

2012

DEATH PENALTY.

Follow this and additional works at: http://repository.uchastings.edu/ca_ballot_props

Recommended Citation

DEATH PENALTY. California Proposition 34 (2012).
http://repository.uchastings.edu/ca_ballot_props/1313

This Proposition is brought to you for free and open access by the California Ballot Propositions and Initiatives at UC Hastings Scholarship Repository. It has been accepted for inclusion in Propositions by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcusc@uchastings.edu.

DEATH PENALTY. INITIATIVE STATUTE.

- Repeals death penalty as maximum punishment for persons found guilty of murder and replaces it with life imprisonment without possibility of parole.
- Applies retroactively to persons already sentenced to death.
- States that persons found guilty of murder must work while in prison as prescribed by the Department of Corrections and Rehabilitation, with their wages subject to deductions to be applied to any victim restitution fines or orders against them.
- Directs \$100 million to law enforcement agencies for investigations of homicide and rape cases.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- State and county savings related to murder trials, death penalty appeals, and corrections of about \$100 million annually in the first few years, growing to about \$130 million annually thereafter. This estimate could be higher or lower by tens of millions of dollars, largely depending on how the measure is implemented and the rate at which offenders would otherwise be sentenced to death and executed in the future.
- One-time state costs totaling \$100 million for grants to local law enforcement agencies to be paid over the next four years.

ANALYSIS BY THE LEGISLATIVE ANALYST**BACKGROUND**

Murder and the Death Penalty. First degree murder is generally defined as the unlawful killing of a human being that (1) is deliberate and premeditated or (2) takes place at the same time as certain other crimes, such as kidnapping. It is punishable by a life sentence in state prison with the possibility of being released by the state parole board after a minimum of 25 years. However, current state law 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 court. Existing state law identifies a number of special circumstances that can be charged, such as in cases when the murder was carried out for financial gain, was especially cruel, or was committed while the defendant was engaged in other specified criminal activities. A jury generally determines which penalty is to be applied when special circumstances have been charged and proven.

Implementation of the Death Penalty in California. Murder trials where the death penalty is sought are divided into two phases. The first phase involves determining whether the defendant is guilty of murder and any charged special circumstances,

while the second phase involves determining whether the death penalty should be imposed. Under existing state law, death penalty verdicts are automatically appealed to the California Supreme Court. In these “direct appeals,” the defendants’ attorneys argue that violations of state law or federal constitutional law took place during the trial, such as evidence improperly being included or excluded from the trial. If the California Supreme Court confirms the conviction and death sentence, the defendant can ask the U.S. Supreme Court to review the decision. In addition to direct appeals, death penalty cases ordinarily involve extensive legal challenges in both state and federal courts. These challenges involve factors of the case different from those considered in direct appeals (such as the claim that the defendant’s counsel was ineffective) and are commonly referred to as “habeas corpus” petitions. Finally, inmates who have received a sentence of death may also request that the Governor reduce their sentence. Currently, the proceedings that follow a death sentence can take a couple of decades to complete in California.

Both the state and county governments incur costs related to murder trials, including costs for the courts and prosecution, as well as for the defense of persons charged with murder who cannot afford legal

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

representation. In addition, the state incurs costs for attorneys employed by the state Department of Justice that seek to uphold death sentences in the appeals process. Various state agencies (including the Office of the State Public Defender and the Habeas Corpus Resource Center) are tasked with providing representation to individuals who have received a sentence of death but cannot afford legal representation.

Since the current death penalty law was enacted in California in 1978, around 900 individuals have received a death sentence. Of these, 14 have been executed, 83 have died prior to being executed, and about 75 have had their sentences reduced by the courts. As of July 2012, California had 725 offenders in state prison who were sentenced to death. Most of these offenders are at various stages of the direct appeal or habeas corpus review process. Condemned male inmates generally are housed at San Quentin State Prison (on death row), while condemned female inmates are housed at the Central California Women's Facility in Chowchilla. The state currently has various security regulations and procedures that result in increased security costs for these inmates. For example, inmates under a death sentence generally are handcuffed and escorted at all times by one or two officers while outside of their cells. In addition, these offenders are currently required to be placed in separate cells, whereas most other inmates share cells.

PROPOSAL

This measure repeals the state's current death penalty statute. In addition, it generally requires murderers to work while in prison and provides new state funding for local law enforcement on a limited-term basis.

Elimination of Death Sentences. Under this measure no offender could be sentenced to death by the state. The measure also specifies that offenders currently under a sentence of death would not be executed and instead would be resentenced to a prison term of life without the possibility of parole. This measure also allows the California Supreme Court to transfer all of its existing death penalty direct appeals and habeas corpus petitions to the state's Courts of Appeal or superior courts. These courts would resolve issues remaining even after changing these sentences to life without the possibility of parole.

Inmate Work Requirement. Current state law generally requires that inmates—including murderers—work while they are in prison. California regulations allow for some exceptions to these work requirements, such as for inmates who pose too great a security risk to participate in work programs. In addition, inmates may be required by the courts to make payments to victims of crime. This measure specifies that every person found guilty of murder must work while in state prison and have their pay deducted for any debts they owe to victims of crime, subject to state regulations. Because the measure does not change state regulations, existing prison practices related to inmate work requirements would not necessarily be changed.

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, sheriffs' departments, and district attorneys' offices for the purpose of increasing the rate at which homicide and rapes are solved. For example, the measure specifies that the money could be used to increase staffing in homicide and sex offense investigation or prosecution units. Under the measure, a total of \$100 million would be transferred from the state General Fund to the SAFE California Fund over four years—\$10 million in 2012–13 and \$30 million in each year from 2013–14 through 2015–16. Monies in the SAFE California Fund would be distributed to local law enforcement 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 of the measure are discussed below.

