



CALIFORNIA 2016  
BALLOT BACKGROUNDER

Proposition **66**  
Death Penalty Enhancement

Research Assistant: Ellen Lempres

---

**Purpose**

Proposition 66 would make it easier for the state to enforce the death penalty. It competes with Proposition 62, which would abolish capital punishment in California.

**Background**

Capital punishment has a long and contentious history in California. The state first authorized executions in 1851 and regularly enforced this penalty for many decades. Since the 1970s, however, a series of judicial decisions has restricted capital punishment in the state.<sup>1</sup> In 1972, the California Supreme Court ruled that the death penalty violated the California Constitution's prohibition on cruel or unusual punishment.<sup>2</sup> The people of California quickly overturned that decision, however, by adopting a state constitutional amendment to allow capital punishment.<sup>3</sup> Meanwhile, the U.S. Supreme Court issued decisions in the 1970s that forced California and other states to revise their death penalty statutes.<sup>4</sup>

In November 1978, Californians adopted Proposition 7, a measure that reestablished the death penalty, and juries again began sentencing prisoners to death.<sup>5</sup> Ongoing resistance in the courts, however, has prevented most executions in the state. California executed no prisoners

---

<sup>1</sup> [http://www.cdcr.ca.gov/Capital\\_Punishment/history\\_of\\_capital\\_punishment.html](http://www.cdcr.ca.gov/Capital_Punishment/history_of_capital_punishment.html)

<sup>2</sup> *People v. Anderson* (1972).

<sup>3</sup> California Proposition 17 of 1972.

<sup>4</sup> *E.g., Furman v. Georgia* (1972), *Gregg v. Georgia* (1976).

<sup>5</sup> [http://www.cdcr.ca.gov/Capital\\_Punishment/history\\_of\\_capital\\_punishment.html](http://www.cdcr.ca.gov/Capital_Punishment/history_of_capital_punishment.html)

## PROPOSITION 66—DEATH PENALTY ENHANCEMENT

---

from 1978 until 1992, 13 from 1992 to 2006, and none since 2006.<sup>6</sup> For the past decade, the state's administration of the death penalty has been blocked court challenges to the state's methods of execution, among other issues. Meanwhile, the number of prisoners on death row now exceeds 700.<sup>7</sup>

Because California's capital punishment system was adopted through a voter-approved initiative (Proposition 7 of 1978), abolishing the death penalty would require a vote of the people. Proposition 62 is the second attempt in four years to repeal capital punishment in the state through a ballot initiative. In 2012, voters defeated a similar measure, Proposition 34, by four percentage points.<sup>8</sup>

The official proponent of Proposition 66 is former NFL star Kermit Alexander.<sup>9</sup> Alexander became an advocate for capital punishment after his mother, sister, and two nephews were murdered in Los Angeles in 1984.<sup>10</sup> Frustrated by the ineffectiveness of California's capital punishment system, Alexander became a leader of the effort to reform the system to expedite executions.

While Proposition 66 seeks to retain and expedite the state's death penalty procedures, a competing initiative, Proposition 62, seeks to abolish the death penalty in California. If voters approve both Proposition 62 and Proposition 66, the measure with the larger affirmative vote will prevail.

### Existing Law

Under current California law, the death penalty is the maximum criminal punishment and is available only for a limited number of crimes. The California Supreme Court automatically reviews every death sentence and the court has the ability to affirm both the conviction and the death sentence, to affirm the conviction but reverse the death sentence, or reverse the conviction and death sentence. If the California Supreme Court reverses the death penalty but affirms the conviction, a retrial of the penalty phase must occur. Moreover, if the California Supreme Court reverses the death penalty and the conviction, then an entirely new trial must occur. In addition, if the California Supreme Court affirms *both* the death penalty sentence and the conviction, the inmate still has the ability to file appeals on other constitutional issues. He or she is also able to have appeals heard at the state or the federal court level and can also introduce new evidence not presented at trial. Death penalty appeals typically involve many years of litigation.<sup>11</sup>

---

<sup>6</sup> [http://www.cdcr.ca.gov/Capital\\_Punishment/Inmates\\_Executed.html](http://www.cdcr.ca.gov/Capital_Punishment/Inmates_Executed.html)

<sup>7</sup> [http://www.cdcr.ca.gov/Capital\\_Punishment/docs/CondemnedInmateSummary.pdf?pdf=Condemned-Inmates](http://www.cdcr.ca.gov/Capital_Punishment/docs/CondemnedInmateSummary.pdf?pdf=Condemned-Inmates)

