

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 779

Introduced by Senator Anderson

February 22, 2013

An act to amend ~~Section 190.8~~ Sections 68661, 68661.1, 68662, 68664, and 68665 of, to add Section 68661.1 to, to repeal Section 15425 of, and to repeal and add Section 15403 of, the Government Code, and to amend Sections 190.7, 190.8, 1202a, 1227, 1239, 1240, 1240.1, 1335, 3603, 3604, 3605, and 3700.5 of, to add Section 1509, 3604.1, 3604.2, and 3604.3 to, to repeal Sections 3601 and 3602 of, and to repeal and add Section 3600 of the Penal Code, relating to capital punishment.

LEGISLATIVE COUNSEL'S DIGEST

SB 779, as amended, Anderson. Capital punishment: appeals.

(1) Existing law requires the Governor to appoint a State Public Defender and requires the State Public Defender, among other things, to formulate plans for the representation of indigents in the Supreme Court and each appellate district.

This bill would delete the provision requiring the State Public Defender to formulate plans for the representation of indigents. The bill would require the State Public Defender to report annually to the Governor and the Legislature on the status of, and appointment of counsel for, indigent persons with respect to death penalty appeals.

(2) Existing law provides that the duties prescribed by the State Public Defender in existing law are not exclusive, and allows the State Public Defender to perform any acts consistent with his or her prescribed duties in carrying out the functions of the office.

This bill would delete these provisions.

(3) Existing law establishes the California Habeas Corpus Resource Center in the judicial branch of state government and authorizes the center employ up to 34 attorneys who may be appointed by the Supreme Court to represent any person convicted and sentenced to death in this state, who is without counsel, and who is determined by a court to be indigent, for the purposes of instituting and prosecuting postconviction actions in state and federal courts, challenging the legality of the judgment or sentence imposed against that person, and preparing petitions for executive clemency. Among other things, existing law requires the center to establish and periodically update a roster of attorneys qualified as counsel in postconviction proceedings in capital cases.

Existing law requires the Supreme Court to offer to appoint counsel to represent all state prisoners subject to a capital sentence for state postconviction proceedings and enter an order to appoint one or more counsel to represent the prisoner in postconviction state proceedings upon a finding that the prisoner is indigent or unable to completely decide whether to accept or reject that offer. Existing law grants the center the power to employ investigators and staff to provide services to appointed counsel, and to provide legal or other advice or, to the extent not otherwise available, any other assistance to the appointed counsel in postconviction proceedings as is appropriate.

This bill would instead require the superior court which imposed the death sentence to offer to appoint counsel to represent state prisoners subject to a capital sentence for purposes of state postconviction proceedings, and would require the superior court to appoint one or more counsel to represent the prisoner in a state habeas corpus proceeding. The bill would require the Legislature to ensure funding to fulfill these requirements, and would authorize the Legislature to consider utilizing funds that were formerly appropriated for the support of the Supreme Court. The bill would provide that the center shall annually recommend attorneys to the Supreme Court for inclusion in a roster of attorneys qualified as counsel in postconviction proceedings in capital cases, provided that the final determination of whether to include an attorney in a roster shall be made by the Supreme Court and not delegated to the center. This bill would remove the power of the center to provide any other assistance to appointed counsel other than employing investigators and staff, or providing legal or other advice.

The bill would provide that the center may only represent a person sentenced to death on one federal habeas corpus petition, and only if

certain requirements are met, including that the center was appointed to represent that person on a state petition for habeas corpus.

(4) Existing law requires that the executive director of the California Habeas Corpus Resource Center be chosen by a 5-member board of directors and confirmed by the Senate, as provided.

This bill would eliminate the provisions regarding the 5-member board of directors and instead require the executive director to be appointed by the Supreme Court. The bill would provide that the executive director shall receive the salary that is specified in existing law for the State Public Defender and would require all other attorneys employed by the center to be compensated at the same level as comparable positions in the office of the State Public Defender.

(5) Existing law requires the Judicial Council and the Supreme Court to adopt binding and mandatory competency standards for the appointment of counsel in death penalty direct appeals and habeas corpus proceedings.

This bill would instead provide that an attorney shall be deemed competent for appointment as counsel in a death penalty direct appeal or habeas corpus proceeding if the attorney has been admitted to practice in a court of appeal for not less than 5 years, and has had not less than 3 years of experience in handling appeals in that court in felony cases, as specified in federal law. The bill would allow the Judicial Council and the Supreme Court to adopt mandatory competency standards in lieu of the above provision, as specified, and would require the above standard to be in effect until the Judicial Council or the Supreme Court has adopted new standards.

(6) Existing law requires the California Habeas Corpus Resource Center to report annually to the Legislature, the Governor, and the Supreme Court on the status of appointment of counsel for indigent persons in postconviction capital cases, and on the operations of the center.

This bill would require the report to list all cases in which the center is providing representation. For each case that has been pending for more than one year in any court, the bill would require the report to state the reason for the delay and actions the center is taking to bring the case to completion. The bill would require the report to be made available on the center's Internet Web site or by another medium providing equal or better access to the public.

(7) Existing law, for purposes of the death penalty, defines the "entire record" as including the normal and additional record prescribed in

the rules adopted by the Judicial Council pertaining to an appeal taken by the defendant from a judgment of conviction, a copy of any other record on file or lodged with the superior court, and a transcript of any other oral proceeding reported in the superior court.

This bill would instead define the record for purposes of death penalty cases and provide that jury questionnaires filled out by jurors who were excused without having been seated in the jury box during the selection process and who were not excused for cause are not part of the record.

