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Editorial: Death penalty system requires a major overhaul

Mercury News Editorial

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California has the death penalty basically in name only. With 13 executions in 30 years and 673 inmates now on the nation's largest death row, capital punishment has turned into life without parole - at a stiff price for taxpayers.

"Fixing" a system marred by delays and poor legal representation would cost an additional \$95 million per year, according to the California Commission on the Fair Administration of Justice. That's money that California, facing a \$15 billion deficit, doesn't have - and if it did, should have plenty of spending priorities higher than executions.

We agree with a minority of the 22-member commission who call for abolishing the death penalty. It is vulnerable to error, ineffective as a deterrent, subject to racial bias and expensive to administer. But persuading voters to repeal 21 capital punishment statutes, many of which they passed by initiative decades ago, faces improbable odds, even though the public is increasingly ambivalent about putting criminals to death.

There is a pragmatic alternative: Pare back the number of crimes subject to execution and commit full resources to fair trials and full appeals for those cases. The commission estimates that would save taxpayers about \$100 million a year by eliminating drawn-out appeals. Many of those now sentenced to death would instead serve life in prison with no possibility of parole - essentially what they are

serving now, only at lower cost.

The commission could not get a majority to back this proposal, but we believe it's the best plan at this point.

Nearly seven of eight first-degree murders in California now qualify for the death penalty, including murder while committing a felony, such as a robbery. Accomplices theoretically can be put to death, too.

Limiting the death penalty to a few of the most heinous murders would substantially reduce the docket and the cost. Those might include multiple homicides; killing a law enforcement official, a witness, a prosecutor or others involved in a case; committing murder while in prison; and murder involving torture.

The current implementation of the death penalty insults families of victims, who wait decades for closure that never comes, and it abuses the accused, who often lack adequate legal representation. Although the commission found no credible evidence that the state executed an innocent person, 98 inmates once on death row have had their convictions or sentences overturned.

The commission called the system dysfunctional and "close to collapse." It's also inconsistently applied from county to county. That's why the commission recommended creating a Death Penalty Review Panel to analyze cases and recommend safeguards and improvements to the Legislature.

This marks the final report of the commission, which the state Senate created four years ago to review California's criminal justice system. Gov. Arnold Schwarzenegger unwisely vetoed earlier recommendations to prevent false confessions and faulty eyewitness testimony and to reduce the use of

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jailhouse informants. Many of the commission's other sound recommendations have not yet been seriously considered.

The report on the death penalty must not be ignored. The costs, in so many respects, are just too high.

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