Murder Trials

Court Proceedings. This measure would reduce state and county costs associated with some murder cases that would otherwise have been eligible for the death penalty under current law. These cases would likely be less expensive if the death penalty was no longer an option for two primary reasons. First, the duration of some trials would be shortened. This is because there would no longer be a separate phase to determine

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

whether the death penalty is imposed. Other aspects of murder trials could also be shortened. For example, jury selection time for some trials could be reduced as it would no longer be necessary to remove potential jurors who are unwilling to impose the death penalty. Second, the elimination of the death penalty would reduce the costs incurred by counties for prosecutors and public defenders for some murder cases. This is because these agencies generally use more attorneys in cases where a death sentence is sought and incur greater expenses related to investigations and other preparations for the penalty phase in such cases.

County Jails. County jail costs could also be reduced because of the measure's effect on murder trials. Persons held for trial on murder charges, particularly cases that could result in a death sentence, ordinarily remain in county jail until the completion of their trial and sentencing. As some murder cases are shortened due to the elimination of the death penalty, the persons being charged with murder would spend less time in county jail before being sent to state prison. Such an outcome would reduce county jail costs and increase state prison costs.

Savings. The state and counties could achieve several tens of millions of dollars in savings annually on a statewide basis from reduced costs related to murder trials. The actual amount of savings would depend on various factors, including the number of death penalty trials that would otherwise occur in the absence of the measure. It is also possible that the state and counties would redirect some of their court-related resources to other court activities. Similarly, the county jail savings would be offset to the extent that jail beds no longer needed for defendants in death penalty trials were used for other offenders, such as those who are now being released early because of a lack of jail space in some counties.

The above savings could be partially offset to the extent that the elimination of the death penalty reduced the incentive for offenders to plead guilty in exchange for a lesser sentence in some murder cases. If the death penalty is prohibited and additional cases go to trial instead of being resolved through plea agreements, additional state and county costs for support of courts, prosecution, and defense counsel, as well as county jails, could result. The extent to which this would occur is unknown.

Appellate Litigation

Over time, the measure would reduce state expenditures by the California Supreme Court and the state agencies participating in the death penalty appeal process. These state savings would reach about \$50 million annually. However, these savings likely would be partially offset in the short run because some state expenditures for appeals would probably continue until the courts resolved all pending appeals for inmates who previously received death sentences. In the long run, there would be relatively minor state and local costs—possibly totaling about \$1 million annually—for hearing appeals from additional offenders receiving sentences of life without the possibility of parole.

State Corrections

The elimination of the death penalty would affect state prison costs in different ways. On the one hand, its elimination would result in somewhat higher prison population and higher costs as formerly condemned inmates are sentenced to life without the possibility of parole. Given the length of time that inmates currently spend on death row, these costs would likely not be major. On the other hand, these added costs likely would be more than offset by the savings generated by not having to house hundreds of inmates on death row. As previously discussed, it is generally more expensive to house an inmate under a death sentence than an inmate subject to life without the possibility of parole, due to higher and more expensive security measures to house and supervise inmates sentenced to death.

The net effect of these fiscal impacts would likely be a net reduction in state costs for the operation of the state's prison system, potentially in the low tens of millions of dollars annually. These savings, however, could be higher or lower for various reasons. For example, if the rate of executions that were to occur in the future in the absence of the measure increased, the future cost of housing inmates who have been sentenced to death would be reduced. Therefore, there would be lower correctional savings resulting from this measure's provisions eliminating the death penalty. Alternatively, if the number of individuals sentenced to death in the future in the absence of the measure were to increase, the cost to house these individuals in

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

prison would also increase. Under this scenario, eliminating the death penalty would result in higher correctional savings than we have estimated.

General Fund Transfers to the SAFE California Fund

The measure requires 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 in those years, but more funding would be available for local government agencies that receive 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, jail, and prison operations.

Other Fiscal Effects

Prison Construction. The measure could also affect future prison construction costs by allowing the state to avoid future facility costs associated with housing an increasing number of death row inmates. However, the extent of any such savings would depend on the future growth in the condemned inmate population, how the

state chooses to house condemned inmates in the future, and the future growth in the general prison population.

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 criminal justice expenditures. The resulting fiscal impact, if any, is unknown.

Summary

In total, the measure would result in net savings to state and local governments related to murder trials, appellate litigation, and state corrections. These savings would likely be about \$100 million annually in the first few years, growing to about \$130 million annually thereafter. The actual amount of these annual savings could be higher or lower by tens of millions of dollars, depending on various factors including how the measure is implemented and the rate of death sentences and executions that would take place in the future if this measure were not approved by voters. In addition, the measure would require the state to provide a total of \$100 million in grants to local law enforcement agencies over the next four years.

★ **ARGUMENT IN FAVOR OF PROPOSITION 34** ★

Evidence shows MORE THAN 100 INNOCENT PEOPLE HAVE BEEN SENTENCED TO DEATH in the U.S., and some have been executed!

Prop. 34 means WE’LL NEVER EXECUTE AN INNOCENT PERSON in California.

Franky Carrillo was 16 when he was arrested and wrongly convicted of murder in Los Angeles. It took 20 years to show his innocence! Cameron Willingham was executed in 2004 in Texas for an arson that killed his children; impartial investigators have since concluded there was no arson.

“If someone’s executed and later found innocent, we can’t go back.”—Judge LaDoris Cordell, Santa Clara (Retired)

California’s death penalty is TOO COSTLY and BROKEN BEYOND REPAIR.

- Only 13 people have been executed since 1967—no one since 2006. Most death row inmates die of old age.
- WE WASTE MILLIONS OF TAX DOLLARS on special housing and taxpayer-financed appeals that can last 25 years.
- Today, death row inmates can sit around doing nothing.

34 MAKES CONVICTED KILLERS WORK AND PAY into the victims’ compensation fund, as ordered by a judge.

It keeps killers who commit heinous crimes IN PRISON UNTIL THEY DIE.

It frees up millions of WASTED TAX DOLLARS—to help our kids’ schools and catch more murderers and rapists—without raising taxes.

34 SAVES MONEY.

California is broke. Many think the death penalty is cheaper than life without parole—that’s just NOT true.

