

2016

Death Penalty. Initiative Statute.

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PROPOSITION **DEATH PENALTY.**
62 INITIATIVE STATUTE.

OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

- 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 and sentenced to life without possibility of parole must work while in prison as prescribed by the Department of Corrections and Rehabilitation.

- Increases portion of life inmates' wages that may be applied to victim restitution.

SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- Net ongoing reduction in state and county costs related to murder trials, legal challenges to death sentences, and prisons of around \$150 million annually within a few years. This estimate could be higher or lower by tens of millions of dollars, depending on various factors.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Murder Punishable by Death

First degree murder is generally defined as the unlawful killing of a human being that (1) is deliberate and premeditated or (2) takes place while certain other crimes are committed, 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 "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 or when more than one murder was committed.

Death Penalty Proceedings

Death Penalty Trials Can Consist of Two Phases.

The first phase of a murder trial where the prosecutor seeks a death sentence involves determining whether the defendant is guilty of murder and any special circumstances. If the defendant is found guilty and a special

circumstance is proven, the second phase involves determining whether the death penalty or life without the possibility of parole should be imposed. These murder trials result in costs to the state trial courts. In addition, counties incur costs for the prosecution of these individuals as well as the defense of individuals who cannot afford legal representation. Since the current death penalty law was enacted in California in 1978, 930 individuals have received a death sentence. In recent years, an average of about 20 individuals annually have received death sentences.

Legal Challenges to Death Sentences. Under current 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

ANALYSIS BY THE LEGISLATIVE ANALYST

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state and federal courts. These challenges, which are commonly referred to as “habeas corpus” petitions, involve factors of the case that are different from those considered in direct appeals (such as the claim that the defendant’s attorney was ineffective). All of these legal challenges—measured from when the individual receives a death sentence to when the individual has completed all state and federal legal challenge proceedings—can take a couple of decades to complete in California.

The state currently spends about \$55 million annually on the legal challenges that follow death sentences. This funding supports the California Supreme Court as well as attorneys employed by the state Department of Justice who seek to uphold death sentences while cases are being challenged in the courts. In addition, it also supports various state agencies that are tasked with providing representation to individuals who have received a sentence of death but cannot afford legal representation.

Implementation of the Death Penalty

Housing of Condemned Inmates. As of April 2016, of the 930 individuals who received a death sentence since 1978, 15 have been executed, 103 have died prior to being executed, 64 have had their sentences reduced by the courts, and 748 are in state prison with death sentences. The vast majority of the 748 condemned inmates are at various stages of the direct appeal or habeas corpus petition process. Condemned male inmates generally are required to be 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 their cells. In addition, unlike most offenders, condemned inmates are currently required to be placed in separate cells.

Executions Currently Halted by Courts. The state uses lethal injection to execute condemned inmates. Because of legal issues surrounding the state’s lethal injection procedures, executions have not taken place since 2006. The state is currently in the process of developing procedures to allow for executions to resume.

PROPOSAL

Elimination of Death Penalty for First Degree Murder. Under this measure, no offender could be sentenced to death by the state for first degree murder. Instead, the most serious penalty available would be a prison term of life without the possibility of being released by the state parole board. (There is another measure on this ballot—Proposition 66—that would maintain the death penalty but seeks to shorten the time that the legal challenges to death sentences take.)

Resentencing of Inmates With Death Sentences to Life Without the Possibility of Parole. The measure also specifies that offenders currently sentenced to 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 trial courts. These courts would resolve any remaining issues unrelated to the death sentence—such as claims of innocence.

Inmate Work and Payments to Crime Victim Requirements. Current state law generally requires that inmates—including murderers—work while they are in prison. State prison

ANALYSIS BY THE LEGISLATIVE ANALYST

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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. In addition, the measure increases from 50 percent to 60 percent the maximum amount that may be deducted from the wages of inmates sentenced to life without the possibility of parole for any debts owed to victims of crime. This provision would also apply to individuals who are resentenced under the measure from death to life without the possibility of parole.

