

RESOLUTION 03-06-2007

DIGEST

Death Penalty: Elimination

Amends Penal Code sections 37, 128, 190.2, 219, 4500 and Military and Veterans Code section 1672 to eliminate the death penalty as a sentencing alternative in criminal cases.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to 04-02-2003, 04-03-2003, and 03-07-2004, all of which were approved in principle.

Reasons:

This resolution amends Penal Code sections 37, 128, 190.2, 219, 4500 and Military and Veterans Code section 1672 to eliminate the death penalty as a sentencing alternative in criminal cases. This resolution should be approved in principle because capital punishment carries a demonstrated serious risk of wrongful conviction, has failed to achieve any deterrent effect, devalues human life, and is inherently irrevocable and unfair.

If our society values human life, this necessarily includes all people, including those who have committed criminal acts. The effect of capital punishment is to cheapen human life.

According to the ACLU, more than 120 people in 25 states have been released from death row based on a determination of factual innocence, primarily due to scientific advances and DNA evidence. There has been no study of the number of people that have been wrongfully put to death. However, since the risk of executing innocents due to wrongful conviction cannot be eliminated, and given the obviously irrevocable nature of the punishment, executions should be halted.

Other serious inequities exist in a capital punishment system. Execution is allowed for a felony murder conviction (where death has resulted during the commission of a felony), which means that execution is permitted in cases where no intentional killing took place. There are many examples of accomplice liability which could result in the execution of a person who had no intent to kill, such as a getaway driver.

Moreover, scientific studies have consistently failed to find convincing evidence that the death penalty deters crime more effectively than other punishments. ". . . [I]t is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment." (Roger Hood, *The Death Penalty: A World-wide Perspective*, Oxford, Clarendon Press, 3d ed. 2002, p. 230.)

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Penal Code Sections 37, 128, 190.2, 219, 4500, and Military and Veterans Code Section 1672 as follows:

1 §37

2 (a) Treason against this state consists only in levying war against it, adhering to its
3 enemies, or giving them aid and comfort, and can be committed only by persons owing
4 allegiance to the state. The punishment of treason shall be ~~death or~~ life imprisonment
5 without possibility of parole. The penalty shall be determined pursuant to Sections 190.3 and
6 190.4.

7 (b) Upon a trial for treason, the defendant cannot be convicted unless upon the
8 testimony of two witnesses to the same overt act, or upon confession in open court; nor,
9 except as provided in Sections 190.3 and 190.4, can evidence be admitted of an overt act not
10 expressly charged in the indictment or information; nor can the defendant be convicted
11 unless one or more overt acts be expressly alleged therein.

12

13 § 128.

14 Every person who, by willful perjury or subornation of perjury procures the
15 conviction and execution of any innocent person, is punishable by ~~death or~~ life
16 imprisonment without possibility of parole. The penalty shall be determined pursuant to
17 Sections 190.3 and 190.4.

18

19 § 190.2.

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

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

24 (2) The defendant was convicted previously of murder in the first or second degree.

25 For the purpose of this paragraph, an offense committed in another jurisdiction, which if
26 committed in California would be punishable as first or second degree murder, shall be
27 deemed murder in the first or second degree.

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

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

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

37 (6) The murder was committed by means of a destructive device, bomb, or explosive
38 that the defendant mailed or delivered, attempted to mail or deliver, or caused to be mailed

39 or delivered, and the defendant knew, or reasonably should have known, that his or her act
40 or acts would create a great risk of death to one or more human beings.

41 (7) The victim was a peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31,
42 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or
43 830.12, who, while engaged in the course of the performance of his or her duties, was
44 intentionally killed, and the defendant knew, or reasonably should have known, that the
45 victim was a peace officer engaged in the performance of his or her duties; or the victim was
46 a peace officer, as defined in the above-enumerated sections, or a former peace officer under
47 any, of those sections, and was intentionally killed in retaliation for the performance of his or
48 her official duties.

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

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

59 (10) The victim was a witness to a crime who was intentionally killed for the purpose
60 of preventing his or her testimony in any criminal or juvenile proceeding, and the killing
61 was not committed during the commission or attempted commission, of the crime to which
62 he or she was a witness; or the victim was a witness to a crime and was intentionally killed
63 in retaliation for his or her testimony in any criminal or juvenile proceeding. As used in this
64 paragraph, "juvenile proceeding" means a proceeding brought pursuant to Section 602 or
65 707 of the Welfare and Institutions Code.