An impartial study found California will SAVE NEARLY \$1 BILLION in five years if we replace the death penalty with life in prison without possibility of parole. Savings come from eliminating lawyers’ fees and special death row housing. http://media.lls.edu/documents/Executing_the_Will_of_the_Voters.pdf

Those wasted tax dollars would be better spent on LAW ENFORCEMENT and OUR SCHOOLS.

WE CANNOT LET BRUTAL KILLERS EVADE JUSTICE.

Every year, almost half of all murders and over half of all rapes GO UNSOLVED. Killers walk free and often go on to rape and kill again. Thousands of victims wait for justice while we waste millions on death row.

Killers who commit monstrous acts must be swiftly brought to justice, locked up forever, and severely punished.

- 34 SAVES TAX DOLLARS and directs \$100 million in savings for more DNA testing, crime labs, and other tools that help cops solve rapes and murders.
- 34 makes killers who commit horrible crimes spend the rest of their lives in prison with NO HOPE OF EVER GETTING OUT. It makes them WORK so they can PAY restitution to their victims.
- That’s JUSTICE THAT WORKS.

Every person justly sentenced to life in prison without possibility of parole since 1977 is still locked up or has died in prison. Life without possibility of parole works and ensures we will NEVER EXECUTE AN INNOCENT PERSON in California.

“The death penalty doesn’t make us safer—better crime-solving does.”—Former Attorney General John Van de Kamp

“I am troubled by cases like Willingham’s—of innocent people who may have been executed. I support 34 because it guarantees we will never execute an innocent person in California.”

—Bishop Flores, San Diego Diocese

Vote YES on 34.

GIL GARCETTI, District Attorney
Los Angeles County, 1992–2000

JEANNE WOODFORD, Warden
California’s Death Row prison, 1999–2004

JENNIFER A. WAGGONER, President
League of Women Voters of California

★ **REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 34** ★

JERRY BROWN SAYS THERE ARE NO INNOCENT INMATES ON CALIFORNIA’S DEATH ROW.—*San Francisco Chronicle*, 3/7/12.

Yes on 34 is so desperate that they’ll say anything to get your vote. PUBLIC OPINION POLLS SHOW OVERWHELMING SUPPORT FOR THE DEATH PENALTY, SO THEY PURPOSELY USE MISLEADING TERMS LIKE INNOCENCE, SOLVING CRIMES AND SAVING MONEY.

Don’t be fooled.

“PROP. 34 TAKES \$100 MILLION FROM CALIFORNIA’S GENERAL FUND. PROPONENTS’ CLAIMS THAT THE MONEY COMES FROM ALLEGED SAVINGS IS FALSE. Furthermore, Prop. 34 will cost taxpayers millions more annually by guaranteeing murderers lifetime housing and healthcare benefits.”—Mike Genest, 2005–2009 California Finance Director.

Prop. 34 supporters can’t defend their initiative. Instead, they deceive.

Prop. 34’s so-called “work requirement?” Making killers take PE classes meets it.

Exonerated Franky Carrillo . . . He never got a death sentence.

There’s no “California’s Death Row prison.” It’s San Quentin.

Voters are smart and know Prop. 34 supporters have been working for decades to eliminate capital punishment. THEY ARE

NOT TAXPAYER WATCHDOGS—just the opposite. THEY MAKE JUSTICE MORE EXPENSIVE.

“Prop. 34 punishes families of those who suffered horrific deaths by condemned killers. That’s why EVERY MAJOR CALIFORNIA LAW ENFORCEMENT ORGANIZATION OPPOSES PROP. 34.”—Scott Seaman, President, California Police Chiefs Association.

DON’T LET GUILTY MURDERERS WIN. Scott Peterson callously murdered his wife Laci and their unborn son. He earned his death sentence. LACI WAS INNOCENT. BABY CONNER WAS HELPLESS.

Remember the victims, including 43 police officers murdered protecting us. Stand up for a safer California.

Vote NO on 34.

CARL V. ADAMS, President
California District Attorneys Association

KERMIT ALEXANDER
Family Executed by Los Angeles Gang Member

RON COTTINGHAM, President
Peace Officers Research Association of California

★ ARGUMENT AGAINST PROPOSITION 34 ★

California is broke. Abolishing the death penalty costs taxpayers \$100 MILLION OVER THE NEXT FOUR YEARS AND MANY MILLIONS MORE IN THE FUTURE. Instead of justice, killers get lifetime housing/healthcare benefits.

PROP. 34 ISN'T ABOUT SAVING MONEY. It's about the ACLU's agenda to weaken public safety laws. They're desperate to convince you that saving murderers from justice is justified. Or, if you don't believe that, they claim it saves money!

THE ACLU'S EFFORTS ARE INDEFENSIBLE, CRUEL TO LOVED ONES OF VICTIMS, MISLEADING AND INSULTING TO VOTERS AND DANGEROUS FOR CALIFORNIA.

Prop. 34 lets serial killers, cop killers, child killers, and those who kill the elderly, escape justice. Proponents don't acknowledge that when California's death penalty was eliminated before, condemned criminals were released only to rape and kill again!

Voters had to restore capital punishment to restore justice.

HERE ARE THE FACTS. The death penalty is given to less than 2% of murderers whose crimes are so shocking that juries of law-abiding citizens unanimously delivered the sentence.

Richard Allen Davis: kidnapped, raped and murdered 12-year-old Polly Klaas.

Richard "The Night Stalker" Ramirez: kidnapped, raped, tortured and mutilated 14 people and terrorized 11 more including children and senior citizens.

Gang Member Ramon Sandoval: ambushed and shot Police Officers Daryle Black (a former U.S. Marine) and Rick Delfin with an AK-47, killing Black, shooting Delfin in the head and wounding a pregnant woman.

Serial killer Robert Rhoades, a child rapist, kidnapped 8-year-old Michael Lyons. Rhoades raped and tortured Michael for 10 hours, stabbing him 70 times before slitting his throat and dumping his body in a river.

Alexander Hamilton: executed Police Officer Larry Lasater (a Marine combat veteran). Lasater's wife was seven months pregnant at the time.