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 typically 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 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 sentencing 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, persons convicted of murder would be sent to state prison earlier than they otherwise would be. Such an outcome would reduce county jail costs and increase state prison costs.

Summary of Impacts Related to Murder Trials. In total, the measure could reduce annual state and county costs for murder trials by several tens of millions of dollars on a statewide basis. The actual reduction would depend on various factors, including the number of death penalty trials that would otherwise have occurred in the absence of the measure. In addition, the amount of this reduction 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 additional cases went to trial instead of being resolved through plea agreements, the state and counties would experience additional costs for support of courts, prosecution, and defense attorneys, as well as county jails. The extent to which this would occur is unknown. In most cases, the state and counties would likely redirect available resources resulting from the

ANALYSIS BY THE LEGISLATIVE ANALYST

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above cost reductions to other court and law enforcement activities.

Legal Challenges to Death Sentences

Over time, the measure would reduce state expenditures by the California Supreme Court and the state agencies participating in the legal challenges to death sentences. These reduced costs would reach about \$55 million annually. However, these reduced costs likely would be partially offset in the short run because some state expenditures would probably continue until the courts resolved all cases for inmates who previously received death sentences. In the long run, there would be relatively minor state and local costs—possibly totaling a couple million dollars annually—for hearing appeals from additional offenders receiving sentences of life without the possibility of parole.

State Prisons

The elimination of the death penalty would affect state prison costs in different ways. On the one hand, its elimination would result in a 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 significant. On the other hand, these added costs likely would be more than offset by reduced costs from not housing 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 the higher security measures used to house and supervise inmates sentenced to death.

The combined effect of these fiscal impacts would likely result in net state savings for the

operation of the state's prison system in the low tens of millions of dollars annually. These savings, however, could be higher or lower depending on the rate of executions that would have otherwise occurred.

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. The extent of any such savings would depend on the future growth in the condemned inmate population, how the state chose 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 and cannot be estimated.

Summary of Fiscal Impacts

In total, we estimate that this measure would reduce net state and county costs related to murder trials, legal challenges to death sentences, and prisons. These reduced costs would likely be around \$150 million annually within a few years. This reduction in costs could be higher or lower by tens of millions of dollars, depending on various factors.

Visit <http://www.sos.ca.gov/measure-contributions> for a list of committees primarily formed to support or oppose this measure. Visit <http://www.fppc.ca.gov/transparency/top-contributors/nov-16-gen-v2.html> to access the committee's top 10 contributors.

★ ARGUMENT IN FAVOR OF PROPOSITION 62 ★

California's death penalty system has failed. Taxpayers have spent more than \$5 billion since 1978 to carry out 13 executions—a cost of \$384 million per execution.

The death penalty is an empty promise to victims' families and carries the unavoidable risk of executing an innocent person.

YES ON 62 REPLACES THIS COSTLY, FAILED SYSTEM WITH A STRICT LIFE SENTENCE AND ZERO CHANCE OF PAROLE

Under Prop. 62, the death penalty will be replaced with a strict life sentence. Those convicted of the worst crimes will NEVER be released. Instead of being housed in expensive private cells on death row, murderers will be kept with other maximum-security inmates.

WORK AND RESTITUTION

Criminals who would otherwise sit on death row and in courtrooms during the decades-long appeals guaranteed by the Constitution, will instead have to work and pay restitution to their victims' families.

REAL CLOSURE FOR VICTIMS' FAMILIES

"California's death penalty system is a long, agonizing ordeal for our family. As my sister's killer sits through countless hearings, we continually relive this tragedy. The death penalty is an empty promise of justice. A life sentence without parole would bring real closure."—*Beth Webb, whose sister was murdered with seven other people in a mass-shooting at an Orange County hair salon.*

HUGE COST SAVINGS CONFIRMED BY IMPARTIAL ANALYSIS

The state's independent Legislative Analyst confirmed Prop. 62 will save \$150 million per year. A death row sentence costs 18 times more than life in prison. Resources can be better spent on education, public safety, and crime prevention that actually works.

