

SPECIAL DIRECTIVE 20-11

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN
District Attorney

SUBJECT: DEATH PENALTY POLICY

DATE: DECEMBER 7, 2020

This Special Directive addresses issues of Special Circumstances Cases in Chapter 7 of the Legal Policies Manual. Effective **December 8, 2020**, the policies outlined below supersede the relevant sections of Chapter 7 of the Legal Policies Manual.

A sentence of death is never an appropriate resolution in any case. The office will strive to ensure that all actions taken are consistent with this policy, including refraining from filing letters stating an intention to seek the death penalty, filing briefs, seeking discovery, or making arguments in court that indicate that the death penalty is an appropriate sentence.

INTRODUCTION

Racism and the death penalty are inextricably intertwined.¹ Numerous studies have found that race influences who is sentenced to die in this country and in California; this includes both the race of the defendant and the race of the victims.²

Los Angeles County has historically been one of the nation's most prolific death penalty counties,³ and it exemplifies how racism infects death penalty proceedings. There are currently 215 people on California's death row who were sentenced to death as a result of capital prosecutions in Los Angeles County.⁴ An astonishing 85% of those people are people of color.⁵

¹ Stephen B. Bright, *Discrimination, Death and Denial: The Tolerance of Racial Discrimination in Infliction of the Death Penalty* (1995) 35 Santa Clara L. Rev. 433, 439; see also Equal Just. Initiative, *Lynching in America: Confronting the Legacy of Racial Terror* 5 (3d ed. 2017), <<https://lynchinginamerica.eji.org/report/>>.

² Alexis Hoag, *Valuing Black Lives: A Case for Ending the Death Penalty* (2020) 51 Colum. Hum. Rts. L. Rev. 983 [collecting and describing studies].

³ Death Penalty Info. Ctr., *Outlier Counties: Los Angeles County Has Nation's Largest – and Still Expanding – Death Row* (Nov. 21, 2016), <<https://deathpenaltyinfo.org/news/outlier-counties-los-angeles-county-has-nations-largest-and-still-expanding-death-row>>.

⁴ Brief of Amicus Curiae The Honorable Gavin Newsom in Support of Defendant And Appellant McDaniel, *People v. McDaniel* (S171393, app. pending), Attachment A, at p. 79, <<https://www.gov.ca.gov/wp-content/uploads/2020/10/10.26.20-Governor-Newsom-McDaniel-Amicus-Brief.pdf>>.

⁵ *Ibid.*

This makes Los Angeles County an outlier even within the state's flawed system; the rest of California's death row is populated by 59% people of color.⁶

In light of its unequal application to people of color, the death penalty inflicts an extraordinary amount of harm to the moral authority of our justice system. In addition, the death penalty serves no penological purpose as state sanctioned killings do not deter crime,⁷ and any retributive value of the death penalty is undermined by California's dysfunctional death penalty system. California has executed 13 people since 1978, while over 11 times that number of people have died of other causes awaiting execution.⁸

The death penalty is also costly and makes no fiscal sense from the prospective of public safety. The strains upon the state's and the county's financial health are extraordinary. Los Angeles can no longer waste huge taxpayer resources to pursue the death penalty when so many needs are unmet. California has spent more than \$5 billion since 1978 prosecuting death penalty cases, defending death judgments, and maintaining a death row that houses approximately 712 people.⁹ These funds are better spent on programs that improve the quality of life and safety of the Los Angeles County community. A majority of Los Angeles County residents agree.¹⁰

Finally, by imposing the death penalty, there is a real risk of executing innocent people. According to a peer-reviewed study published in the National Academy of Sciences, one in 25 people sentenced to death in the United States from 1973 to 2004 was erroneously convicted.¹¹ This "conservative estimate"¹² would mean that at least 9 people currently on death row who were convicted in Los Angeles County are innocent. Maintaining a system of capital punishment

⁶ *Ibid.*

⁷ Michael L. Radelet & Traci L. Lacoock, *Do Executions Lower Homicide Rates: The Views of Leading Criminologists*, (2009) 99 *Journal of Criminal Law and Criminology* 489, 501 ["88.2% of the polled criminologists do not believe that the death penalty is a deterrent"]; National Research Council of the National Academies, *Deterrence and the Death Penalty*, 70-71 (Daniel S. Nagin & John V. Peppers eds., 2012) [finding deterrent effect as justification for capital punishment is "patently not credible" based on meta-analysis of studies conducted].

⁸ Cal. Dept. of Corr. & Rehab, *Condemned Inmates Who Have Died Since 1978*, <<https://www.cdcr.ca.gov/capital-punishment/condemned-inmates-who-have-died-since-1978/>>.