Capital murder victims include:

225 CHILDREN

43 POLICE OFFICERS

235 RAPED/murdered

90 TORTURED/murdered

THE ACLU IS THE PROBLEM: They claim the death penalty is broken and expensive. What hypocrisy! It's the ACLU and supporters who have disrupted fair implementation of the law with endless delays. Other states including Ohio and Arizona give criminals full rights and fairly enforce the death penalty. California can too.

PLAYING POLITICS: Marketing Prop. 34, supporters make cost claims based on newspaper articles and "studies" written by the ACLU or other death penalty opponents.

Department of Corrections data suggests abolishing capital punishment will result in increased long-term costs in the tens of millions, just for housing/healthcare. Taxpayers will spend at least \$50,000 annually to care for each convicted killer who didn't think twice about killing innocent children, cops, mothers and fathers.

DO YOU THINK GIVING VICIOUS KILLERS LIFETIME HOUSING AND HEALTHCARE BENEFITS SAVES MONEY? OF COURSE NOT!

THAT'S THE SECRET PROP. 34 PROPONENTS DON'T WANT YOU TO KNOW. It's not about money . . . it's about their political agenda.

Prosecutors, cops, crime victims and community leaders across California are urging you to vote NO on 34. Stop the ACLU. Preserve the death penalty. Protect California.

Visit waitingforjustice.net. Please join us. Vote NO on 34.

HON. PETE WILSON

Former Governor of California

MARC KLAAS

Father of 12-Year-Old Murder Victim Polly Klaas

KEITH ROYAL, President

California State Sheriffs' Association

★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 34 ★

WE'LL NEVER EXECUTE AN INNOCENT PERSON with Proposition 34.

California's death penalty is costly and broken beyond repair.

CHECK THE FACTS:

- The impartial cost analysis in this voter guide says 34 SAVES MILLIONS every year. Read it yourself.
- Law enforcement leaders and prosecutors found California's death penalty is BROKEN and COSTS MILLIONS more each year than life in prison without parole. Read here: <http://ccfaj.org/lrr-dp-official.html>.
- 34 ends expensive special housing, lawyers, and private cells for death row inmates. We need those wasted tax dollars for our schools.

"There's no chance California's death penalty can ever be fixed. The millions wasted on this broken system would be much better spent keeping teachers, police and firefighters on their jobs."

—Justice Carlos Moreno, California Supreme Court (Retired)

34 helps CATCH AND PUNISH KILLERS. It will:

- Keep heinous killers IN PRISON UNTIL THEY DIE with NO HOPE OF EVER GETTING OUT.
- Make them WORK and PAY court-ordered victim restitution.

- Save hundreds of millions and directs \$100 million to law enforcement to solve rapes and murders. 46% of murders and 56% of rapes GO UNSOLVED while we WASTE MILLIONS on a handful of criminals already behind bars.

Every person justly sentenced to LIFE IN PRISON WITHOUT POSSIBILITY OF PAROLE since 1977 REMAINS IN PRISON OR HAS DIED IN PRISON.

Remember, evidence shows MORE THAN 100 INNOCENT PEOPLE HAVE BEEN SENTENCED TO DEATH in the U.S., and some have been executed!

WE'LL NEVER EXECUTE AN INNOCENT PERSON with 34.

That's justice that works.

Vote YES on 34.

MAYOR ANTONIO R. VILLARAIGOSA

City of Los Angeles

HON. JOHN VAN DE KAMP, Attorney General

State of California, 1983–1991

JUDGE LADORIS CORDELL (Retired)

Santa Clara County Superior Court

(1) *Continuous coverage shall be deemed to exist if there is a lapse in coverage due to an insured’s active military service.*

(2) *Continuous coverage shall be deemed to exist even if there is a lapse in coverage of up to 18 months in the last five years due to loss of employment resulting from a layoff or furlough.*

(3) *Continuous coverage shall be deemed to exist even if there is a lapse of coverage of not more 90 days in the previous five years for any reason.*

(4) *Children residing with a parent shall be provided a discount for continuous coverage based upon the parent’s eligibility for a continuous coverage discount.*

(c) *Consumers who are unable to demonstrate continuous coverage shall be granted a proportional discount. This discount shall be a proportion of the amount of the rate of reduction that would have been granted if the consumer had been able to demonstrate continuous coverage. The proportion shall reflect the number of whole years in the immediately preceding five years for which the consumer was insured.*

SEC. 5. Conflicting Ballot Measures

In the event that this measure and another measure or measures relating to continuity of coverage shall appear on the same statewide election ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measures shall be null and void.

SEC. 6. Amendment

The provisions of this act shall not be amended by the Legislature except to further its purposes by a statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring.

SEC. 7. Severability

It is the intent of the people that the provisions of this act are severable and that if any provision of this act, or the application thereof to any person or circumstance, is held invalid such invalidity shall not affect any other provision or application of this act which can be given effect without the invalid provision or application.

PROPOSITION 34

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and repeals sections of the Penal Code and adds sections to the Government Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

The SAFE California Act

SECTION 1. Title

This initiative shall be known and may be cited as “The Savings, Accountability, and Full Enforcement for California

Act,” or “The SAFE California Act.”

SEC. 2. Findings and Declarations

The people of the State of California do hereby find and declare all of the following:

1. Murderers and rapists need to be stopped, brought to justice, and punished. Yet, on average, a shocking 46 percent of homicides and 56 percent of rapes go unsolved every year. Our limited law enforcement resources should be used to solve more crimes, to get more criminals off our streets, and to protect our families.

2. Police, sheriffs, and district attorneys now lack the funding they need to quickly process evidence in rape and murder cases, to use modern forensic science such as DNA testing, or even hire enough homicide and sex offense investigators. Law enforcement should have the resources needed for full enforcement of the law. By solving more rape and murder cases and bringing more criminals to justice, we keep our families and communities safer.