DEATH PENALTY SYSTEM FLAWS RUN DEEP

California has not executed anyone in 10 years because of serious problems. For nearly 40 years, every attempted fix has failed to make the death penalty system work. It's simply unworkable.

"I prosecuted killers using California's death penalty law, but the high costs, endless delays and total ineffectiveness in deterring crime convinced me we need to replace the death penalty system with life in prison without parole."—*John Van de Kamp, former Los Angeles District Attorney and former California Attorney General.*

THE RISK OF EXECUTING AN INNOCENT PERSON IS REAL

DNA technology and new evidence have proven the innocence of more than 150 people on death row after they were sentenced to death. In California, 66 people had their murder convictions overturned because new evidence showed they were innocent.

Carlos DeLuna was executed in 1989, but an independent investigation later proved his innocence. Executing an innocent person is a mistake that can never be undone.

FORMER DEATH PENALTY ADVOCATES: YES ON 62

"I led the campaign to bring the death penalty back to California in 1978. It was a costly mistake. Now I know we just hurt the victims' families we were trying to help and wasted taxpayer dollars. The death penalty cannot be fixed. We need to replace it, lock up murderers for good, make them work, and move on."—*Ron Briggs, led the campaign to create California's death penalty system.*
www.YesOn62.com

JEANNE WOODFORD, Former Death Row Warden

DONALD HELLER, Author of California's Death Penalty Law

BETH WEBB, Sister of Victim Murdered in 2011

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 62 ★

California's death penalty HASN'T failed; *it was intentionally sabotaged.*

Key supporters of Proposition 62—like the ACLU—have spent decades undermining the death penalty; now they argue for repeal.

For the sake of victims, **DON'T LET THEM WIN!**

We all agree that the death penalty in California isn't working. The solution is to MEND, NOT END, the death penalty. California's frontline prosecutors and almost all our 58 elected District Attorneys have a plan to fix it.

STARTING WITH VOTING NO ON PROPOSITION 62!

The system is expensive because BRUTAL KILLERS file endless, frivolous appeals, spending decades on death row. Prop. 62 backers want you to believe that granting these thugs lifetime healthcare, housing, meals, and privileges will save money? **WHO ARE THEY FOOLING?** They say we don't need a death penalty. *Really?*

There's about 2,000 murders in California annually. Approximately 15—the worst of the worst—receive a death sentence. Who are they?

• **MASS MURDERERS/SERIAL KILLERS.** • Murderers

who RAPED/TORTURED victims. • **CHILD KILLERS.** • **TERRORISTS.**

Ask the proponents of Proposition 62: if a murderer sentenced to "Life Without Parole" escapes and murders again, or kills a prison guard, what sentence will they give him? Another life without parole?

The proponent of Prop. 62—an actor—wants you to believe the movie script. But let's be clear, there are no innocents on California's death row. They cite one case from Texas from 1989, still under dispute. California has never executed an innocent, and never will.

Join victims' families and law enforcement and **VOTE NO ON PROP. 62!**

www.NoProp62YesProp66.com.

MICHELE HANISEE, President

Association of Deputy District Attorneys of Los Angeles County

MARC KLAAS, Father of 12-year-old Murder Victim Polly Klaas

LAREN LEICHLITER, President

San Bernardino County Deputy Sheriffs Association

★ ARGUMENT AGAINST PROPOSITION 62 ★

Join us in VOTING NO on PROPOSITION 62!

Let's be clear what Proposition 62 does.

Proposition 62 says the worst of the worst murderers get to stay alive, at the taxpayers' expense, decades after committing their horrible crimes, and mocking the pain of their victims' families.

The death penalty is reserved for only the worst murderers like child killers, rape/torture murderers, serial murderers, and cop killers. Just 1–2% of about 2,000 murders in California annually end up with a death sentence.

Proposition 62 says these most heinous crimes should have no higher level of punishment. We disagree. For the very worst criminals, there needs to be a death penalty.

