaluating the standards, the Judicial Council and the Supreme Court shall consider the qualifications needed to achieve competent representation, the need to avoid unduly restricting the available pool of attorneys so as to provide timely appointment, and the standards needed to qualify for chapter 154 of title 28 of the United States Code. Experience requirements shall not be limited to defense experience.

SEC. 19. EFFECTIVE DATE. Except as more specifically provided in this act, all sections of this act take effect immediately upon enactment and apply to all proceedings conducted on or after the effective date.

SEC. 20. AMENDMENTS. The statutory provisions of this act shall not be amended by the Legislature except by a statute passed in each house by roll call vote entered in the journal, three-fourths of the membership of each house concurring, or by a statute that becomes effective only when approved by the

voters.

SEC. 21. SEVERABILITY/CONFLICTING MEASURES/STANDING.

If any provision of this Act, or any part of any provision, or its application to any person or circumstance is for any reason held to be invalid or unconstitutional, the remaining provisions and applications which can be given effect without the invalid or unconstitutional provision or application shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable.

This measure is intended to be comprehensive. It is the intent of the People that in the event this measure or measures relating to the subject of capital punishment shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.

The People of the State of California declare that the proponent of this Act has a direct and personal stake in defending this Act and grant formal authority to the proponent to defend this Act in any legal proceeding, either by intervening in such legal proceeding, or by defending the Act on behalf of the People and the State in the event that the State declines to defend the Act or declines to appeal an adverse judgment against the Act. In the event that the proponent is defending this Act in a legal proceeding because the State has declined to defend it or to appeal an adverse judgment against it, the proponent shall: act as an agent of the people and the State; be subject to all ethical, legal, and fiduciary duties applicable to such parties in such legal proceedings; take and be subject to the Oath of Office prescribed by Article XX, section 3 of the California Constitution for the limited purpose of acting on behalf of the People and the State in such legal proceeding; and be entitled to recover reasonable legal fees and related costs from the State.