<sup>8</sup> [https://ballotpedia.org/California\\_Proposition\\_34,\\_the\\_End\\_the\\_Death\\_Penalty\\_Initiative\\_\(2012\)](https://ballotpedia.org/California_Proposition_34,_the_End_the_Death_Penalty_Initiative_(2012))

<sup>9</sup> [https://ballotpedia.org/California\\_Proposition\\_66,\\_Death\\_Penalty\\_Procedures\\_\(2016\)](https://ballotpedia.org/California_Proposition_66,_Death_Penalty_Procedures_(2016))

<sup>10</sup> <http://noprop62yesprop66.com/stories/kermit-and-tami-alexander/>

<sup>11</sup> [http://www.cdcr.ca.gov/Capital\\_Punishment/history\\_of\\_capital\\_punishment.html](http://www.cdcr.ca.gov/Capital_Punishment/history_of_capital_punishment.html)

## PROPOSITION 66—DEATH PENALTY ENHANCEMENT

---

For more than a decade, implementation of capital punishment in California has been blocked by litigation regarding the state's methods of execution and delays in state approval of new execution protocols.<sup>12</sup>

### Proposed New Law

Proposition 66 would alter procedures for state court appeals to the death penalty, expediting the process of appeals and limiting the time period during which an individual could petition capital punishment convictions and sentences. Prop. 66 would require that a prisoner appealing a death sentence bring the initial petition in superior court, and would limit the number of petitions an individual could subsequently file.<sup>13</sup> To facilitate death penalty process further, Prop. 66 would require qualified attorneys who seek assignments in non-capital criminal cases to accept assignments in death penalty cases, and would streamline the regulatory procedures for adopting methods of execution. Prop. 66 also would allow transfer of death row prisoners from San Quentin to other prisons in the state and would require prisoners sentenced to death to work in prison and to pay a share of their wages to victims as restitution.<sup>14</sup>

### Fiscal Impact

According to the Legislative Analyst, Proposition 66 would increase state costs by tens of millions of dollars immediately following the implementation of the initiative due to direct appeals and habeas corpus proceedings. The longer run fiscal impact is less known, yet the Legislative Analyst estimates that the state's correctional savings could annually be tens of millions of dollars.<sup>15</sup>

### Supporters

Supporters include:

- California District Attorneys Association
- California State Sheriffs Association
- California Peace Officers Association
- California Correctional Peace Officers Association
- California Association of Highway Patrolmen
- Former Governors George Deukmejian and Pete Wilson
- California Republican Party
- Former NFL star and pro-death penalty activist Kermit Alexander

More than 80 law enforcement organizations have contributed to the No-on-62/Yes on 66 campaign.

---

<sup>12</sup> Ibid.

<sup>13</sup> [https://ballotpedia.org/California\\_Proposition\\_66,\\_Death\\_Penalty\\_Procedures\\_\(2016\)](https://ballotpedia.org/California_Proposition_66,_Death_Penalty_Procedures_(2016))

<sup>14</sup> [https://ballotpedia.org/California\\_Death\\_Penalty\\_Procedure\\_Regulation\\_Initiative,\\_Proposition\\_66\\_\(2016\)](https://ballotpedia.org/California_Death_Penalty_Procedure_Regulation_Initiative,_Proposition_66_(2016))

<sup>15</sup> Ibid.

### Arguments of Supporters

Supporters say Prop. 66 would preserve the death penalty, which the state needs to punish the most severe crimes. Further, it would mend the broken capital punishment system by speeding up the appeals process while ensuring that no innocent persons are executed.

### Opponents

Opponents include:

Lt. Gov. Gavin Newsom  
Former L.A. Mayor Antonio Villaraigosa  
California Democratic Party

Numerous advocacy organizations, including:

- American Civil Liberties Union
- California NAACP
- California Labor Federation
- California League of Women Voters
- California Catholic Conference

The ACLU has provided major funding for the No-on-66 campaign.

### Arguments of Opponents

Opponents say that the death penalty should be abolished, not expedited. Moreover, Prop. 66 would add further costs to the system and increase the chances that innocent persons would be executed.

### Conclusion

Voting Yes on Proposition 66 would expedite the process of the death penalty and would limit the number of petitions possible by those sentenced to death.

Voting No on Proposition 66 would leave unchanged the current appeals process in death penalty cases. Moreover, if Proposition 62 is passed and receives more votes than Prop. 66, the death penalty will be abolished in California.

**For more information on Proposition 66, visit:**

[www.roseinstitute.org](http://www.roseinstitute.org)

[www.noprop62yesprop66.com](http://www.noprop62yesprop66.com)

[www.nooncaprop66.org](http://www.nooncaprop66.org)