(8) Existing law requires the record on appeal to be expeditiously certified in 2 stages, first for completeness and 2nd for accuracy, in any case in which the death sentence has been imposed. Existing law requires the clerk of the superior court to provide trial counsel copies of the clerk's transcript within 30 days of the imposition of the death sentence. Existing law requires trial counsel to alert the court's attention to any errors in the transcripts incidentally discovered by counsel while reviewing them in the normal course of trial preparation. Existing law requires the trial court to certify the record for completeness and for incorporation of all corrections no later than 90 days after entry of the imposition of the death sentence unless good cause is shown, except that existing law provides this time period may be extended if the trial transcript exceeds 10,000 pages.

Existing law requires the trial court to hold one or more hearings for trial counsel to address the completeness of the record and any outstanding errors that have come to their attention and to certify that they have reviewed all docket sheets to ensure that the record contains transcripts for any proceedings, hearings, or discussions that are required to be reported. Existing law requires the trial court to certify the record for accuracy no later than 120 days after the record has been delivered to appellate counsel, except that existing law provides that this time may be extended, as provided.

This bill would delete the requirement that the record be certified in 2 stages for completeness and accuracy. The bill would require the superior court to provide trial counsel with copies of the clerk's transcript, the reporter's transcript, and a comprehensive journal of proceedings, as provided. The bill would require trial counsel to undertake to identify and promptly alert the court's attention to any errors in the transcript of proceedings and to provide a list of any proposed corrections to the reporter's transcript. The bill would remove the exception to the 90-day certification requirement for proceedings in which the trial transcript exceeds 10,000 pages. The bill would

require the clerk of the trial court to deliver a copy of the record on appeal to the Attorney General.

The bill would provide that no additional motion for correcting the record may be entertained after the record is certified, except that either party may file in the Supreme Court a motion for referral to the trial court for correction of a material error in the record, as provided. The bill would require the Supreme Court to rule on the motion not later than 21 days after it is filed.

(9) Under existing law, when an appeal lies on behalf of a defendant or the people, the appeal may be taken in the manner provided in the rules adopted by the Judicial Counsel. Under existing law, when a judgment of death is rendered, an appeal is automatically taken by the defendant without any action by him or his or her counsel.

This bill would provide that the appellate court may require the appellant to be represented by counsel, but would require counsel to respect the right of the client to determine the goals of representation.

(10) Existing law authorizes the Supreme Court to appoint counsel other than the State Public Defender in cases where a judgment of death has been rendered.

This bill would instead prohibit the State Public Defender from being appointed in a noncapital case at any time when there is a backlog of capital cases awaiting appointment of more than 3 months and the State Public Defender is unable to take all of the cases for which the State Public Defender would otherwise be appointed. The bill would require the clerk of the Supreme Court to notify the State Public Defender of a case promptly upon docketing, and would require the State Public Defender to notify the Supreme Court if the office is unable to represent the appellant within 30 days. The bill would require the Supreme Court to promptly issue an order appointing the State Public Defender as counsel for the appellant if notice is not received within the 30 days. The bill would require any attorney who is qualified for appointment in capital appeals to agree to accept any appointments as a condition of remaining on the list of attorneys for appointment by a court of appeals in noncapital cases, as provided.

(11) Existing law provides that every person unlawfully imprisoned or restrained of liberty may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint. Existing law requires that the person upon whom the writ is served to file a return. Existing law requires that if the party is held under illegal restraint or custody, he or she shall be discharged, and if not, he or she shall be restored to

the care or custody of the person entitled thereto. Existing law provides that an appeal may be taken from a final order of a superior court upon the return of a writ of habeas corpus discharging the defendant to the court of appeal in all criminal cases, except that existing law requires the appeal to be to the Supreme Court in cases where judgment of death has been rendered.

This bill would provide the exclusive procedure for collateral attack on a judgment of death. The bill would require any petition for writ of habeas corpus filed by a person in custody pursuant to a judgment of death to be filed in, or transferred to, the court that imposed the sentence unless good cause is shown for the petition to be heard by another court. The bill would require that the prisoner be offered counsel, and would authorize the prisoner or the State to appeal the decision on the petition to the court with jurisdiction over the appeal from the underlying criminal judgment. The bill would prohibit a successive petition to be used as a means of reviewing a denial of habeas relief. The bill would require the initial petition to be filed within one year of appointing counsel or of the defendant's rejecting of counsel, unless the court finds, by a preponderance of all available evidence that the defendant is actually innocent of the crime or is ineligible for the sentence of death. The bill would require that a successive petition claiming innocence or ineligibility for the sentence of death to disclose all material information relating to guilt in possession of the petitioner.

(12) Existing law requires that every male person upon whom a judgment of death has been imposed to be delivered to the warden of the California state prison designated by the department for the execution of the death penalty, and requires the person to be kept there until the execution of judgment. Existing law allows an inmate who commits specified crimes to be housed in secure condemned housing. Existing law requires that a judgment for imprisonment where the judgment is for death to direct the defendant to be delivered to the warden of the California Prison at San Quentin.

This bill would instead allow the department to transfer any inmate, without regard to gender, to another prison which the department determines provides a level of security sufficient for the inmate, and would require the inmate to be returned to the prison designated for execution of the death penalty after an execution date has been set. The bill would allow a condemned inmate to be housed in any state prison designated by the Secretary of the Department of Corrections and Rehabilitation for the housing of condemned prisoners.

