

# The high cost of executions in California

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According to a comprehensive study of death penalty costs, the expense to California taxpayers for executing one person condemned to death is \$308 million, and the total taxpayers have spent on capital punishment since it was reinstated in 1978 now exceeds \$4 billion.

This finding is part of a study conducted by U.S. Circuit Judge Arthur L. Alarcon and Loyola Law School Professor Paula M. Mitchell published in the February 2011 edition of the *Loyola of Los Angeles Law Review* entitled, “Executing the Will of the Voters?: A Roadmap to Mend or End the California Legislature’s Multi-Billion-Dollar Death Penalty Debacle.”

Judge Alarcon, a former Los Angeles deputy district attorney who prosecuted capital cases and is not opposed to the death penalty, and Mitchell, who opposes the death penalty, conducted their three-year study by examining local, state, and federal expenditures for capital cases. The authors were able to obtain California prison records that had previously been unavailable to others who had attempted to produce a cost-benefit analysis of the death penalty.

According to the Loyola Law review, the study makes the following findings:

- A death penalty prosecution costs up to 20 times as much as a life-without-parole case.
- The least expensive death penalty trial costs \$1.1 million more than the most expensive life-without-parole case.
- Jury selection in a capital case runs three to four weeks longer and costs \$200,000 more than in life-without-parole cases.
- The state pays up to \$300,000 for attorneys to represent each capital inmate on appeal.
- The heightened security practices mandated for death row inmates added \$100,663 to the cost of incarcerating each capital prisoner last year, for a total of \$72 million.

- Since 1978 when California reinstated the death penalty there have been 13 executions, the last occurring in 2006. During the same 33-year period, 54 death row inmates have died of natural causes, 18 by suicide and 6 by violence or undetermined causes.

Of this total of 78 prisoners who have died awaiting execution, 32 prisoners died while their petitions for habeas corpus relief were still pending in federal court. Of the California death row inmates whose petitions for federal habeas corpus relief that have been reviewed, nearly 70 percent have been granted relief, in the form of either a new trial on the question of guilt or a new penalty proceeding.

The study concluded, “It is therefore reasonable to conclude that the federal courts may well have determined that a significant number of those prisoners who spent many years on death row and died while their federal habeas corpus petitions were pending had meritorious claims that required a new trial or a new sentencing proceeding.”

This latest and most detailed study on the costs of the death penalty in California mirrors a similar finding by the California Commission on the Fair Administration of Justice in 2008, which also highlighted the fiscal concerns and exorbitant costs associated with the capital litigation and expressed a growing opposition to the death penalty amongst many who previously had been its most strident institutional supporters, namely judges, prosecutors, and politicians.

An example of this “fiscal opposition” was illustrated by the reaction from these forces to an October 2010 *Los Angeles Times* editorial that called for ending the death penalty on the basis that it is “inappropriate in all situations because it is unbecoming of a civilized society.”

In response to its editorial, the *Times* on March 25, 2011 published an op-ed from retired Superior Court Judge Donald McCartin who was known as “the

hanging judge of Orange County” for having sentenced 10 people to death.

Expressing his frustration with the futility of the death penalty, its indeterminable delays, and how it needlessly re-victimizes the victims, McCartin wrote, “Had I known then what I know now, I would have given Alcala and the others the alternative sentence of life in prison without the possibility of parole.... And the people of California would not have had to pay many millions of tax dollars in this meaningless and ultimately fruitless pursuit of death.... It’s time to stop playing the killing game. Let’s use the hundreds of millions of dollars we’ll save to protect some of those essential services now threatened with death.”

Judge McCartin’s column was soon followed by an op-ed from Gil Garcetti, the former Los Angeles County district attorney, who during his tenure (1992-2000) was responsible for the prosecution of dozens of death penalty cases and was a zealous supporter and defender of the death penalty. Garcetti lamented, “California’s death penalty does not and cannot function the way its supporters want it to. It is also an incredibly costly penalty, and the money would be far better spent keeping kids in school, keeping teachers and counselors in their schools and giving the juvenile justice system the resources it needs.”

Monetary concerns also became the overriding rationale in March 2011, when Illinois became the 15th state to abolish the death penalty. It had previously imposed a 10-year moratorium on executions in response to the large number of its death row inmates—13—who had been exonerated while waiting execution. Consequently the criminal justice system had become widely discredited and death verdicts in particular were perceived by most to be unreliable. In ultimately abolishing the death penalty, however, Illinois Governor Pat Quinn and the Illinois legislature routinely cited fiscal concerns.

According to Gallup, public opinion polls show that there has been a steady nationwide decline of support for capital punishment since the 1990s. Public support in the mid-1990s for capital punishment was at an all-time high of 80 percent—during the Clinton administration’s promotion of a draconian “law and order” culture—with only 16 percent opposed. Support in favor of the practice has since dwindled to 64 percent in 2010 with nearly 30 percent opposed. Moreover,

according to a 2010 poll by Lake Research Partners, a majority of people,( 61 percent), would choose a punishment of life without the possibility of parole for the crime of murder, rather than the death penalty.

A variety of factors have contributed to the dramatic decrease in support for the death penalty. Many are now opposed because of the ever-present risk of wrongful conviction, the widespread recognition of the existence of bias against low-income and minority defendants who are disproportionately charged with capital offenses, the geographic disproportionality in its administration, the widespread acceptance of life without parole as a preferable alternative, and the fact that most other civilized societies around the world have long ago concluded that this barbaric practice should be abolished.

The increased opposition to the death penalty amongst sections of the state, however, is not based on any sense of justice, fairness, or the recognition of how capitalist society has contributed to the conditions that have led to these human tragedies, but instead is based on monetary considerations of dollars and cents.



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