⁹ Judge Arthur L. Alarcón and Paula M. Mitchell, *Costs of Capital Punishment in California: Will Voters Choose Reform this November?* (2012) 46 *Loy. L.A. L. Rev.* S1 [concluding that California had spent over \$4 billion on the death penalty from 1978-2011 and estimating that the state's death penalty system costs approximately \$184.2 million annually]; Cal. Dep't of Corr. & Rehab., *Condemned Inmate List (Secure)* (Nov. 16, 2020), <https://www.cdcr.ca.gov/capital-punishment/condemned-inmate-list-secure-request/> (listing 712 people on death row).

¹⁰ Rachel Lawler, Public Policy Institute of California, *Is Momentum Growing to End California's Death Penalty?*, (Apr. 9 2019), <https://www.ppic.org/blog/is-momentum-growing-to-end-californias-death-penalty/> [polling data that 62% of Los Angeles County voters prefer life in prison over the death penalty]; California Secretary of State, November 8, 2016 General Election – Statement of Vote, State Ballot Measures p. 71, <<https://elections.cdn.sos.ca.gov/sov/2016-general/sov/65-ballot-measures-formatted.pdf>> [52.3% of Los Angeles County voters voted in favor of Proposition 62 in 2016]; California Secretary of State, November 6, 2012 General Election – Statement of Vote, State Ballot Measures p. 67, <<https://elections.cdn.sos.ca.gov/sov/2012-general/15-ballot-measures.pdf>> [54.5% of Los Angeles voters voted in favor of Proposition 34 in 2012].

¹¹ Samuel R. Gross, Barbara O'Brien, Chen Hu, & Edward H. Kennedy, *Rate of false conviction of criminal defendants who are sentenced to death*, 111 *Proceedings of the National Academy of Sciences of the United States of America* 7230-7235 (2014), <<https://www.pnas.org/content/pnas/111/20/7230.full.pdf>>.

¹² *Id.* at p. 7234.

when there is a significant risk that an innocent person will be executed is intolerable. (See policy memo on Conviction Integrity for additional steps that will be taken related to innocence issues.)

The immediate steps detailed below recognize that it is essential to communicate with victims' family members and other stakeholders in order to conduct a thorough review of every case in which this office previously made a decision to seek the death penalty and those cases in which this office previously obtained death judgments. Victims' family members deserve the utmost care and consideration, and it is critical for this office to provide information and services to them and to ensure that their voices are heard. (See policy memo on Victims' Services for additional steps that will be taken related to the needs of victims.)

THE USE OF THE DEATH PENALTY AT TRIAL

In any case charged from this day forward, the District Attorney's Office will not seek the death penalty. In any case currently charged with special circumstances that does not fall into the categories listed below, the case shall now proceed as a non-death penalty case. The Special Circumstance Committee is hereby permanently disbanded.

The following specific policies apply to all filed cases where a letter of intent to seek the death penalty has been filed or verbally noticed in court, or a jury has returned a verdict of death.

1. All Deputy District Attorneys are to request a continuance of at least 30 days to enable the District Attorney or his designee, to review the case. If a deadline cannot be continued, the Deputy District Attorney shall immediately notify the District Attorney or his designee. No new briefs or documents will be filed in these cases without direct approval from the District Attorney or his designee.
2. Further instructions will be provided on a case-by-case basis.

CASES WITH A JUDGEMENT OF DEATH ARISING OUT OF LOS ANGELES COUNTY

The District Attorney's Office will not seek an execution date for any person sentenced to death.

The District Attorney's Office will not defend existing death sentences and will engage in a thorough review of every existing death penalty judgment from Los Angeles County with the goal of removing the sentence of death. The Office will continue to defend validly obtained convictions in all cases where the evidence supports the conviction beyond a reasonable doubt, consistent with the policies established for conviction integrity review.

Consistent with this policy, in any post-conviction case in which the District Attorney is counsel for the People of the State of California in record correction proceedings or counsel or co-counsel for the Secretary of the Department of Corrections and Rehabilitation in post-conviction proceedings, the following specific policies apply:

1. All Deputy District Attorneys are to request a continuance of at least 30 days to enable the District Attorney or his designee to review the case. If a deadline cannot be continued, the Deputy District Attorney shall immediately notify the District Attorney. No new briefs or documents will be filed, nor any evidentiary hearing dates set, in any case without direct approval of the District Attorney or his designee.
2. For cases arising from death judgments in Los Angeles County in which the District Attorney is not currently counsel or co-counsel for any party to the litigation, the office will consult with the Attorney General and seek his assistance with implementing the goals of this Office. This Office authorizes and encourages the Attorney General to adopt positions and negotiate resolutions in state and federal post-conviction proceedings consistent with this policy in any capital case arising out of Los Angeles County.

The policies of this Special Directive supersede any contradictory language of the Legal Policies Manual.