3. Many people think the death penalty is less expensive than life in prison without the possibility of parole, but that’s just not true. California has spent \$4 billion on the death penalty since 1978 and death penalty trials are 20 times more expensive than trials seeking life in prison without the possibility of parole, according to a study by former death penalty prosecutor and judge, Arthur Alarcon, and law professor Paula Mitchell. By replacing the death penalty with life in prison without the possibility of parole, California taxpayers would save well over \$100 million every year. That money could be used to improve crime prevention and prosecution.

4. Killers and rapists walk our streets free and threaten our safety, while we spend hundreds of millions of taxpayer dollars on a select few who are already behind bars forever on death row. These resources would be better spent on violence prevention and education, to keep our families safe.

5. By replacing the death penalty with life in prison without the possibility of parole, we would save the state \$1 billion in five years without releasing a single prisoner—\$1 billion that could be invested in law enforcement to keep our communities safer, in our children’s schools, and in services for the elderly and disabled. Life in prison without the possibility of parole ensures that the worst criminals stay in prison forever and saves money.

6. More than 100 innocent people have been sentenced to death in this country and some innocent people have actually been executed. Experts concluded that Cameron Todd Willingham was wrongly executed for a fire that killed his three children. With the death penalty, we will always risk executing innocent people.

7. Experts have concluded that California remains at risk of executing an innocent person. Innocent people are wrongfully convicted because of faulty eyewitness identification, outdated forensic science, and overzealous prosecutions. We are not doing what we need to do to protect the innocent. State law even protects a prosecutor if he or she intentionally sends an innocent person to prison, preventing accountability to taxpayers and victims. Replacing the death penalty with life in prison without the possibility of parole will at least ensure that we do not execute an innocent person.

33

34

8. Convicted murderers must be held accountable and pay for their crimes. Today, less than 1 percent of inmates on death row work and, as a result, they pay little restitution to victims. Every person convicted of murder should be required to work in a high-security prison and money earned should be used to help victims through the victim's compensation fund, consistent with the victims' rights guaranteed by Marsy's Law.

9. California's death penalty is an empty promise. Death penalty cases drag on for decades. A sentence of life in prison without the possibility of parole provides faster resolution for grieving families and is a more certain punishment.

10. Retroactive application of this act will end a costly and ineffective practice, free up law enforcement resources to increase the rate at which homicide and rape cases are solved, and achieve fairness, equality and uniformity in sentencing.

SEC. 3. Purpose and Intent

The people of the State of California declare their purpose and intent in enacting the act to be as follows:

1. To get more murderers and rapists off the streets and to protect our families.

2. To save the taxpayers \$1 billion in five years so those dollars can be invested in local law enforcement, our children's schools, and services for the elderly and disabled.

3. To use some of the savings from replacing the death penalty to create the SAFE California Fund, to provide funding for local law enforcement, specifically police departments, sheriffs, and district attorney offices, to increase the rate at which homicide and rape cases are solved.

4. To eliminate the risk of executing innocent people.

5. To require that persons convicted of murder with special circumstances remain behind bars for the rest of their lives, with mandatory work in a high-security prison, and that money earned be used to help victims through the victim's compensation fund.

6. To end the more than 25-year-long process of review in death penalty cases, with dozens of court dates and postponements that grieving families must bear in memory of loved ones.

7. To end a costly and ineffective practice and free up law enforcement resources to keep our families safe.

8. To achieve fairness, equality and uniformity in sentencing, through retroactive application of this act to replace the death penalty with life in prison without the possibility of parole.

SEC. 4. Section 190 of the Penal Code is amended to read:

190. (a) Every person guilty of murder in the first degree shall be punished by ~~death~~; imprisonment in the state prison for life without the possibility of parole; or imprisonment in the state prison for a term of 25 years to life. The penalty to be applied shall be determined as provided in Sections ~~190.1~~, 190.2, ~~190.3~~, 190.4, and 190.5.

Except as provided in subdivision (b), (c), or (d), every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 15 years to life.

(b) Except as provided in subdivision (c), every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 25 years to life if the victim was a peace officer, as defined in subdivision (a) of

Section 830.1, subdivision (a), (b), or (c) of Section 830.2, subdivision (a) of Section 830.33, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties.

(c) Every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of life without the possibility of parole if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a), (b), or (c) of Section 830.2, subdivision (a) of Section 830.33, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties, and any of the following facts has been charged and found true:

(1) The defendant specifically intended to kill the peace officer.

(2) The defendant specifically intended to inflict great bodily injury, as defined in Section 12022.7, on a peace officer.

(3) The defendant personally used a dangerous or deadly weapon in the commission of the offense, in violation of subdivision (b) of Section 12022.

(4) The defendant personally used a firearm in the commission of the offense, in violation of Section 12022.5.

(d) Every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 20 years to life if the killing was perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury.

(e) Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to reduce any minimum term of a sentence imposed pursuant to this section. A person sentenced pursuant to this section shall not be released on parole prior to serving the minimum term of confinement prescribed by this section.

(f) Every person found guilty of murder and sentenced pursuant to this section shall be required to work within a high-security prison as many hours of faithful labor in each day and every day during his or her term of imprisonment as shall be prescribed by the rules and regulations of the Department of Corrections and Rehabilitation, pursuant to Section 2700. In any case where the prisoner owes a restitution fine or restitution order, the Secretary of the Department of Corrections and Rehabilitation shall deduct money from the wages and trust account deposits of the prisoner and shall transfer those funds to the California Victim Compensation and Government Claims Board according to the rules and regulations of the Department of Corrections and Rehabilitation, pursuant to Sections 2085.5 and 2717.8.

SEC. 5. Section 190.1 of the Penal Code is repealed.

