

RESOLUTION ELF-03-2008

Death Penalty Administrative Reforms; Life Without Parole as "Alternative" Sentence

TEXT OF RESOLUTION

RESOLVED that the Conference of the Delegates of California Bar Associations urges the California Senate and Assembly to pass legislation, and the Governor to sign such legislation into law, implementing an alternative to the death penalty, lifetime incarceration, as identified by the California Commission on the Fair Administration of Justice in "Part B" of its Final Report and Recommendations on The Administration of the Death Penalty in California, released on June 30, 2008, and reforms to the administration of California's death penalty law, as recommended by the California Commission on the Fair Administration of Justice in "Part C" of its Final Report, with dissent, as follows:

Alternative to the death penalty

Replacing the death penalty with a maximum penalty of lifetime incarceration without the possibility of parole;

Administrative Reforms

1. The Commission recommends that upon the implementation of the Recommendations in Part A of this Report, serious consideration be given to a proposed constitutional amendment to permit the California Supreme Court to transfer fully briefed pending death penalty appeals from the Supreme Court to the Courts of Appeal. This amendment should not be adopted without the provision of adequate staff and resources for the Courts of Appeal, and provisions for ongoing monitoring by the Supreme Court.

(Commissioners Bellas, Cottingham, Hill, Hing, Moulds, Ridolfi and Totten oppose this recommendation.)

2. The Commission recommends that upon the implementation of the Recommendations in Part A of this Report, changes to California statutes, rules and policies be seriously considered to encourage more factual hearings and findings in state habeas proceedings in death penalty cases, including a proposal to require petitions be filed in the Superior Court, with right of appeal to the Courts of Appeal and discretionary review by the California Supreme Court.

3. The Commission recommends the establishment of a California Death Penalty Review Panel, to be composed of judges, prosecutors, defense lawyers, law enforcement representatives and victim advocates appointed by the Governor and the Legislature. It should be the duty of this Panel to issue an annual report to the Legislature, the Governor and the courts, gauging the progress of the courts in reducing delays, analyzing the costs of and monitoring the implementation of the recommendations of this Commission, and examining ways of providing safeguards and making improvements in the way the California death penalty law functions.

(Commissioners Hill, Mayorkas and Totten oppose this recommendation.)

4. The Commission recommends that reporting requirements be imposed to systematically collect and make public cumulative data regarding all decisions by prosecutors in murder cases whether or not to charge special circumstances and/or seek the death penalty, as well as the disposition of such cases by dismissal, plea or verdict in the trial courts. The Legislature should impose a requirement upon courts, prosecutors and defense counsel to collect and report any data other than privileged material designated by the California Death Penalty Review Panel which may be necessary: (1) to determine whether demographics affect decisions to implement the death penalty, and if so, how; (2) to determine what impact decisions to seek the death penalty have upon the costs of trials and post-conviction review; and (3) to track the progress of potential and pending death penalty cases to predict the future impact upon the courts and correctional needs. The information should be reported to the California Department of Justice and the California Death Penalty Review Panel. The information reported should be fully accessible to the public and to researchers. (Commissioners Boscovich, Cottingham, Dunbar, Hill, Mayorkas, Fox and Totten oppose this recommendation.)

5. The Commission recommends that each District Attorney Office in California formulate a written Office Policy describing when and how decisions to seek the death penalty are made, such as who participates in the decisions, and what criteria are applied. Such policies should also provide for input from the defense before the decision to seek the death penalty is made.

6. The Commission recommends that Article V, Section 8(a) of the California constitution be amended to read as follows:

Art. V, Section 8(a). Subject to application procedures provided by statute, the Governor, on conditions the Governor deems proper, may grant a reprieve, pardon, and commutation, after sentence, except in case of impeachment. The Governor shall report to the Legislature each reprieve, pardon, and commutation granted or denied. ~~stating the pertinent facts and the reasons for granting it. The Governor may not grant a pardon or commutation to a person twice convicted of a felony except on recommendation of the Supreme Court, 4 judges concurring.~~

7. The Commission recommends that Penal Code Section 4813 be amended to make it discretionary rather than mandatory that requests for clemency by a twice convicted felon be referred to the Board of Prison Terms for a written recommendation.

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: The death penalty system in California is “dysfunctional,” although many problems identified by the California Commission on the Fair Administration of Justice can be mitigated by increased funding and the enactment of legislation to implement administrative reforms. The Commission’s Final Report makes recommendations for reform and funding. One thing all agree upon is that reform is needed. One approach is to adopt life without parole as an alternative to the death penalty. Another is to “downsize” the death penalty by eliminating most “special circumstances,” and to adopt additional administrative reforms identified by this ELF, which reforms would be combined with the unanimous reforms suggested by the Commission and identified in an accompanying ELF.

This Resolution: The alternatives to the death penalty which the Commission has identified are abolition of the death penalty in favor of lifetime incarceration without the possibility of parole (“LWOP”), or, “downsizing” the death penalty by limiting the number of special circumstances which make a first degree murder a capital-eligible case. There are competing approaches to the “downsizing” approach, but the core concept requires, as Commission Vice Chairman Jon Streeter says in a Separate Statement accompanying the Final Report of the Commission, that “the rules governing death penalty eligibility must be designed to reduce dramatically the number of capital cases entering the system. Tinkering around the edges will not do.”

The Bar Association of San Francisco believes the death penalty should be repealed. We urge the elimination of the death penalty and cite as our reasons the exorbitant costs, the statistics suggesting racial discrimination, the disproportionate impact of the death penalty on the poor and the disadvantaged, the biasing effect of death qualification of capital jurors, and the heightened risk of error in capital cases coupled with the irrevocability of the penalty.

We believe that the answer to the “dysfunctional death penalty system” is abolition rather than “downsizing.” We recognize that narrowing the scope of the death penalty is a compromise position at which proponents and opponents might meet. While we disagree with this compromise, we urge as a condition of this compromise the adoption of the administrative reforms recommended by a majority of the Commissioners in their non-unanimous “Part C” recommendations. Those recommendations appear in the “Administrative Reforms” text of the resolution.

The Problem: California’s death penalty system needs reform, but correcting the problem will require an enormous expenditure of funds over time when California is facing an unprecedented budget crisis. Funds spent administering the death penalty would be better spent on other California priorities like health, education and infrastructure, and/or for providing direct financial and social services to crime victims and the relatives of murder victims.

Our position on the death penalty says much about us as a people. We favor life imprisonment without the possibility of parole for what it says about us morally and civilly as a society. We come to this decision informed by the Commission's findings about the cost of repairing California's dysfunctional death penalty system.

AUTHOR AND/OR PERMANENT CONTACT: Frank Z. Leidman, Law Offices of Frank Z. Leidman, 473 Jackson Street, Third Floor, San Francisco, CA 94111, Cellular Telephone: (415) 308-1590; Email: Frank@LeidmanLaw.com

RESPONSIBLE FLOOR DELEGATE: Frank Z. Leidman