(13) Existing law requires a court, if a judgment of death remains in force and has not been executed, to enter an order appointing a day upon which the judgment shall be executed that is not less than 30 days, nor more than 60 days from the time of making the order.

This bill would instead require the court enter an order specifying a period of 30 days during which the judgment shall be executed, as provided. The bill would make conforming changes.

(14) Existing law requires that, in order to expedite certification of the entire record on appeal in all criminal cases, the defendant's trial counsel and the prosecutor continue to represent the respective parties. Existing law specifies that each counsel's obligations extend to taking all steps necessary to facilitate the preparation and timely certification of the record of superior court proceedings. Existing law specifies that these provisions do not foreclose the defendant's appellate counsel from requesting additions or corrections to the record on appeal in either the trial court or the Supreme Court in a manner provided by the rules of court adopted by the Judicial Council.

This bill would delete these provisions.

(15) Under existing law, when a defendant has been charged with a public offense triable in any court, he or she may, and in cases other than those for which the punishment may be death, the people may, have witnesses examined conditionally, as specified.

This bill would allow witnesses to be examined conditionally by the defendant and by the people in any case where the defendant has been charged with a public offense triable in any court, as provided.

(16) Existing law requires a judgment of death to be executed within the walls of the California State Prison at San Quentin. Existing law requires every female person, upon whom has been imposed the judgment of death, to be delivered to the warden of the Central California Women's Facility, to be held pending appeal. Upon affirmance of her appeal, existing law requires the female person sentenced to death to be delivered to the warden of the California state prison designated by the department for the execution of the death penalty.

This bill would delete the above provisions relating to condemned female inmates and would instead require the judgment of death in the case of both genders to be executed within the walls of a state prison to be determined by the Secretary of the Department of Corrections and Rehabilitation. The bill would provide that this determination, and any standards, procedures, or regulations promulgated by the

department in regard to the administration of the penalty of death, would not be subject to review by the Office of Administrative Law, as provided.

(17) Existing law requires the punishment of death to be inflicted by the administration of lethal gas or an intravenous injection and provides that if either method is held invalid that the punishment shall be imposed by the other method.

This bill would provide that the punishment of death would be inflicted by the administration of lethal gas or injection by any means. The bill would specify that lethal gas may include any gas administered in a lethal manner, including by displacing oxygen. In the event a method of execution is held invalid, the bill would require the court to order the use of a valid method of execution, as provided. If the method of execution is enjoined by a federal court, the bill would require the Department of Corrections and Rehabilitation to adopt a method that conforms to federal requirements, as specified. If the Department of Corrections and Rehabilitation fails to perform any duty needed to enable it to execute judgment, the bill would require the court which rendered the judgment of death to order the department to perform that duty on its own motion, on the motion of the district attorney or Attorney General, or on the motion of any victim of the crime, as specified. The bill would provide that the execution of judgment shall not be prevented or substantially delayed under any circumstances.

(18) The California Constitution requires that a statute that limits the right of access to meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by that limitation and the need for protecting that interest. Except as provided by statute enacted by a two-thirds vote of the membership in each house of the legislature, the California Constitution prohibits the exclusion of relevant evidence in any criminal proceeding, including pretrial and postconviction motions and hearings.

This bill would require the identity and personal identifying information of the members of an execution team, medical professionals who assist in or consult on executions, persons who perform ancillary functions in an execution, and persons who supply drugs, medical supplies, or medical equipment for an execution to be privileged official information. The bill would prohibit disclosure of this information, and would provide the information shall not be subject to discovery in any civil, criminal, or administrative proceedings, except as specified. Because this bill would potentially exclude relevant evidence from a

criminal proceeding, it would require a 2/3 vote. The bill would make a legislative finding and declaration relating to the necessity of protecting the privacy of these individuals.

The bill would require any pharmacy operated by the Department of Corrections and Rehabilitation to obtain and provide any drugs or other controlled substances and medical supplies necessary for the execution process and practice sessions. The bill would require the secretary of the department to maintain ultimate authority over the pharmacy for purposes of obtaining these supplies.

The bill would prohibit the infliction of the punishment of death from being construed to be the practice of medicine. The bill would prohibit any physician from being compelled by the state to perform an execution. The bill would allow the state to employ a physician to be present during the execution and to pronounce death. The bill would prohibit any agency that regulates the practice of health care from taking disciplinary action against any licensed health care professional for participating in, or providing assistance with, and execution.

(19) Existing law requires that the warden of the state prison where an execution is to take place be present at the execution and invite the presence of the Attorney General, the members of the immediate family of the victim or victims of the defendant, and at least 12 reputable citizens selected by the warden.

This bill would require the warden, in the event that a condemned inmate has been sentenced to death in one or more proceedings or jurisdictions, to invite the prosecuting attorney, the judge, and the chief law enforcement official from each jurisdiction where any death sentence has issued to attend the execution.

(20) The bill would provide that it would not be operative unless Senate Constitutional Amendment No. ____ of the 2013–14 Regular Session is approved by the voters.