We all know California's death penalty system is broken.

Death row inmates are now able to file one frivolous appeal after another, denying justice.

The answer is to MEND, NOT END California's death penalty laws.

Prosecutors, law enforcement, and the families of murder victims OPPOSE PROPOSITION 62 because it jeopardizes public safety, denies justice and closure to victims' families, and rewards the most horrible killers.

The backers of Proposition 62 want you to believe they are protecting wrongly-convicted death row prisoners from being executed.

But in a meeting with the *San Francisco Chronicle*, Governor Jerry Brown, "a former Attorney General, said there are no innocent inmates on California's death row." (3/7/12)

The backers of Proposition 62 say it will save taxpayers money. WHO ARE THEY FOOLING?

Under Prop. 62, taxpayers are on the hook to feed, clothe, house, guard, and provide healthcare to brutal killers until they die of old age. Even give them a heart transplant!

That's why Mike Genest, former California Finance Director, says, "Prop. 62 will cost over \$100 million."

If Proposition 62 doesn't protect victims and doesn't protect taxpayers, just who does Proposition 62 protect?

Prop. 62 protects Charles Ng, a brutal serial killer who kidnapped families, tortured/killed children in front of their parents, killed the father, and then repeatedly raped the mother before killing her.

Ng committed his crimes over 30 years ago, delayed his trial for nearly 15 years with appeals, and was finally tried, convicted, and sentenced to death almost 20 years ago. He's still on death row, filing appeals to delay his punishment, long after his victims were silenced forever.

Who else does Proposition 62 protect?

Richard Allen Davis, who kidnapped, raped, and tortured 12-year-old Polly Klaas.

Serial killer Robert Rhoads, who kidnapped, raped, and tortured 8-year-old Michael Lyons before stabbing him 70 times.

And hundreds more like them.

California's death row inmates include the killers of:

- Over 1,000 MURDER VICTIMS. • 226 CHILDREN.
- 43 PEACE OFFICERS. • 294 victims who were RAPED or TORTURED before being killed.

The American Civil Liberties Union supports repealing the death penalty; the very same people who file all the frivolous appeals that have bogged down the system. Now they are using the problems they created to argue the death penalty should be repealed.

DON'T BE FOOLED. Join us and VOTE NO on PROPOSITION 62!

Visit www.NoProp62YesProp66.com for more information.

MIKE RAMOS, District Attorney of San Bernardino County

MARC KLAAS, Father of 12-year-old Murder Victim

Polly Klaas

MIKE DURANT, President

Peace Officers Research Association of California

★ REBUTTAL TO ARGUMENT AGAINST PROPOSITION 62 ★

YES ON 62 REQUIRES A STRICT LIFE SENTENCE—WHY KEEP PAYING FOR A COSTLY, FAILED DEATH PENALTY SYSTEM?

Prop. 62 locks up the worst murderers for life and ends the huge cost of death row. These murderers will never be paroled or set free. They will have to work and pay restitution to the families of their victims.

Most of those sentenced to death already end up spending life in prison because 99% of death sentences are never carried out. Yet it costs 18 times more to house them on death row and pay for their attorneys than a strict life sentence without parole.

YES ON 62 SAVES \$150 MILLION A YEAR

The state's nonpartisan fiscal advisor—the Legislative Analyst—confirms Prop. 62 will save taxpayers \$150 million every year. Read the analysis for yourself in this Voter Guide.

38 YEARS OF FAILURE

Opponents of Prop. 62 admit the death penalty system is broken. In fact, the death penalty advocates who created this system now admit it has failed, despite many attempts to fix it. Since 1978, taxpayers have spent \$5 billion on the death penalty, yet over the last ten years there hasn't been a single execution.

The long and costly appeals process is mandated by the Constitution so an innocent person isn't wrongly executed. It can't be changed. Vote YES on Prop. 62 to save hundreds of millions of dollars and keep vicious killers locked up, working and paying restitution to the families of their victims.