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

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

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

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

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

82 (16) The victim was intentionally killed because of his or her race, color, religion,

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

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

87 (B) Kidnapping in violation of Section 207, 209, or 209.5.

88 (C) Rape in violation of Section 261.

89 (D) Sodomy in violation of Section 286.

90 (E) The performance of a lewd or lascivious act upon the person of a child under the
91 age of 14 years in violation of Section 288.

92 (F) Oral copulation in violation of Section 288a.

93 (G) Burglary in the first or second degree in violation of Section 460.

94 (H) Arson in violation of subdivision (b) of Section 451.

95 (I) Train wrecking in violation of Section 219.

96 (J) Mayhem in violation of Section 203.

97 (K) Rape by instrument in violation of Section 289.

98 (L) Carjacking, as defined in Section 215.

99 (M) To prove the special circumstances of kidnapping in subparagraph (B), or arson
100 in subparagraph (H), if there is specific intent to kill, it is only required that there be proof of
101 the elements of those felonies. If so established, those two special circumstances are proven
102 even if the felony of kidnaping or arson is committed primarily or solely for the purpose of
103 facilitating the murder.

104 (18) The murder was intentional and involved the infliction of torture.

105 (19) The defendant intentionally killed the victim by the administration of poison.

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

109 (21) The murder was intentional and perpetrated by means of discharging a firearm
110 from a motor vehicle, intentionally at another person or persons outside the vehicle with the
111 intent to inflict DEATH. For purposes of this paragraph, "motor vehicle" means any vehicle
112 as defined in Section 415 of the Vehicle Code.

113 (22) The defendant intentionally killed the victim while the defendant was an active
114 participant in a criminal street gang, as defined in subdivision (f) of Section 186.22, and the
115 murder was carried out to further the activities of the criminal street gang.

116 (b) Unless an intent to kill is specifically required under subdivision (a) for a special
117 circumstance enumerated therein, an actual killer, as to whom the special circumstance has
118 been found to be true under Section 190.4, need not have had any intent to kill at the time of
119 the commission of the offense which is the basis of the special circumstance in order to
120 suffer ~~death~~ or confinement in the state prison for life without the possibility of parole.

121 (c) Every person, not the actual killer, who, with the intent to kill, aids, abets,
122 counsels, commands, induces, solicits, requests, or assists any actor in the commission of
123 murder in the first degree shall be punished by ~~death~~ or imprisonment in the state prison for
124 life without the possibility of parole if one or more of the special circumstances enumerated
125 in subdivision (a) has been found to be true under Section 190.4.

126 (d) Notwithstanding subdivision (c), every person, not the actual killer, who, with
127 reckless indifference to human life and as a major participant, aids, abets, counsels,

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

134 The penalty shall be determined as provided in this section and Sections 190.1,
135 190.3, 190.4, and 190.5.

136
137 § 219.

138 Every person who unlawfully throws out a switch, removes a rail, or places any
139 obstruction on any railroad with the intention of derailing any passenger, freight or other
140 train, car or engine and thus derails the same, or who unlawfully places any dynamite or
141 other explosive material or any other obstruction upon or near the track of any railroad with
142 the intention of blowing up or derailing any such train, car or engine and thus blows up or
143 derails the same, or who unlawfully sets fire to any railroad bridge or trestle over which any
144 such train, car or engine must pass with the intention of wrecking such train, car or engine,
145 and thus wrecks the same, is guilty of a felony and punishable with ~~death or~~ imprisonment in
146 the state prison for life without possibility of parole in cases where any person suffers death
147 as a proximate result thereof, or imprisonment in the state prison for life with the possibility
148 of parole, in cases where no person suffers DEATH as a proximate result thereof. The
149 penalty shall be determined pursuant to Sections 190.3 and 190.4.

150
151 § 4500.

152 Every person while undergoing a life sentence, who is sentenced to state prison
153 within this state, and who, with malice aforethought, commits an assault upon the person of
154 another with a deadly weapon or instrument, or by any means of force likely to produce
155 great bodily injury is punishable with ~~death or~~ life imprisonment without possibility of
156 parole. The penalty shall be determined pursuant to the provisions of Sections 190.3 and
157 190.4; however, in cases in which the person subjected to such assault does not die within a
158 year and a day after such assault as a proximate result thereof, the punishment shall be
159 imprisonment in the state prison for life without the possibility of parole for nine years.