~~Existing law requires the record on appeal in any case in which a death sentence has been imposed to be expeditiously certified in 2 stages, first for completeness and 2nd for accuracy. Existing law requires the clerk of the superior court to provide trial counsel copies of the clerk's transcript within 30 days of the imposition of the death sentence. Existing law requires trial counsel to alert the court's attention to any errors in the transcripts incidentally discovered by counsel while reviewing them in the normal course of trial preparation. Existing law requires the trial court to certify the record for completeness and for incorporation of all corrections no later than 90 days after entry of the~~

~~imposition of the death sentence unless good cause is shown, except that existing law provides this time period may be extended if the trial transcript exceeds 10,000 pages.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~^{yes}. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *This act shall be known, and may be cited, as the*
2 *Death Penalty reform Act of 2013.*

3 SEC. 2. *The Legislature of California finds and declares the*
4 *following:*

5 (a) *The review of capital cases in this state is taking far longer*
6 *than is needed for a fair adjudication of claims, that the delay is*
7 *contrary to the right of victims and their families to a prompt*
8 *conclusion of the case, that the delay impairs the deterrent effect*
9 *of capital punishment, costing innocent lives, and that the delay*
10 *constitutes a denial of justice in the worse criminal cases. Reforms*
11 *in the review process are needed to bring these cases to a prompt,*
12 *fair conclusion.*

13 (b) *As presently administered, the death penalty costs far more*
14 *than it needs to. Among the unnecessary expenses are the excessive*
15 *length of incarceration during the needlessly prolonged review of*
16 *the sentence, unnecessarily expensive conditions of confinement,*
17 *unnecessary litigation of execution protocols, briefing of frivolous*
18 *claims by defense counsel with the requisite response by the*
19 *Attorney General and decision by the courts, and unnecessary*
20 *repetitive review of judgments on issues having no bearing on*
21 *actual guilt of the offense.*

22 (c) *In order to protect the privacy of individuals who are*
23 *members of an execution team, medical professionals who assist*
24 *in or consult on executions, persons who perform ancillary*
25 *functions in an execution, and persons who supply drugs, medical*
26 *supplies, or medical equipment for an execution, it is necessary*
27 *that the identity and personal identifying information of these*
28 *persons be kept confidential pursuant to Section 26 of this act*

29 SEC. 3. *Section 15403 of the Government Code is repealed.*

1 ~~15403. The State Public Defender shall formulate plans for the~~
2 ~~representation of indigents in the Supreme Court and in each~~
3 ~~appellate district as provided in this article. Each plan shall be~~
4 ~~adopted upon the approval of the court to which the plan is~~
5 ~~applicable. Any such plan may be modified or replaced by the~~
6 ~~State Public Defender with the approval of the court to which the~~
7 ~~plan is applicable.~~

8 *SEC. 4. Section 15403 is added to the Government Code, to*
9 *read:*

10 *15403. (a) The State Public Defender shall report annually*
11 *to the Governor and the Legislature on the status of, and*
12 *appointment of counsel for, indigent persons with respect to*
13 *appeals under Section 11 of Article VI of the California*
14 *Constitution.*

15 *(b) A report to be submitted pursuant to subdivision (a) shall*
16 *be submitted in compliance with Section 9795 of the Government*
17 *Code.*

18 *SEC. 5. Section 15425 of the Government Code is repealed.*

19 ~~15425. The duties prescribed for the State Public Defender by~~
20 ~~this chapter are not exclusive and he may perform any acts~~
21 ~~consistent with them in carrying out the functions of the office.~~

22 *SEC. 6. Section 68661 of the Government Code is amended to*
23 *read:*

24 68661. There is hereby created in the judicial branch of state
25 government the California Habeas Corpus Resource Center, which
26 shall have all of the following general powers and duties:

27 (a) To employ up to 34 attorneys who may be appointed by the
28 ~~Supreme Court pursuant to Section 68662~~ to represent any person
29 convicted and sentenced to death in this state who is without
30 counsel, and who is determined by a court of competent jurisdiction
31 to be indigent, for the purpose of instituting and prosecuting
32 postconviction actions in the state and federal courts, challenging
33 the legality of the judgment or sentence imposed against that
34 person, *subject to the limitations specified in Section 68661.1*, and
35 preparing petitions for executive clemency. An appointment may
36 be concurrent with the appointment of the State Public Defender
37 or other counsel for purposes of direct appeal under Section 11 of
38 Article VI of the California Constitution.

39 (b) To seek reimbursement for representation and expenses
40 pursuant to Section 3006A of Title 18 of the United States Code

1 when providing representation to indigent persons in the federal
2 courts and process those payments via the Federal Trust Fund.

3 (c) To work with the Supreme Court in recruiting members of
4 the private bar to accept death penalty habeas corpus case
5 appointments.

6 ~~(d) To establish and periodically update~~ *recommend attorneys*
7 *on an annual basis to the Supreme Court for inclusion in a roster*
8 *of attorneys qualified as counsel in postconviction proceedings in*
9 *capital cases, provided that the final determination of whether to*
10 *include an attorney in the roster shall be made by the Supreme*
11 *Court and not delegated to the center.*

12 (e) To establish and periodically update a roster of experienced
13 investigators and experts who are qualified to assist counsel in
14 postconviction proceedings in capital cases.

15 (f) To employ investigators and experts as staff to provide
16 services to appointed counsel upon request of counsel, provided
17 that when ~~the provision of those services is to~~ *are provided by*
18 *private counsel under appointment by the Supreme Court*, those
19 services shall be pursuant to contract between appointed counsel
20 and the center.

21 (g) To provide legal or other advice ~~or, to the extent not~~
22 ~~otherwise available, any other assistance~~ to appointed counsel in
23 postconviction proceedings as is appropriate when not prohibited
24 by law.

25 (h) To develop a brief bank of pleadings and related materials
26 on significant, recurring issues that arise in postconviction
27 proceedings in capital cases and to make those briefs available to
28 appointed counsel.