~~190.1. A case in which the death penalty may be imposed pursuant to this chapter shall be tried in separate phases as follows:~~

~~(a) The question of the defendant's guilt shall be first determined. If the trier of fact finds the defendant guilty of first degree murder, it shall at the same time determine the truth of~~

~~all special circumstances charged as enumerated in Section 190.2 except for a special circumstance charged pursuant to paragraph (2) of subdivision (a) of Section 190.2 where it is alleged that the defendant had been convicted in a prior proceeding of the offense of murder in the first or second degree.~~

~~(b) If the defendant is found guilty of first degree murder and one of the special circumstances is charged pursuant to paragraph (2) of subdivision (a) of Section 190.2 which charges that the defendant had been convicted in a prior proceeding of the offense of murder of the first or second degree, there shall thereupon be further proceedings on the question of the truth of such special circumstance.~~

~~(c) If the defendant is found guilty of first degree murder and one or more special circumstances as enumerated in Section 190.2 has been charged and found to be true, his sanity on any plea of not guilty by reason of insanity under Section 1026 shall be determined as provided in Section 190.4. If he is found to be sane, there shall thereupon be further proceedings on the question of the penalty to be imposed. Such proceedings shall be conducted in accordance with the provisions of Section 190.3 and 190.4.~~

SEC. 6. Section 190.2 of the Penal Code is amended to read:

190.2. (a) The penalty for a defendant who is found guilty of murder in the first degree is death or imprisonment in the state prison for life without the possibility of parole if one or more of the following special circumstances has been found under Section 190.4 to be true:

(1) The murder was intentional and carried out for financial gain.

(2) The defendant was convicted previously of murder in the first or second degree. For the purpose of this paragraph, an offense committed in another jurisdiction, which if committed in California would be punishable as first or second degree murder, shall be deemed murder in the first or second degree.

(3) The defendant, in this proceeding, has been convicted of more than one offense of murder in the first or second degree.

(4) The murder was committed by means of a destructive device, bomb, or explosive planted, hidden, or concealed in any place, area, dwelling, building, or structure, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to one or more human beings.

(5) The murder was committed for the purpose of avoiding or preventing a lawful arrest, or perfecting or attempting to perfect, an escape from lawful custody.

(6) The murder was committed by means of a destructive device, bomb, or explosive that the defendant mailed or delivered, attempted to mail or deliver, or caused to be mailed or delivered, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to one or more human beings.

(7) The victim was a peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or

reasonably should have known, that the victim was a peace officer engaged in the performance of his or her duties; or the victim was a peace officer, as defined in the above-enumerated sections, or a former peace officer under any of those sections, and was intentionally killed in retaliation for the performance of his or her official duties.

(8) The victim was a federal law enforcement officer or agent who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a federal law enforcement officer or agent engaged in the performance of his or her duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of his or her official duties.

(9) The victim was a firefighter, as defined in Section 245.1, who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a firefighter engaged in the performance of his or her duties.

(10) The victim was a witness to a crime who was intentionally killed for the purpose of preventing his or her testimony in any criminal or juvenile proceeding, and the killing was not committed during the commission or attempted commission, of the crime to which he or she was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his or her testimony in any criminal or juvenile proceeding. As used in this paragraph, "juvenile proceeding" means a proceeding brought pursuant to Section 602 or 707 of the Welfare and Institutions Code.

(11) The victim was a prosecutor or assistant prosecutor or a former prosecutor or assistant prosecutor of any local or state prosecutor's office in this or any other state, or of a federal prosecutor's office, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(12) The victim was a judge or former judge of any court of record in the local, state, or federal system in this or any other state, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(13) The victim was an elected or appointed official or former official of the federal government, or of any local or state government of this or any other state, and the killing was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity. As used in this section, the phrase "especially heinous, atrocious, or cruel, manifesting exceptional depravity" means a conscienceless or pitiless crime that is unnecessarily torturous to the victim.

(15) The defendant intentionally killed the victim by means of lying in wait.

(16) The victim was intentionally killed because of his or her race, color, religion, nationality, or country of origin.

(17) The murder was committed while the defendant was engaged in, or was an accomplice in, the commission of, attempted commission of, or the immediate flight after committing, or attempting to commit, the following felonies:

(A) Robbery in violation of Section 211 or 212.5.

- (B) Kidnapping in violation of Section 207, 209, or 209.5.
- (C) Rape in violation of Section 261.
- (D) Sodomy in violation of Section 286.
- (E) The performance of a lewd or lascivious act upon the person of a child under the age of 14 years in violation of Section 288.
- (F) Oral copulation in violation of Section 288a.
- (G) Burglary in the first or second degree in violation of Section 460.
- (H) Arson in violation of subdivision (b) of Section 451.
- (I) Train wrecking in violation of Section 219.
- (J) Mayhem in violation of Section 203.
- (K) Rape by instrument in violation of Section 289.
- (L) Carjacking, as defined in Section 215.
- (M) To prove the special circumstances of kidnapping in subparagraph (B), or arson in subparagraph (H), if there is specific intent to kill, it is only required that there be proof of the elements of those felonies. If so established, those two special circumstances are proven even if the felony of kidnapping or arson is committed primarily or solely for the purpose of facilitating the murder.
- (18) The murder was intentional and involved the infliction of torture.
- (19) The defendant intentionally killed the victim by the administration of poison.
- (20) The victim was a juror in any court of record in the local, state, or federal system in this or any other state, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.
- (21) The murder was intentional and perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person or persons outside the vehicle with the intent to inflict death. For purposes of this paragraph, "motor vehicle" means any vehicle as defined in Section 415 of the Vehicle Code.
- (22) The defendant intentionally killed the victim while the defendant was an active participant in a criminal street gang, as defined in subdivision (f) of Section 186.22, and the murder was carried out to further the activities of the criminal street gang.
- (b) Unless an intent to kill is specially required under subdivision (a) for a special circumstance enumerated therein, an actual killer, as to whom the special circumstance has been found to be true under Section 190.4, need not have had any intent to kill at the time of the commission of the offense which is the basis of the special circumstance in order to suffer death or confinement in the state prison for life without the possibility of parole.
- (c) Every person, not the actual killer, who, with the intent to kill, aids, abets, counsels, commands, induces, solicits, requests, or assists any actor in the commission of murder in the first degree shall be punished by death or imprisonment in the state prison for life without the possibility of parole if one or more of the special circumstances enumerated in subdivision (a) has been found to be true under Section 190.4.
- (d) Notwithstanding subdivision (c), every person, not the actual killer, who, with reckless indifference to human life and as a major participant, aids, abets, counsels, commands,

induces, solicits, requests, or assists in the commission of a felony enumerated in paragraph (17) of subdivision (a) which results in the death of some person or persons, and who is found guilty of murder in the first degree therefor, shall be punished by death or imprisonment in the state prison for life without the possibility of parole if a special circumstance enumerated in paragraph (17) of subdivision (a) has been found to be true under Section 190.4.