ROBYN BARBOUR, Grandmother was Murdered in 1994

JOHN DONOHUE, Ph.D., Professor of Economics and Law Stanford Law School

RON BRIGGS, Led Campaign to Bring the Death Penalty Back in 1978

not be affected, but shall remain in full force and effect, and to this end the provisions and parts of this Act are severable. The voters hereby declare that this Act, and each portion and part, would have been adopted irrespective of whether any one or more provisions or parts are found to be invalid or unconstitutional.

SEC. 10. Legal Defense.

The people of the State of California desire that the Act, if approved by the voters, and thereafter challenged in court, be defended by the State of California. The people of the State of California, by enacting this Act, hereby declare that the proponent of this Act has a direct and personal stake in defending this Act from constitutional or statutory challenges to the Act's validity. In the event the Attorney General fails to defend this Act, or the Attorney General fails to appeal an adverse judgment against the constitutionality or statutory permissibility of this Act, in whole or in part, in any court of law, the Act's proponent shall be entitled to assert its direct and personal stake by defending the Act's validity in any court of law and shall be empowered by the citizens through this Act to act as agent of the citizens of the State of California subject to the following conditions: (1) the proponent shall not be considered an "at-will" employee of the State of California, but the Legislature shall have the authority to remove the proponent from their agency role by a majority vote of each house of the Legislature when "good cause" exists to do so, as that term is defined by California case law; (2) the proponent shall take the Oath of Office under Section 3 of Article XX of the California Constitution as an employee of the State of California; (3) the proponent shall be subject to all fiduciary, ethical, and legal duties prescribed by law; and (4) the proponent shall be indemnified by the State of California for only reasonable expenses and other losses incurred by the proponent, as agent, in defending the validity of the challenged Act. The rate of indemnification shall be no more than the amount it would cost the state to perform the defense itself.

SEC. 11. Effective Date.

Except as otherwise provided herein, this Act shall become effective the day after its approval by the voters.

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PROPOSITION 62

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; 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 Justice That Works Act of 2016

SECTION 1. Title.

This initiative shall be known and may be cited as "The Justice That Works Act of 2016."

SEC. 2. Findings and Declarations.

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

1. Violent killers convicted of first degree murder must be separated from society and severely punished.

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2. Under current law, California sentences many criminals to death who commit first degree murder, but the state rarely carries out executions. Instead, the state spends millions of taxpayer dollars providing lawyers for death row inmates, only to see the murderers it has sentenced to death by execution die of old age in prison.

3. Since 1978, California has spent more than \$4 billion on a death penalty system that has sentenced nearly one thousand criminals to death by execution but has executed only 13 people. Even though there are over 700 inmates now on death row, California has not executed anyone in almost eleven years.

4. Violent murderers who are sentenced to serve life in prison without the possibility of parole in California are never eligible for parole. They spend the rest of their lives in prison and they die in prison.

5. Fewer than 1% of death row inmates work and pay their wages to compensate their victims. Murderers sentenced to life imprisonment without the possibility of parole are required to work in prison and use their wages to pay restitution to the victims of their crimes.

6. All convicted murderers sentenced to life imprisonment without the possibility of parole should be legally required to work while in prison and pay 60% of their wages to compensate their victims for the damage they caused.

7. While many think it is cheaper to execute murderers than to imprison them for life, in fact it is far more expensive. The death penalty system costs over \$100 million more per year to maintain than a system that has life imprisonment without the possibility of parole as its harshest punishment, 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 imprisonment without the possibility of parole, California taxpayers would save well over \$100 million every year.

8. The death penalty is a failed government program that wastes taxpayer dollars and makes fatal mistakes. More than 150 innocent people have been sentenced to death in this country, and some innocent people have actually been executed. Wrongful convictions rob innocent people of decades of their lives, waste tax dollars, and re-traumatize the victims' families, while the real killers remain free to kill again.

9. Retroactive application of this act will end a costly and ineffective practice immediately and ensure that California never executes an innocent person.