29 (i) To evaluate cases and recommend assignment by the court
30 of appropriate attorneys.

31 (j) To provide assistance and case progress monitoring as
32 needed.

33 (k) To timely review case billings and recommend compensation
34 of members of the private bar to the court.

35 (l) The center shall report annually to the *people, by way of its*
36 *Internet Web site or other medium providing equal or better public*
37 *access, the Legislature, the Governor, and the Supreme Court on*
38 *the status of the appointment of counsel for indigent persons in*
39 *postconviction capital cases, and on the operations of the center.*
40 ~~On or before January 1, 2000, the Legislative Analyst's Office~~

1 ~~shall evaluate the available reports.~~ *The report shall list all cases*
2 *in which the center is providing representation. For each case that*
3 *has been pending for more than one year in any court, the report*
4 *shall state the reason for the delay and the actions the center is*
5 *taking to bring the case to completion.*

6 SEC. 7. *Section 68661.1 is added to the Government Code, to*
7 *read:*

8 68661.1. (a) *The center may represent a person sentenced to*
9 *death on one federal habeas corpus petition if, and only if, all of*
10 *the following requirements are met:*

11 (1) *The center was appointed to represent that person on a state*
12 *petition for habeas corpus.*

13 (2) *The center is appointed for that purpose by the federal court.*

14 (3) *The executive director determines that compensation from*
15 *the federal court will fully cover the cost of representation.*

16 (b) *Neither the center nor any other person or entity receiving*
17 *state funds shall use state resources to attack any judgment by a*
18 *state court in a capital case in a federal court, other than review*
19 *in the United States Supreme Court pursuant to Section 1257 of*
20 *Title 28 of the United States Code.*

21 (c) *The center is not authorized to represent any person on*
22 *successive habeas corpus petitions or in any action that constitutes*
23 *a collateral attack on the judgment or seeks to delay or prevent*
24 *its execution. The center shall not engage in any other litigation*
25 *or expend funds in any form of advocacy other than as expressly*
26 *authorized by this section or Section 68661.*

27 SEC. 8. *Section 68662 of the Government Code is amended to*
28 *read:*

29 68662. ~~The Supreme Court~~ *superior court that imposed the*
30 *sentence shall offer to appoint counsel to represent all state*
31 *prisoners subject to a capital sentence for purposes of state*
32 *postconviction proceedings, and shall enter an order containing*
33 *one of the following:*

34 (a) *The appointment of one or more counsel to represent the*
35 *prisoner in ~~postconviction~~ state proceedings pursuant to Section*
36 *1509 of the Penal Code upon a finding that the person is indigent*
37 *and has accepted the offer to appoint counsel or is unable to*
38 *competently decide whether to accept or reject that offer.*

1 (b) A finding, after a hearing if necessary, that the prisoner
2 rejected the offer to appoint counsel and made that decision with
3 full understanding of the legal consequences of the decision.

4 (c) The denial to appoint counsel upon a finding that the person
5 is not indigent.

6 (d) *The Legislature shall ensure that funding is made available*
7 *to fulfill the requirements of this section and Section 1509 of the*
8 *Penal Code, and may, in so doing, consider utilizing funds that*
9 *were formerly appropriated for the support of the Supreme Court*
10 *in order to comply with this section.*

11 SEC. 9. Section 68664 of the Government Code is amended to
12 read:

13 68664. (a) The center shall be managed by an executive
14 director who shall be responsible for the day-to-day operations of
15 the center.

16 (b) The executive director shall be chosen by ~~a five-member~~
17 ~~board of directors and confirmed by the Senate. Each Appellate~~
18 ~~Project shall appoint one board member, all of whom shall be~~
19 ~~attorneys. However, no attorney who is employed as a judge,~~
20 ~~prosecutor, or in a law enforcement capacity shall be eligible to~~
21 ~~serve on the board. The executive director shall serve at the will~~
22 ~~of the board the Supreme Court and shall serve at the will of the~~
23 ~~Supreme Court.~~

24 ~~(c) Each member of the board shall be appointed to serve a~~
25 ~~four-year term, and vacancies shall be filled in the same manner~~
26 ~~as the original appointment. Members of the board shall receive~~
27 ~~no compensation, but shall be reimbursed for all reasonable and~~
28 ~~necessary expenses incidental to their duties. The first members~~
29 ~~of the board shall be appointed no later than February 1, 1998.~~

30 ~~(d)~~

31 (c) The executive director shall meet the appointment
32 qualifications of the State Public Defender as specified in Section
33 15400.

34 (d) *The executive director shall ensure that all matters in which*
35 *the center provides representation are completed as expeditiously*
36 *as possible, consistent with providing effective representation.*

37 (e) The executive director shall receive the salary that shall be
38 specified for the ~~executive director~~ *State Public Defender* in
39 Chapter 6 (commencing with Section 11550) of Part 1 of Division
40 3 of Title 2. *All attorneys employed by the center shall be*

1 *compensated at the same level as positions with the same or similar*
2 *experience requirements in the office of the State Public Defender.*

3 *SEC. 10. Section 68665 of the Government Code is amended*
4 *to read:*

5 *68665. (a) Except as provided in subdivision (b), an attorney*
6 *shall be deemed competent for appointment as counsel in a death*
7 *penalty direct appeal or habeas corpus proceeding if the attorney*
8 *has been admitted to practice in a court of appeals for not less*
9 *than five years, and has had not less than three years' experience*
10 *in the handling of appeals in that court in felony cases, as specified*
11 *in standards adopted by Congress for federal capital proceedings*
12 *in subdivision (c) of Section 3599 of Title 18 of the United States*
13 *Code or any successor statute.*

