

CHAIR

STEVE PEACE

VICE CHAIR

DENISE MORENO DUCHENY

SENATE

MAURICE K. JOHANNESSEN
PATRICK JOHNSTON
TIM LESLIE
JACK O'CONNELL
RICHARD G. POLANCO
JOHN VASCONCELLOS
CATHIE WRIGHT

ASSEMBLY

ROY ASHBURN
TONY CARDENAS
JIM CUNNEEN
FRED KEELEY
CAROLE MIGDEN
GEORGE RUNNER
RODERICK WRIGHT

September 9, 1999

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Connie Lemus
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative relating to the death penalty (File No. SA19 99RF0031).

This measure would amend the California Constitution to prohibit the imposition of the death penalty as the penalty for any crime punished by the state. The measure also specifies that offenders under a sentence of death at the time of this measure's enactment would not be executed and would instead serve a prison term of life without the possibility of parole.

While this measure does not explicitly repeal the state's current death penalty statute, which was enacted by a voter-approved initiative in 1978, it would effectively establish a conflicting and overriding prohibition on such punishment in the California Constitution.

Background

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. A jury trial generally determines which penalty is to be applied when special circumstances have been charged and proven.

As of May 1999, 537 offenders had received a death sentence and had been transferred to "death row" at San Quentin State Prison to await execution. 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.

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 May 1999, the California Supreme Court had affirmed 189 death sentences under the automatic appeal process. Many additional cases remain pending in the courts. Seven persons have been executed since the current death penalty law was enacted in 1978.

Fiscal Effect

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. Elimination of the death penalty could result in reduced court time and workload in two ways. First, some murder cases may be resolved by guilty pleas instead of going to trial. Second, for some of those murder cases that do proceed to trial, the time it takes to try them could be shortened. For example, jury selection for some capital cases could be shortened by as much as three or four weeks.

As a result, 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. The magnitude of the sav-

ings to the state and local governments is unknown, but could potentially range from the millions to the low tens of millions of dollars annually on a statewide basis.

These savings would be offset to the extent that prohibition of the death penalty eliminated an incentive for some offenders to reach plea agreements with county 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 could result. The magnitude of these offsetting costs is unknown .

Prohibition of the death penalty might also reduce expenditures by state and local law enforcement agencies on such cases, in part because law enforcement personnel are often key witnesses in murder trials. The amount of this potential expenditure decrease is unknown.

County Jail Costs. 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 are expedited or eliminated due to the prohibition on capital punishment, as discussed above, the transfer of persons convicted of murder from county jail to state prison would be accelerated, thus reducing the costs for operation of county jails. The magnitude of the savings is unknown but could amount to as much as several millions of dollars annually statewide.

Appellate Litigation Costs. Eventually, the measure would likely reduce current annual state expenditures by the state Department of Justice, the Office of the State Public Defender, the Habeas Corpus Resource Center, and the Court-Appointed Counsel program for the costs of litigating capital punishment appeals. These costs currently amount to about \$35 million annually. However, expenditure of part of this \$35 million for capital punishment litigation would probably continue until the courts determined how to procedurally resolve all past and pending cases involving death sentences.

The measure could also eventually result in an unknown reduction in expenditures by the California Supreme Court, potentially in the millions of dollars, by eliminating its workload of death penalty-related appeals.

Any savings on the California Supreme Court workload could also be fully or partly offset by an increase in the workload for state appellate courts, which handle appeals of

sentences of life without the possibility of parole. That is because there would likely be more such appeals for the appellate courts to handle if this measure were enacted.

State Correctional Costs. The enactment of this measure would result in an increase in state prison operation and construction costs because offenders who would otherwise have been executed would be held in state prisons for a much longer period of time. These additional costs would not occur in the near term because relatively few persons sentenced to death would otherwise have been executed due to the appeal of their cases. However, the net cost of imprisoning offenders for life without the possibility of parole, instead of sentencing them to death, could be significantly larger in the long term if capital cases were to be resolved much more quickly by the appeals courts in favor of allowing executions to proceed. The impact of such future court rulings is unknown.

To the extent that the enactment of this measure expedited murder trials and the transfer of persons convicted of murder from county jail to state prison, there could be a one-time increase in the number of convicted murderers into the state prison system. The operational and fiscal effects of this shift of offenders from county jails to the state prison system would likely even out over time, however.

The enactment of this measure could also result in a reduction in operational and construction expenditures for the state's prison system because, under prior court rulings, male offenders under death sentence must generally be held in separate cells on death row and cannot share cells with other inmates there. Prohibition of the death penalty might permit the state to move some former death row inmates to prison facilities where they could legally be double-celled with other high-security inmates at a lower security cost. Such a shift could generate significant one-time costs to modify existing prison facilities to hold former death row inmates, but could generate significant ongoing operational savings.

The accomplishment of such a shift would allow the otherwise vacant cells at the former death row to be used for other types of prison inmates, and allow the state to postpone construction of some additional prison space for its growing inmate population. These potential avoided costs are unknown, but could be in the low tens of millions of dollars.

Finally, the enactment of this measure would save the state the actual cost of carrying out executions. These savings would probably not be significant.

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

Summary

The enactment of this measure is likely to result in both savings and costs to the state and local governments. When the full impact is realized, we estimate that the measure would probably result in net savings to the state of at least several tens of millions of dollars annually and net savings to local governments in the millions to tens of millions of dollars annually on a statewide basis.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

B. Timothy Gage
Director of Finance