10. 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 swift and certain justice for grieving families.

11. Life in prison without the possibility of parole ensures that the worst criminals stay in prison forever and saves money. 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 crime prevention strategies, services for victims, education, and keeping our communities and families safe.

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 end California's costly and ineffective death penalty system and replace it with a common sense approach that sentences persons convicted of first degree murder with special circumstances to life imprisonment without the possibility of parole so they are permanently separated from society and required to pay restitution to their victims.
2. To require everyone convicted of first degree murder and sentenced to life imprisonment without the possibility of parole to work while in prison, and to increase to 60% the portion of wages they must pay as restitution to their victims.
3. To eliminate the risk of executing an innocent person.
4. To end the decades-long appeals process in which grieving family members attending multiple hearings are forced to continually relive the trauma of their loss.
5. To achieve fairness 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 or resentenced to a term of life imprisonment without the possibility of parole 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 specifically 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 of 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.

(e) (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. Section 2085.5 of the Penal Code is amended to read:

2085.5. (a) (1) In any case in which a prisoner owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4, the Secretary of the Department of Corrections and Rehabilitation shall deduct a minimum of 20 percent or the balance owing on the fine amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the California Victim Compensation Board for deposit in the Restitution Fund in the State Treasury. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(2) *In any case in which a prisoner sentenced or resentenced on or after the effective date of this act to a term of life imprisonment without the possibility of parole owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4, the Secretary of the Department of Corrections and Rehabilitation shall deduct a minimum of 20 percent or the balance owing on the fine amount, whichever is less, up to a maximum of 60 percent from the wages and up to a maximum of 50 percent from the trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the California Victim Compensation Board for deposit in the Restitution Fund in the State Treasury. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.*

(b) (1) When a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, in any case in which a prisoner owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4, the agency designated by the board of supervisors in the county where the prisoner is incarcerated is authorized to deduct a minimum of 20 percent or the balance owing on the fine amount, whichever is less, up to a maximum of 50 percent from the county jail equivalent of wages and trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the California Victim Compensation Board for deposit in the Restitution Fund in the State Treasury. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(2) If the board of supervisors designates the county sheriff as the collecting agency, the board of supervisors shall first obtain the concurrence of the county sheriff.

(c) (1) In any case in which a prisoner owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (f) of Section 1202.4, the Secretary of the Department of Corrections and Rehabilitation shall deduct a minimum of 20 percent or the balance owing on the order amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law. The secretary shall transfer that amount to the

California Victim Compensation Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program. The sentencing court shall be provided a record of the payments made to victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.

(2) *In any case in which a prisoner sentenced or resentenced on or after the effective date of this act to a term of life imprisonment without the possibility of parole owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (f) of Section 1202.4, the Secretary of the Department of Corrections and Rehabilitation shall deduct a minimum of 20 percent or the balance owing on the order amount, whichever is less, up to a maximum of 60 percent from the wages and up to a maximum of 50 percent from the trust account deposits of a prisoner, unless prohibited by federal law. The secretary shall transfer that amount to the California Victim Compensation Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program. The sentencing court shall be provided a record of the payments made to victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.*

(d) When a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, in any case in which a prisoner owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4, the agency designated by the board of supervisors in the county where the prisoner is incarcerated is authorized to deduct a minimum of 20 percent or the balance owing on the order amount, whichever is less, up to a maximum of 50 percent from the county jail equivalent of wages and trust account deposits of a prisoner, unless prohibited by federal law. The agency shall transfer that amount to the California Victim Compensation Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program, or may pay the victim directly. The sentencing court shall be provided a record of the payments made to the victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.

