

CALIFORNIA'S DEATH PENALTY**No: Many reasons the state should abolish this system**

By Allen I. Freehling, Bill Ong Hing and Douglas Ring
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On June 30, the 22-member California Commission on the Fair Administration of Justice issued its final report on California's death penalty. We are the only members who are not engaged in law enforcement, criminal prosecution or criminal defense work.

The report concluded that if we are to achieve the goals of justice, fairness and accuracy in the administration of the death penalty, and reduce delays, we urgently need to increase funding at every level. While we agree with the commission's report, after weighing all the testimony and reviewing all the research presented, we wrote separately on behalf of eight commissioners (and endorsed by two others) recommending that the death penalty be repealed for the following reasons:

Costs. The resources that go into a death penalty case are enormous. The pursuit of execution adds millions at each phase of the process, from trial, to appeal, and habeas proceedings. A death penalty trial costs counties at least \$1.1 million more than a conventional murder trial. The state spends an additional \$117 million a year on capital punishment. Adopting a maximum penalty of life without possibility of parole would incur only a fraction of the death penalty costs, including prison expenses. Death penalty funds would be better spent on other California priorities such as health, education and infrastructure.

Racial and geographic variation. The counties with the highest death penalty sentencing rates tend to have the highest proportion of whites in their population and are more rural. Those who kill African-Americans and Latinos are less likely to be sentenced to death than those who kill whites. Persons of color have been sentenced to death at rates far exceeding their numbers in the population. The correlation between poor communities (comprised of many blacks, Latinos and Southeast Asians) and crime and inadequate representation is just too high to accept capital punishment as a potential penalty.

Economic disadvantage. Economically deprived, marginalized Californians are particularly vulnerable in society and within the judicial system. More than 90 percent of defendants charged with capital crimes are indigent, and as a result the vast majority of death row inmates in California are poor. A poor defendant initially may be at a disadvantage primarily because poverty fractures his or her past. Poverty creates serious disparities in the administration of justice as well. A person of means can afford to employ forensic experts and access to nationally acclaimed labs. The indigent accused may not be fortunate enough to be represented by an institutional public defender team with the experience and resources to provide high-quality advocacy. Instead, such an indigent may be saddled with an appointed lawyer who lacks those essential qualities.

Risk of error. Many jurists and researchers are convinced that the likelihood of wrongly convicted defendants having been executed in the United States is high. Unfortunately, in our criminal justice system, wrongful convictions arising from such factors as faulty eyewitness identification, false confessions, police mistake or misconduct, and prosecution mistake or misconduct occur with unacceptable frequency. This all raises the grim prospect that someday a mistake will be made (if one has not already been made of which we are unaware), and an innocent person or one wrongfully sentenced will be put to death in California.

Closing off other options. The death penalty closes the door on any possibility of redemption and healing,

something that we should all care about as a civil society. Loved ones of murdered victims have shared with us their poignant experiences of finding a comforting balm, produced by extolling life over death by virtue of their advocacy of a sentence of imprisonment until death without execution, for those convicted of such crimes. Some receive spiritual validation and fulfillment by assisting those convicted who genuinely pursue redemption in their own penitential journey toward the ultimate judgment of their savior.

Death qualification. In order to be “death-qualified” to serve on a capital jury, a person must be willing to consider all of the sentencing options – usually death and life imprisonment without parole. If their opinions would prevent them from considering any of the sentencing options, then potential jurors are not “death-qualified” and are barred from serving on the jury. Death qualification biases the jury by selecting members who are “conviction prone.” More than 40 percent of jurors in capital cases surveyed admitted they had already decided on the penalty before the guilt phase had concluded.

Evolving standards in other countries. Capital punishment has been abandoned by a majority of the countries of the world. The list includes allies and many with whom we share a common heritage such as the United Kingdom, Germany, France, Spain, Mexico, Ireland, the Philippines and Canada. Even countries such as Russia and Myanmar have a de facto ban on the death penalty. In Israel, capital punishment is illegal in all circumstances, except for genocide, war crimes, crimes against humanity and treason. New Jersey abolished the death penalty last December, joining 13 other states.

After full consideration of the information that has been brought to the attention of the commission, we are compelled to conclude that the death penalty should be repealed in California. Its process and administration are inherently flawed. Its costs are too high. Its continuation violates our values as a civil society.

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