The penalty shall be determined as provided in this section and Sections ~~190.1, 190.3, 190.4,~~ and 190.5.

SEC. 7. Section 190.3 of the Penal Code is repealed.

~~190.3. If the defendant has been found guilty of murder in the first degree, and a special circumstance has been charged and found to be true, or if the defendant may be subject to the death penalty after having been found guilty of violating subdivision (a) of Section 1672 of the Military and Veterans Code or Sections 37, 128, 219, or 4500 of this code, the trier of fact shall determine whether the penalty shall be death or confinement in state prison for a term of life without the possibility of parole. In the proceedings on the question of penalty, evidence may be presented by both the people and the defendant as to any matter relevant to aggravation, mitigation, and sentence including, but not limited to, the nature and circumstances of the present offense, any prior felony conviction or convictions whether or not such conviction or convictions involved a crime of violence, the presence or absence of other criminal activity by the defendant which involved the use or attempted use of force or violence or which involved the express or implied threat to use force or violence, and the defendant's character, background, history, mental condition and physical condition.~~

~~However, no evidence shall be admitted regarding other criminal activity by the defendant which did not involve the use or attempted use of force or violence or which did not involve the express or implied threat to use force or violence. As used in this section, criminal activity does not require a conviction.~~

~~However, in no event shall evidence of prior criminal activity be admitted for an offense for which the defendant was prosecuted and acquitted. The restriction on the use of this evidence is intended to apply only to proceedings pursuant to this section and is not intended to affect statutory or decisional law allowing such evidence to be used in any other proceedings.~~

~~Except for evidence in proof of the offense or special circumstances which subject a defendant to the death penalty, no evidence may be presented by the prosecution in aggravation unless notice of the evidence to be introduced has been given to the defendant within a reasonable period of time as determined by the court, prior to trial. Evidence may be introduced without such notice in rebuttal to evidence introduced by the defendant in mitigation.~~

~~The trier of fact shall be instructed that a sentence of confinement to state prison for a term of life without the possibility of parole may in future after sentence is imposed, be commuted or modified to a sentence that includes the possibility of parole by the Governor of the State of California.~~

~~In determining the penalty, the trier of fact shall take into account any of the following factors if relevant:~~

- ~~(a) The circumstances of the crime of which the defendant~~

~~was convicted in the present proceeding and the existence of any special circumstances found to be true pursuant to Section 190.1.~~

~~(b) The presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or the express or implied threat to use force or violence.~~

~~(c) The presence or absence of any prior felony conviction.~~

~~(d) Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.~~

~~(e) Whether or not the victim was a participant in the defendant's homicidal conduct or consented to the homicidal act.~~

~~(f) Whether or not the offense was committed under circumstances which the defendant reasonably believed to be a moral justification or extenuation for his conduct.~~

~~(g) Whether or not defendant acted under extreme duress or under the substantial domination of another person.~~

~~(h) Whether or not at the time of the offense the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect, or the affects of intoxication.~~

~~(i) The age of the defendant at the time of the crime.~~

~~(j) Whether or not the defendant was an accomplice to the offense and his participation in the commission of the offense was relatively minor.~~

~~(k) Any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime.~~

~~After having heard and received all of the evidence, and after having heard and considered the arguments of counsel, the trier of fact shall consider, take into account and be guided by the aggravating and mitigating circumstances referred to in this section, and shall impose a sentence of death if the trier of fact concludes that the aggravating circumstances outweigh the mitigating circumstances. If the trier of fact determines that the mitigating circumstances outweigh the aggravating circumstances the trier of fact shall impose a sentence of confinement in state prison for a term of life without the possibility of parole.~~

SEC. 8. Section 190.4 of the Penal Code is amended to read:

190.4. (a) Whenever special circumstances as enumerated in Section 190.2 are alleged and the trier of fact finds the defendant guilty of first degree murder, the trier of fact shall also make a special finding on the truth of each alleged special circumstance. The determination of the truth of any or all of the special circumstances shall be made by the trier of fact on the evidence presented at the trial ~~or at the hearing held pursuant to Subdivision (b) of Section 190.1.~~

In case of a reasonable doubt as to whether a special circumstance is true, the defendant is entitled to a finding that is not true. The trier of fact shall make a special finding that each special circumstance charged is either true or not true. Whenever a special circumstance requires proof of the commission or attempted commission of a crime, such crime shall be charged and proved pursuant to the general law applying to the trial and conviction of the crime.

If the defendant was convicted by the court sitting without a jury, the trier of fact shall be a jury unless a jury is waived by the defendant and by the people, in which case the trier of fact shall be the court. If the defendant was convicted by a plea of guilty, the trier of fact shall be a jury unless a jury is waived by the defendant and by the people.

If the trier of fact finds that any one or more of the special circumstances enumerated in Section 190.2 as charged is true, ~~there shall be a separate penalty hearing the defendant shall be punished by imprisonment in state prison for life without the possibility of parole,~~ and neither the finding that any of the remaining special circumstances charged is not true, nor if the trier of fact is a jury, the inability of the jury to agree on the issue of the truth or untruth of any of the remaining special circumstances charged, shall prevent the holding of a separate penalty hearing.

In any case in which the defendant has been found guilty by a jury, and the jury has been unable to reach an unanimous verdict that one or more of the special circumstances charged are true, and does not reach a unanimous verdict that all the special circumstances charged are not true, the court shall dismiss the jury and shall order a new jury impaneled to try the issues, but the issue of guilt shall not be tried by such jury, nor shall such jury retry the issue of the truth of any of the special circumstances which were found by an unanimous verdict of the previous jury to be untrue. If such new jury is unable to reach the unanimous verdict that one or more of the special circumstances it is trying are true, the court shall dismiss the jury and in the court's discretion shall either order a new jury impaneled to try the issues the previous jury was unable to reach the unanimous verdict on, or impose a punishment of confinement in state prison for a term of 25 years.