(e) The secretary shall deduct and retain from the wages and trust account deposits of a prisoner, unless prohibited by federal law, an administrative fee that totals 10 percent of any amount transferred to the California Victim Compensation Board pursuant to subdivision (a) or (c). The secretary shall deduct and retain from any prisoner settlement or trial award, an administrative fee that totals 5 percent of any amount paid from the settlement or award to satisfy an outstanding restitution order or fine pursuant to subdivision (n), unless prohibited by federal law. The secretary shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the Department of Corrections and Rehabilitation. The secretary, at his or her discretion, may retain any excess funds in the special deposit account for future reimbursement of the department's administrative and support costs for the

restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(f) When a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated is authorized to deduct and retain from the county jail equivalent of wages and trust account deposits of a prisoner, unless prohibited by federal law, an administrative fee that totals 10 percent of any amount transferred to the California Victim Compensation Board pursuant to subdivision (b) or (d). The agency is authorized to deduct and retain from a prisoner settlement or trial award an administrative fee that totals 5 percent of any amount paid from the settlement or award to satisfy an outstanding restitution order or fine pursuant to subdivision (n), unless prohibited by federal law. Upon release from custody pursuant to subdivision (h) of Section 1170, the agency is authorized to charge a fee to cover the actual administrative cost of collection, not to exceed 10 percent of the total amount collected. The agency shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the agency. The agency is authorized to retain any excess funds in the special deposit account for future reimbursement of the agency's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(g) In any case in which a parolee owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4, the secretary, or, when a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated, may collect from the parolee or, pursuant to Section 2085.6, from a person previously imprisoned in county jail any moneys owing on the restitution fine amount, unless prohibited by federal law. The secretary or the agency shall transfer that amount to the California Victim Compensation Board for deposit in the Restitution Fund in the State Treasury. The amount deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(h) In any case in which a parolee owes a direct order of restitution, imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 29, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or paragraph (3) of subdivision (a) of Section 1202.4, the secretary, or, when a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated or a local collection program, may collect from the parolee or, pursuant to Section 2085.6, from a person previously imprisoned in county jail any moneys owing, unless prohibited by federal law. The secretary or the agency shall transfer that amount to the California Victim Compensation Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program, or the agency may pay the victim directly. The sentencing court shall be provided a record of the payments made by the offender pursuant to this subdivision.

(i) The secretary, or, when a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated, may deduct and retain from moneys collected from parolees or persons previously imprisoned in county jail an administrative fee that totals 10 percent of any amount transferred to the California Victim Compensation Board pursuant to subdivision (g) or (h), unless prohibited by federal law. The secretary shall deduct and retain from any settlement or trial award of a parolee an administrative fee that totals 5 percent of an amount paid from the settlement or award to satisfy an outstanding restitution order or fine pursuant to subdivision (n), unless prohibited by federal law. The agency is authorized to deduct and retain from any settlement or trial award of a person previously imprisoned in county jail an administrative fee that totals 5 percent of any amount paid from the settlement or award to satisfy an outstanding restitution order or fine pursuant to subdivision (n). The secretary or the agency shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the Department of Corrections and Rehabilitation or the agency, as applicable. The secretary, at his or her discretion, or the agency may retain any excess funds in the special deposit account for future reimbursement of the department's or agency's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(j) When a prisoner has both a restitution fine and a restitution order from the sentencing court, the Department of Corrections and Rehabilitation shall collect the restitution order first pursuant to subdivision (c).

(k) When a prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 and that prisoner has both a restitution fine and a restitution order from the sentencing court, if the agency designated by the board of supervisors in the county where the prisoner is incarcerated collects the fine and order, the agency shall collect the restitution order first pursuant to subdivision (d).

(l) When a parolee has both a restitution fine and a restitution order from the sentencing court, the Department of Corrections and Rehabilitation, or, when the prisoner is punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency designated by the board of supervisors in the county where the prisoner is incarcerated, may collect the restitution order first, pursuant to subdivision (h).

(m) If an inmate is housed at an institution that requires food to be purchased from the institution canteen for unsupervised overnight visits, and if the money for the purchase of this food is received from funds other than the inmate's wages, that money shall be exempt from restitution deductions. This exemption shall apply to the actual amount spent on food for the visit up to a maximum of fifty dollars (\$50) for visits that include the inmate and one visitor, seventy dollars (\$70) for visits that include the inmate and two or three visitors, and eighty dollars (\$80) for visits that include the inmate and four or more visitors.

