

October 4, 2011

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Dawn McFarland
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to the death penalty (A.G. File No. 11-0035).

BACKGROUND

Murder and the Death Penalty. First degree murder is generally defined as murder that is intentional or deliberate or that takes place during certain other crimes. It is generally punishable by a sentence of 25-years-to-life imprisonment with the possibility of release from prison on parole. However, current statute makes first degree murder punishable by death or life imprisonment without the possibility of parole when specified “special circumstances” of the crime have been charged and proven in a case. Existing state law identifies a number of special circumstances that could be charged, such as in cases when the murder was intentional and carried out for financial gain, was especially cruel, or was committed while the defendant was engaged in other specified criminal activities. A jury trial generally determines which penalty is to be applied when special circumstances have been charged and proven.

Implementation of the Death Penalty in California. As of August 2011, California had 712 offenders with a death sentence. Male condemned inmates are housed at San Quentin State Prison, while female condemned inmates are housed at the Central California Women’s Facility in Chowchilla. By law, death penalty verdicts are automatically appealed to the California Supreme Court. Also, such cases ordinarily involve an extensive series of appeals both to state and federal courts, which are commonly referred to as habeas corpus petitions.

Both the state and county governments incur costs for murder trials, including costs for the courts, prosecution, and defense of indigent persons charged with murder. The state also incurs costs for death penalty appeals both for prosecution of such cases and for defense of indigent persons.

As of August 2011, the California Supreme Court had affirmed 293 death sentences under the automatic appeal process. Many additional cases remain pending in the courts. Thirteen persons have been executed since the current death penalty law was enacted in 1978.

PROPOSAL

This measure changes state law to (1) repeal the state's current death penalty statute, (2) generally require murder offenders to work while in prison, and (3) provide funding for new local law enforcement grants on a limited-term basis.

Elimination of Death Sentences. This measure eliminates the imposition of death as the penalty for any crime punished by the state. The measure also specifies that offenders currently under a sentence of death would not be executed and would instead serve a prison term of life without the possibility of parole.

Resolution of Pending Appeals and Petitions. This measure outlines a process for possibly resolving ongoing death penalty appeals and habeas corpus petitions for capital cases that are pending in state courts. Specifically, it allows the California Supreme Court to transfer all such cases to any of the state's Courts of Appeal or superior courts.

Inmate Work Requirement. Current state law generally requires that inmates work while they are in prison. California statutes and California Department of Corrections and Rehabilitation (CDCR) regulations allow for some exceptions to these requirements, such as for inmates who pose too great a security risk to participate in work programs. This measure specifies that every person found guilty of murder must work while in state prison, subject to the existing state laws and regulations. Thus, if enacted by voters, this new work requirement could not be changed in the future without a vote of the public.

Establishment of Fund for Local Law Enforcement. The measure establishes a new special fund, called the SAFE California Fund, to support grants to police departments, sheriff's departments, and district attorney's offices, for the stated purpose of increasing the rate at which homicide and rapes are solved. The measure specifies that the money could be used to speed up the processing of physical evidence collected in rape cases, improve the use of forensic science in investigations, increase staffing in homicide and sex offense investigation and prosecution units, and to relocate crime witnesses. The measure also states that it could be used by these agencies for other projects and activities related to this measure. Under the terms of the measure, \$10 million would be transferred in 2012-13 from the state General Fund, the main state fund used for the support of various types of state programs, to the SAFE California Fund. Each year from 2013-14 through 2015-16, \$30 million more would be transferred from the General Fund to the fund, bringing the total amount of transfers to \$100 million. Monies in the SAFE California Fund would be distributed to local agencies based on a formula determined by the state Attorney General.

FISCAL EFFECTS

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

Murder Trial Costs

Savings. Elimination of the death penalty would result in reduced criminal justice systems costs related to some murder trials, in various ways:

- This measure would shorten the time it takes to try some murder cases. For example, jury selection for some cases would be shortened and there would no longer be a separate phase of some murder trials to determine whether life without the possibility of parole or the death penalty should be imposed. These factors would reduce state costs for support of the trial courts. In addition, the elimination of the death penalty would reduce the costs incurred by counties for prosecutors and public defenders for some murder cases, such as preparation for murder trials and participation in the penalty phase of trials where a death sentence is sought.
- County jail costs would also be reduced by the measure. Persons held for trial on murder charges, particularly cases that could result in a death sentence, ordinarily remain in custody in county jail until the completion of their trial and sentencing. As some murder cases were expedited or eliminated due to the prohibition on capital punishment, the transfer of persons convicted of murder from county jail to state prison would be accelerated, thus reducing the operating costs of county jails.
- Prohibition of the death penalty would also reduce expenditures by state, county, and city law enforcement agencies on such cases. Law enforcement personnel are often key witnesses in murder trials. A reduction in the number of such trials and a reduction in the length of those cases that do go to trial would in turn reduce their law enforcement staffing costs.