14 ~~The~~

15 *(b) The Judicial Council and the Supreme Court shall may adopt,*
16 *by rule of court, binding and mandatory competency standards for*
17 *the appointment of counsel in death penalty direct appeals and*
18 *habeas corpus proceedings in lieu of those provided in subdivision*
19 *(a). In establishing the standards, the Judicial Council and the*
20 *Supreme Court shall consider the qualifications needed to achieve*
21 *competent representation, the need to avoid unduly restricting the*
22 *available pool of attorneys in order to provide a timely*
23 *appointment, and the standards needed to qualify pursuant to*
24 *Chapter 154 (commencing with Section 2261) of Part VI of Title*
25 *28 of the United States Code. Experience requirements shall not*
26 *be limited to defense experience.*

27 *(c) Immediately upon the effective date of the act adding this*
28 *subdivision, Rule 8.605 of the Rules of Court shall be suspended.*
29 *The standards under subdivision (a) of this section shall apply*
30 *until the Judicial Council or the Supreme Court has adopted new*
31 *standards in accordance with the criteria specified in subdivision*
32 *(b).*

33 *SEC. 11. Section 190.7 of the Penal Code is amended to read:*

34 *190.7. (a) ~~The "entire record" referred to in Section 190.6 For~~*
35 *purposes of this chapter, the record includes, but is not limited to,*
36 *the following:*

37 *(1) The normal and additional record prescribed in the rules*
38 *adopted by the Judicial Council pertaining to an appeal taken by*
39 *the defendant from a judgment of conviction.*

1 (2) A copy of any other paper or record on file or lodged with
2 the superior ~~or municipal~~ court and a transcript of any other oral
3 proceeding reported in the superior ~~or municipal~~ court pertaining
4 to the trial of the cause.

5 (b) Notwithstanding this section, the Judicial Council may adopt
6 rules, not inconsistent with the purpose of Section 190.6,
7 specifically pertaining to the content, preparation and certification
8 of the record on appeal when a judgment of death has been
9 pronounced.

10 (c) *Jury questionnaires filled out by jurors who were excused*
11 *without having been seated in the jury box during the selection*
12 *process and who were not excused for cause are not part of the*
13 *“entire record” for purposes of this chapter.*

14 **SECTION 1.**

15 *SEC. 12.* Section 190.8 of the Penal Code is amended to read:

16 190.8. (a) In any case in which a death sentence has been
17 imposed, the record on appeal shall be expeditiously certified ~~in~~
18 ~~two stages, the first for completeness and the second for accuracy,~~
19 ~~as provided by this section.~~ The trial court ~~may~~ *shall* use all
20 reasonable means to ensure compliance with all applicable statutes
21 and rules of court pertaining to record certification in capital
22 appeals, including, but not limited to, the imposition of sanctions.

23 (b) Within 30 days of the imposition of the death sentence, the
24 clerk of the superior court shall provide to trial counsel copies of
25 the clerk’s transcript ~~and shall deliver the transcript as provided~~
26 ~~by the court reporter, the reporter’s transcript, and a~~
27 *comprehensive journal of proceedings, prepared on a form*
28 *approved by the Judicial Council, listing each date on which*
29 *proceedings culminating in the judgment occurred and noting the*
30 *duration and nature of each session, the names of the court*
31 *reporters present at each session, and the page length and volume*
32 *designation of all transcriptions prepared in connection with each*
33 *session.* Trial counsel shall promptly notify the court if he or she
34 has not received the transcript within 30 days.

35 (c) (1) During the course of a trial in which the death penalty
36 is being sought, trial counsel shall *undertake to identify and*
37 *promptly* alert the court’s attention to any errors in the transcripts
38 ~~incidentally discovered by counsel while reviewing them in the~~
39 ~~ordinary course of trial preparation of the proceedings.~~ The court
40 shall periodically request that trial counsel provide a list of ~~errors~~

1 ~~in the trial~~ *any proposed corrections to the reporter's* transcript
2 during the course of trial and may hold hearings in connection
3 therewith.

4 (2) Corrections to the record shall not be required to include
5 immaterial typographical errors that cannot conceivably cause
6 confusion.

7 (d) The trial court shall certify the record ~~for completeness and~~
8 ~~for incorporation of all corrections, as provided by subdivision~~
9 ~~(e);~~ no later than 90 days after entry of the imposition of the death
10 sentence unless good cause is shown. ~~However, this time period~~
11 ~~may be extended for proceedings in which the trial transcript~~
12 ~~exceeds 10,000 pages in accordance with the timetable set forth~~
13 ~~in, or for good cause pursuant to the procedures set forth in, the~~
14 ~~rules of court adopted by the Judicial Council.~~

15 (e) Following the imposition of the death sentence and prior to
16 the deadline set forth in subdivision (d), the trial court shall hold
17 one or more hearings for trial counsel to address the completeness
18 of the record and any ~~outstanding errors that have come to their~~
19 ~~attention~~ *proposed corrections*, and to certify that they have
20 reviewed *the comprehensive journal of proceedings prepared by*
21 *the clerk and* all docket sheets to ensure that the record contains
22 *complete and correct* transcripts for ~~any~~ *all* proceedings, hearings,
23 ~~or~~ *and* discussions that are required to be reported and that have
24 occurred in the course of the case in any court, as well as all
25 documents required by this code and the rules adopted by the
26 Judicial Council.