(n) Compensatory or punitive damages awarded by trial or settlement to any inmate, parolee, person placed on postrelease community supervision pursuant to Section 3451, or defendant on mandatory supervision imposed pursuant to subparagraph (B) of paragraph (5) of

subdivision (h) of Section 1170, in connection with a civil action brought against a federal, state, or local jail, prison, or correctional facility, or any official or agent thereof, shall be paid directly, after payment of reasonable attorney's fees and litigation costs approved by the court, to satisfy any outstanding restitution orders or restitution fines against that person. The balance of the award shall be forwarded to the payee after full payment of all outstanding restitution orders and restitution fines, subject to subdivisions (e) and (i). The Department of Corrections and Rehabilitation shall make all reasonable efforts to notify the victims of the crime for which that person was convicted concerning the pending payment of any compensatory or punitive damages. For any prisoner punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency is authorized to make all reasonable efforts to notify the victims of the crime for which that person was convicted concerning the pending payment of any compensatory or punitive damages.

(o) (1) Amounts transferred to the California Victim Compensation Board for payment of direct orders of restitution shall be paid to the victim within 60 days from the date the restitution revenues are received by the California Victim Compensation Board. If the restitution payment to a victim is less than twenty-five dollars (\$25), then payment need not be forwarded to that victim until the payment reaches twenty-five dollars (\$25) or when the victim requests payment of the lesser amount.

(2) If a victim cannot be located, the restitution revenues received by the California Victim Compensation Board on behalf of the victim shall be held in trust in the Restitution Fund until the end of the state fiscal year subsequent to the state fiscal year in which the funds were deposited or until the time that the victim has provided current address information, whichever occurs sooner. Amounts remaining in trust at the end of the specified period of time shall revert to the Restitution Fund.

(3) (A) A victim failing to provide a current address within the period of time specified in paragraph (2) may provide documentation to the Department of Corrections and Rehabilitation, which shall verify that moneys were collected on behalf of the victim. Upon receipt of that verified information from the Department of Corrections and Rehabilitation, the California Victim Compensation Board shall transmit the restitution revenues to the victim in accordance with the provisions of subdivision (c) or (h).

(B) A victim failing to provide a current address within the period of time specified in paragraph (2) may provide documentation to the agency designated by the board of supervisors in the county where the prisoner punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 is incarcerated, which may verify that moneys were collected on behalf of the victim. Upon receipt of that verified information from the agency, the California Victim Compensation Board shall transmit the restitution revenues to the victim in accordance with the provisions of subdivision (d) or (h).

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 at which it was approved, 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 63

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, repeals, and adds 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

The Safety for All Act of 2016

SECTION 1. Title.

This measure shall be known and may be cited as "The Safety for All Act of 2016."

SEC. 2. Findings and Declarations.

The people of the State of California find and declare:

1. Gun violence destroys lives, families and communities. From 2002 to 2013, California lost 38,576 individuals to gun violence. That is more than seven times the number of U.S. soldiers killed in combat during the wars in Iraq and Afghanistan combined. Over this same period, 2,258 children were killed by gunshot injuries in California. The same number of children murdered in the Sandy Hook elementary school massacre are killed by gunfire in this state every 39 days.

2. In 2013, guns were used to kill 2,900 Californians, including 251 children and teens. That year, at least 6,035 others were hospitalized or treated in emergency rooms for non-fatal gunshot wounds, including 1,275 children and teens.

3. Guns are commonly used by criminals. According to the California Department of Justice, in 2014 there were 1,169 firearm murders in California, 13,546 armed robberies involving a firearm, and 15,801 aggravated assaults involving a firearm.

4. This tragic violence imposes significant economic burdens on our society. Researchers conservatively estimate that gun violence costs the economy at least \$229 billion every year, or more than \$700 per American