160 For the purpose of computing the days elapsed between the commission of the
161 assault and the DEATH of the person assaulted, the whole of the day on which the assault
162 was committed shall be counted as the first day.

163 Nothing in this section shall be construed to prohibit the application of this section
164 when the assault was committed outside the walls of any prison if the person committing the
165 assault was undergoing a life sentence and was serving a sentence to a state prison at the
166 time of the commission of the assault and was not on parole, on probation, or released on
167 bail pending an appeal.

168
169 § 1672.

170 Any person who is guilty of violating Section 1670 or 1671 is punishable as follows:

171 (a) If his act or failure to act causes the death of any person, he is punishable by
172 ~~death or~~ imprisonment in the state prison for life without possibility of parole. The penalty

173 shall be determined pursuant to the provisions of Sections 190.3 and 190.4 of the Penal
174 Code. If the act or failure to act causes great bodily injury to any person, a person violating
175 this section is punishable by life imprisonment without possibility of parole.

176 (b) If his act or failure to act does not cause the death of, or great bodily injury to,
177 any person, he is punishable by imprisonment in the state prison for not more than 20 years,
178 or a fine of not more than ten thousand dollars (\$ 10,000), or both. However, if such person
179 so acts or so fails to act with the intent to hinder, delay, or interfere with the preparation of
180 the United States or of any state for defense or for war, or with the prosecution of war by the
181 United States, or with the rendering of assistance by the United States to any other nation in
182 connection with the nation's defense, the minimum punishment shall be imprisonment in the
183 state prison for not less than one year, and the maximum punishment shall be imprisonment
184 in the state prison for not more than 20 years, or by a fine of not more than ten thousand
185 dollars (\$ 10,000), or both.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: The Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: Current law allows persons convicted of certain specified crimes to be executed at the hands of the law.

This Resolution: This resolution will eliminate State sponsored murder.

The Problem: There are currently over four hundred people waiting to be executed in California. The death penalty has always been applied unevenly and freakishly. The death penalty is barbaric. It can never be applied fairly. There is no relief of law whatever is a penalty of death is executed unfairly, c.f. Penal Code 128.

This body has always opposed the death penalty. It is suitable to renew our stand.

IMPACT STATEMENT

Many statutes and regulations implement the death penalty. Some of these are:

CALIFORNIA PENAL CODE

3605, 3600 et seq., 3604, 679.03, 3603, 3704, 1193, 1227, 987.9, 3601, 3602, 190, 190.3, 190.2, 190etseq., 190, 190.3, 190.2, 1193, 1219, 1218,3700, 1218, 1018, 1286,987.9, 1193, 1227, 1218, 1193, 190.3,3701 et seq., 1190.1, 190.4,859, 190.2, 1903, 1376, 3604, 190.5, 190.4, 3605, 190.3, 128, 799, 3605, 3603, 1192.7, 1050, 3705, 3706, 1018, 190.3, 190.9, 190.3, 190.1, 190.4, 1193, 190.8, 1240.1, 190.7. 1193, 3605, 190.1, 190.4, 3700.5 et seq., 1202a, 1170, 190.2, 190.1, 190.4,790, 190.2. 190.1, 190.4, 1218,799, 15, 1243, 1227.5, 3700 et seq., 3705, 3706, 190.9, 1218, 1227, 3600 et seq., 3704, 3605, 3700, 1193, 1227, 3605, 190.2, 3702, 1193, 1243, 190.6, 190.8,4500, 190.3, 1240, 1239, 1254, 190.6 et seq., 190.4, 1270.5, 1286, 190.1, 190.3,

1240.1,2625, 3605, 1217, 190.3, 1240, 987, 987.9, 987 et seq., 1018, 686, 686.1, 190.9, 1285. 3607, 3600 et seq, 1376, 1054.9, 3701 et seq., 3604, 1903, 1243, 1193, 1227, 1227.5

GENERAL RULES OF COURT

34, 36, 36.3, 36.1, 34, 36.2, 35.2, 36.1, 35.1, 34.1, 35.3, 34.2. 34.1, 35-35.2, 36.3, 34.0, 36, 4.117, 76.3, 34.2, 11.7, 36.1, 36.2, 76.6, 36.1, 35.2, 35.1. 35.3, 34.2, 34, 34.2, 35.3, 35,35.2,35.1,36.3,4.315

All of these statutes and regulations will have to be repealed.

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