(b) If defendant was convicted by the court sitting without a jury the trier of fact at the penalty hearing shall be a jury unless a jury is waived by the defendant and the people, in which case the trier of fact shall be the court. If the defendant was convicted by a plea of guilty, the trier of fact shall be a jury unless a jury is waived by the defendant and the people.

If the trier of fact is a jury and has been unable to reach a unanimous verdict as to what the penalty shall be, the court shall dismiss the jury and shall order a new jury impaneled to try the issue as to what the penalty shall be. If such new jury is unable to reach a unanimous verdict as to what the penalty shall be, the court in its discretion shall either order a new jury or impose a punishment of confinement in state prison for a term of life without the possibility of parole.

(c) (b) If the trier of fact which convicted the defendant of a crime for which he may be subject to *imprisonment in state prison for life without the possibility of parole* the death penalty was a jury, the same jury shall consider any plea of not guilty by reason of insanity pursuant to Section 1026, and the truth of any special circumstances which may be alleged, and the penalty to be applied, unless for good cause shown the court discharges that jury in which case a new jury shall be drawn. The court shall state facts in support of the finding of good cause upon the record and cause them to be entered into the minutes.

(d) In any case in which the defendant may be subject to the death penalty, evidence presented at any prior phase of the trial,

including any proceeding under a plea of not guilty by reason of insanity pursuant to Section 1026 shall be considered an any subsequent phase of the trial, if the trier of fact of the prior phase is the same trier of fact at the subsequent phase.

(e) In every case in which the trier of fact has returned a verdict or finding imposing the death penalty, the defendant shall be deemed to have made an application for modification of such verdict or finding pursuant to Subdivision 7 of Section 11. In ruling on the application, the judge shall review the evidence, consider, take into account, and be guided by the aggravating and mitigating circumstances referred to in Section 190.3, and shall make a determination as to whether the jury's findings and verdicts that the aggravating circumstances outweigh the mitigating circumstances are contrary to law or the evidence presented. The judge shall state on the record the reasons for his findings.

The judge shall set forth the reasons for his ruling on the application and direct that they be entered on the Clerk's minutes. The denial of the modification of the death penalty verdict pursuant to subdivision (7) of Section 1181 shall be reviewed on the defendant's automatic appeal pursuant to subdivision (b) of Section 1239. The granting of the application shall be reviewed on the People's appeal pursuant to paragraph (6):

SEC. 9. Chapter 33 (commencing with Section 7599) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 33. SAFE CALIFORNIA FUND TO INVESTIGATE UNSOLVED RAPES AND MURDERS

Article 1. Creation of SAFE California Fund

7599. A special fund to be known as the "SAFE California Fund" is created within the State Treasury and is continuously appropriated for carrying out the purposes of this division.

Article 2. Appropriation and Allocation of Funds

7599.1. Funding Appropriation

On January 1, 2013, ten million dollars (\$10,000,000) shall be transferred from the General Fund to the SAFE California Fund for the 2012–13 fiscal year and shall be continuously appropriated for the purposes of the act that added this chapter. On July 1 of each of fiscal years 2013–14, 2014–15 and 2015–16, an additional sum of thirty million dollars (\$30,000,000) shall be transferred from the General Fund to the SAFE California Fund and shall be continuously appropriated for the purposes of the act that added this chapter. Funds transferred to the SAFE California Fund shall be used exclusively for the purposes of the act that added this chapter and shall not be subject to appropriation or transfer by the Legislature for any other purpose. The funds in the SAFE California Fund may be used without regard to fiscal year.

7599.2. Distribution of Moneys from SAFE California Fund

(a) At the direction of the Attorney General, the Controller shall disburse moneys deposited in the SAFE California Fund to police departments, sheriffs and district attorney offices, for the purpose of increasing the rate at which homicide and rape cases are solved. Projects and activities that may be funded include, but are not limited to, faster processing of physical evidence collected in rape cases, improving forensic science capabilities including DNA analysis and matching, increasing

staffing in homicide and sex offense investigation or prosecution units, and relocation of witnesses. Moneys from the SAFE California Fund shall be allocated to police departments, sheriffs and district attorney offices through a fair and equitable distribution formula to be determined by the Attorney General.

(b) Any costs associated with the allocation and distribution of these funds shall be deducted from the SAFE California Fund. The Attorney General and Controller shall make every effort to keep the costs of allocation and distribution at or close to zero, to ensure that the maximum amount of funding is allocated to programs and activities that increase the rate at which homicide and rape cases are solved.

SEC. 10. Retroactive Application of act

(a) In order to best achieve the purpose of this act as stated in Section 3 and to achieve fairness, equality and uniformity in sentencing, this act shall be applied retroactively.

(b) In any case where a defendant or inmate was sentenced to death prior to the effective date of this act, the sentence shall automatically be converted to imprisonment in the state prison for life without the possibility of parole under the terms and conditions of this act. The State of California shall not carry out any execution following the effective date of this act.

(c) Following the effective date of this act, the Supreme Court may transfer all death penalty appeals and habeas petitions pending before the Supreme Court to any district of the Court of Appeal or superior court, in the Supreme Court's discretion.

SEC. 11. Effective Date

This act shall become effective on the day following the election pursuant to subdivision (a) of Section 10 of Article II of the California Constitution.

SEC. 12. Severability

The provisions of this act are severable. If any provision of this act or its application is held invalid, including but not limited to Section 10, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

PROPOSITION 35

This initiative measure is submitted to the people of California in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds a section to the Evidence Code and amends and adds a chapter heading and sections to the Penal Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

CALIFORNIANS AGAINST SEXUAL EXPLOITATION ACT ("CASE ACT")

SECTION 1. Title.

This measure shall be known and may be cited as the "Californians Against Sexual Exploitation Act" ("CASE Act").

34

35