27 (f) The clerk of the trial court shall deliver a copy of the record
28 on appeal to *the Attorney General and the appellant's* appellate
29 counsel when the clerk receives notice of counsel's appointment
30 or retention, or when the record is certified ~~for completeness~~
31 pursuant to subdivision (d), whichever is later.

32 ~~(g) The trial court shall certify the record for accuracy no later~~
33 ~~than 120 days after the record has been delivered to appellate~~
34 ~~counsel. However, this time may be extended pursuant to the~~
35 ~~timetable and procedures set forth in the rules of court adopted by~~
36 ~~the Judicial Council. The trial court may hold one or more status~~
37 ~~conferences for purposes of timely certification of the record for~~
38 ~~accuracy, as set forth in the rules of court adopted by the Judicial~~
39 ~~Council.~~

1 (g) After the record is certified as provided in subdivision (d),
2 no additional motions for correcting the record shall be entertained
3 except as provided in subdivision (h).

4 (h) Either party may file a motion in the Supreme Court for
5 referral to the trial court for correction of a material error in the
6 record. The motion shall (1) specify the particular correction
7 sought, (2) identify the basis for the moving party's belief that the
8 proposed correction will accurately reflect the events that
9 transpired at trial, and (3) explain how the proposed correction
10 will materially affect the disposition of the pending appeal. The
11 motion shall be made no later than five days after filing the moving
12 party's principal brief, except that a motion may be made later if
13 the moving party demonstrates by clear and convincing evidence
14 that failure to effect the corrections will result in a miscarriage of
15 justice.

16 (i) The Supreme Court shall rule on any motion under
17 subdivision (h) not later than 21 days after it is filed. That motion
18 may be granted only upon a showing of good cause. If the motion
19 is granted, the Supreme Court shall specify the proposed
20 corrections that shall be considered by the trial court. The trial
21 court shall, within 30 days, or any shorter period specified by the
22 Supreme Court, issue an order granting or denying the proposed
23 corrections referred for the trial court's consideration.

24 ~~(h)~~

25 (j) The Supreme Court shall identify in writing to the Judicial
26 Council any case that has not met the time limit for certification
27 of the record for completeness pursuant to subdivision (d) or for
28 accuracy pursuant to subdivision (g), and shall identify those cases,
29 and its reasons, for which it has granted an extension of time. The
30 Judicial Council shall include this information in its annual report
31 to the Legislature.

32 ~~(i)~~

33 (k) As used in this section, "trial counsel" means both the
34 prosecution and the defense counsel in the trial in which the
35 sentence of death has been imposed.

36 ~~(j)~~

37 (l) This section shall be implemented pursuant to rules of court
38 adopted by the Judicial Council.

1 ~~(k) This section shall only apply to those proceedings in which~~
2 ~~a sentence of death has been imposed following a trial that was~~
3 ~~commenced on or after January 1, 1997.~~

4 *(m) The amendments made to this section by the act adding this*
5 *subdivision shall apply only to cases in which the trial commenced*
6 *60 days or more after the effective date of the act adding this*
7 *subdivision.*

8 *SEC. 13. Section 1202a of the Penal Code is amended to read:*

9 1202a. *(a) If the judgment is for imprisonment in the state*
10 *prison the judgment shall direct that the defendant be delivered*
11 *into the custody of the ~~Director~~ Secretary of the Department of*
12 *Corrections and Rehabilitation at the state prison or institution*
13 *designated by the ~~Director of Corrections~~ secretary as the place*
14 *for the reception of persons convicted of felonies, except where*
15 *the judgment is for death in which case the defendant shall be*
16 *taken to the warden of the California State Prison at San Quentin*
17 *delivered into the custody of the secretary to be housed in any state*
18 *prison designated by the secretary for the housing of condemned*
19 *prisoners.*

20 ~~Unless a different place or places are so designated by the~~
21 ~~Director of Corrections, the judgment shall direct that the defendant~~
22 ~~be delivered into the custody of the Director of Corrections at the~~
23 ~~California State Prison at San Quentin.~~

24 *(b) The ~~Director of Corrections~~ secretary shall designate a place*
25 *or places for the reception of persons convicted of felonies by*
26 *order, which order or orders shall be served by registered mail,*
27 *return receipt requested, upon each judge of each superior court*
28 *in the state. The ~~Director of Corrections~~ secretary may change the*
29 *place or places of commitment by the issuance of a new order.*
30 *Nothing contained in this section affects any provision of Section*
31 *3400.*

32 *SEC. 14. Section 1227 of the Penal Code is amended to read:*

33 1227. *(a) If for any reason other than the pendency of an*
34 *appeal pursuant to subdivision (b) of Section 1239 of this code a*
35 *judgment of death has not been executed, and it remains in force,*
36 *the court in which the conviction was had shall, on application of*
37 *the district attorney, or may upon its own motion, make and cause*
38 *to be entered an order ~~appointing a day upon~~ specifying a period*
39 *of 30 days during which the judgment shall be executed, ~~which~~*
40 *must not be less than 30 days nor more than 60 days from the time*