Offsetting Costs. These savings would be offset to the extent that prohibition of the death penalty eliminated an incentive for offenders to reach plea agreements with district attorneys in some murder cases. Some murder cases are being resolved with an offender's plea to a murder charge in trade for an agreement by the district attorney not to seek the death penalty. If the death penalty is prohibited and these cases go to trial instead of being resolved through plea agreements, additional state and local governmental costs for support of courts, prosecution, and defense counsel, as well as county jails, could result. The magnitude of these costs is unknown.

Net Impact. In view of the above, this measure is likely to result in a reduction in costs to the state for support of the trial courts, as well as a reduction in costs to counties for prosecution and representation of indigent defendants charged with murder, as well as the costs associated with housing these defendants in jail prior to their sentencing. The magnitude of the net savings to the state and counties from these factors relating to murder trials is unknown, but could be in the low tens of millions of dollars annually on a statewide basis.

Appellate Litigation Costs

Savings. Over time, the measure would reduce state expenditures by the state Department of Justice, the Office of the State Public Defender, the Habeas Corpus Resource Center, the Court-Appointed Counsel program, and the California Supreme Court for the costs of litigating and hearing capital punishment appeals. These costs currently amount to about \$50 million annually. However, part of these expenditures would continue until the courts resolved all past and pending cases involving death sentences.

Offsetting Costs. These savings would be partially offset by an ongoing increase in the workload for superior courts and the Courts of Appeal. Upon the elimination of the death penalty, these courts would handle more appeals related to sentences of life without the possibility of parole. The state would also incur additional costs for providing representation to qualifying, indigent defendants involved in these appeals. The additional costs to the state and counties as a result of these factors are unknown, but would likely not exceed a few million dollars annually once the lower courts resolved any death penalty cases shifted to them by the California Supreme Court.

Net Impact. Thus, the measure would result in a net reduction in state expenditures on death-penalty related appeals in the tens of millions of dollars annually in the long run.

State Correctional Costs

Costs. The enactment of this measure would result in an increase in state prison operation costs to the extent that offenders who would otherwise have been executed were held in state prisons for a longer period of time. These additional costs would not likely occur in the near term because relatively few persons now sentenced to death would otherwise have been executed as the appeal of their cases continues. However, the net cost of imprisoning offenders for life without the possibility of parole, instead of sentencing them to death, could be significant in the long term, especially if death penalty cases were to be resolved more quickly by the appeals courts in the future than they are now in favor of allowing executions to proceed.

Offsetting Savings. The enactment of this measure could result in a significant ongoing reduction in state costs for the operation of the state's prison system. Because offenders under death sentence are generally held in separate cells on death row and do not share cells with other inmates there, the prohibition of the death penalty might permit the state to move some former death row inmates to prison facilities where they could be double-celled with other high-security inmates at a lower security cost. In addition, the state currently incurs additional costs—above the amount typically spent on an average inmate—to incarcerate offenders under a death sentence due to various regulations and procedures that only apply to such offenders. For example, CDCR staff indicate that such offenders are often escorted by two staff members in circumstances where individuals with sentences of life without the possibility of parole are generally only escorted by a single staff member. Thus, the state could achieve additional operational savings to the extent that such special regulations and procedures would no longer be in effect.

There would likely be little fiscal effect from the provisions mandating that murderers work while in prison. This is because the measure's inmate work requirement does not change existing statute or regulation regarding prison work programs. Finally, the enactment of this measure would save the state the actual cost of carrying out executions. These savings would probably not be significant.

Net Impact. On balance, our analysis indicates it is likely that this measure would result in a net savings to the state on prison operation costs, potentially exceeding the low tens of millions of dollars annually, in the near term. The longer term net impact on correctional operation costs are less certain and would depend heavily on the rate of executions in the future.

General Fund Transfers to the SAFE California Fund

As discussed above, the measure would require that a total of \$100 million be transferred from the state General Fund to the SAFE California Fund from 2012-13 through 2015-16. As a result, less General Fund resources would be available to support various other state programs, but more funding would be available for local government agencies which received these grants. To the extent that funding provided from the SAFE California Fund to local agencies results in additional arrests and convictions, the measure could increase state and county costs for trial court and jail operations. The resulting fiscal impact, if any, is unknown and cannot be estimated at this time.

Other Impacts

Prison Construction. The measure could also affect future prison construction costs. For example, it could also allow the state to avoid future facility costs associated with housing a growing number of death row inmates. On the other hand, it could increase prison construction costs to the extent it increases the number of individuals housed in prison with sentences of life without the possibility of parole. The net impact of these factors on prison construction costs is unknown.

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 expenditures. The resulting fiscal impact, if any, is unknown and cannot be estimated.

Summary of Fiscal Effects

We estimate that this measure would have the following major fiscal effects:

- Net savings to the state and counties that could amount to the high tens of millions of dollars annually on a statewide basis due to the elimination of the death penalty.
- One-time state costs totaling \$100 million from 2012-13 through 2015-16 to provide funding to local law enforcement agencies.

Sincerely,

Mac Taylor
Legislative Analyst

Ana J. Matosantos
Director of Finance