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## **Editorial: A dysfunctional death penalty serves no one**

### **Study shows that California's capital cases are plagued by problems and errors**

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Proponents and opponents of the death penalty should all be able to agree with the chief finding of the Commission on the Fair Administration of Justice: As it is administered in California, the death penalty is dysfunctional. It is an expensive and frustrating judicial exercise that satisfies no one, not defendants, victims' families, taxpayers nor the justice system itself.

Only 13 people in California have been executed since the death penalty was reinstated in 1977. With 673 condemned prisoners awaiting execution, California has the largest death row of any state in the country, but convicts are much more likely to die while awaiting appeals than to be executed.

For the very few who are put to death, it takes on average 17.2 years to carry out an execution after a death penalty has been pronounced, the longest wait of any death penalty state in the nation. Those condemned wrongfully can wait more than a decade to have their cases reviewed. Since 1978, the federal courts have ordered new trials in 38 of 54 death penalty appeals in California, an unacceptable 70 percent error rate.

To reduce errors and speed death penalty appeals, the commission unanimously recommends a list of fixes mainly to improve the quality and increase the number of lawyers handling death penalty appeals. It also calls upon the state to increase reimbursement to counties for the high cost of homicide trials, including the expense of ensuring that defendants, most of whom are indigent, have competent representation.

The cost of administering a dysfunctional death penalty is enormous – \$137 million annually. The fixes recommended will cost an additional \$95 million, or \$232 million a year in total.

But fixing the current system is not the only choice. Commissioners also examined two intriguing alternatives to California's death penalty:

- Reduce the number of "special circumstances" that make criminals eligible for the death penalty. There are currently 21, a list so broad that it makes 87 percent of all convicted first-degree murderers in this state eligible for execution. One special circumstance, the felony murder rule, makes not just the burglar who killed his victim eligible for death, but also the accomplice who drove the get-away car and killed no one.

Cutting the number of special circumstances to five, as a national blue ribbon panel of judges, prosecutors and defense lawyers has recommended, would reserve execution for the worst of the worst. It would also eliminate much of the troubling geographical variation of death penalty cases and save \$100 million annually.

- Alternately, replace the death penalty with life in prison without the possibility of parole. As the report states, "Although the risks of wrongful convictions (would) remain, there would be no wrongful executions" with such a change. Replacing executions with a hard life sentence would

also save the state hundreds of millions of dollars, including construction of a new death row at San Quentin.

Ending the death penalty is a moral decision, and any attempt to eliminate it would have to be decided by voters. Yet the commission has given lawmakers and the public essential information to consider options. The status quo is not a responsible option. Let the debate begin.

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