1 ~~of making such order; and immediately thereafter.~~ *The 30-day*
2 *period shall begin no more than 30 days after the order is entered*
3 *and shall end no more than 60 days after the order is entered.*
4 *Immediately after the order is entered, a certified copy of such the*
5 *order, attested by the clerk, under the seal of the court, shall, for*
6 *the purpose of execution, be transmitted by registered mail to the*
7 *warden of the state prison having the custody of the defendant;*
8 *provided, that if the defendant be at large, a warrant for his*
9 *apprehension may be issued, and upon being apprehended, he shall*
10 *be brought before the court, whereupon the court shall make an*
11 *order directing the warden of the state prison to whom the sheriff*
12 *is instructed to deliver the defendant to execute the judgment at a*
13 *specified time, which shall not be less than 30 days nor more than*
14 *60 days from the time of making such order within a period of 30*
15 *days. The 30-day period shall begin no more than 30 days after*
16 *the order is made and shall end no more than 60 days after the*
17 *order is made.*

18 ~~From~~

19 *(b) From an order fixing the time for and directing the execution*
20 *of such judgment as herein provided, there shall be no appeal.*

21 *SEC. 15. Section 1239 of the Penal Code is amended to read:*

22 1239. (a) Where an appeal lies on behalf of the defendant or
23 the people, it may be taken by the defendant or his or her counsel,
24 or by counsel for the people, in the manner provided in rules
25 adopted by the Judicial Council.

26 (b) When upon any plea a judgment of death is rendered, an
27 appeal is automatically taken by the defendant without any action
28 by him or her or his or her counsel. The defendant's trial counsel,
29 whether retained by the defendant or court appointed, shall continue
30 to represent the defendant until completing the additional duties
31 set forth in paragraph (1) of subdivision (e) of Section 1240.1.

32 (c) *The appellate court may require the appellant to be*
33 *represented by counsel, but counsel shall respect the right of the*
34 *client to determine the goals of representation.*

35 *SEC. 16. Section 1240 of the Penal Code is amended to read:*

36 1240. (a) When in a proceeding falling within the provisions
37 of Section 15421 of the Government Code a person is not
38 represented by a public defender acting pursuant to Section 27706
39 of the Government Code or other counsel and he is unable to afford

1 the services of counsel, the court shall appoint the State Public
2 Defender to represent the person except as follows:

3 (1) The court shall appoint counsel other than the State Public
4 Defender when the State Public Defender has refused to represent
5 the person because of conflict of interest or other reason.

6 (2) The court may, in its discretion, appoint either the State
7 Public Defender or the attorney who represented the person at his
8 trial when the person requests the latter to represent him on appeal
9 and the attorney consents to the appointment. In unusual cases,
10 where good cause exists, the court may appoint any other attorney.

11 (3) A court may appoint a county public defender, private
12 attorney, or nonprofit corporation with which the State Public
13 Defender has contracted to furnish defense services pursuant to
14 Government Code Section 15402.

15 (4) When a judgment of death has been rendered the Supreme
16 Court may, in its discretion, appoint counsel other than the State
17 Public Defender or the attorney who represented the person at trial.

18 (5) *The State Public Defender shall not be appointed in a*
19 *noncapital case at any time when there is a backlog of capital*
20 *cases awaiting appointment of more than three months, and the*
21 *State Public Defender is unable, by reason of workload, to take*
22 *all of the capital cases that the State Public Defender would*
23 *otherwise be appointed as provided in subdivision (b).*

24 (b) *Promptly upon docketing an appeal in a capital case, the*
25 *clerk of the Supreme Court shall notify the State Public Defender*
26 *of the case. Within 30 days, the State Public Defender shall notify*
27 *the court if the office is unable to represent the appellant by reason*
28 *of a conflict, workload, or other good cause. If the Supreme Court*
29 *does not receive such a notice, the court shall promptly issue an*
30 *order appointing the State Public Defender as counsel for the*
31 *appellant. The State Public Defender shall ensure that briefs in*
32 *capital cases are filed within the time limits specified in Section*
33 *190.6 and in the rules of court, without extensions of time, except*
34 *in unusual cases.*

35 (c) *An attorney who is qualified for appointment in a capital*
36 *appeal shall accept appointments to capital appeals as a condition*
37 *of remaining on the list of attorneys for appointment by the*
38 *appellate court in noncapital cases. An attorney who is not yet*
39 *qualified for appointment in capital appeals shall make good faith*
40 *efforts to become qualified as a condition of remaining on the list*

1 of attorneys for appointment by the appellate court in noncapital
2 cases. The Supreme Court may suspend these requirements if the
3 court determines that there is no more than a six-month delay in
4 the appointment of counsel for capital appeals, on average, but
5 shall reinstate these requirements if an average delay of six months
6 or more develops.

7 ~~(b)~~

8 (d) If counsel other than the State Public Defender is appointed
9 pursuant to this section, he or she may exercise the same authority
10 as the State Public Defender pursuant to Chapter 2 (commencing
11 with Section 15420) of Part 7 of Division 3 of Title 2 of the
12 Government Code.

13 SEC. 17. Section 1240.1 of the Penal Code is amended to read:

14 1240.1. (a) In any noncapital criminal, juvenile court, or civil
15 commitment case wherein the defendant would be entitled to the
16 appointment of counsel on appeal if indigent, it shall be the duty
17 of the attorney who represented the person at trial to provide
18 counsel and advice as to whether arguably meritorious grounds
19 exist for reversal or modification of the judgment on appeal. The
20 attorney shall admonish the defendant that he or she is not able to
21 provide advice concerning his or her own competency, and that
22 the State Public Defender or other counsel should be consulted for
23 advice as to whether an issue regarding the competency of counsel
24 should be raised on appeal. The trial court may require trial counsel
25 to certify that he or she has counseled the defendant as to whether
26 arguably meritorious grounds for appeal exist at the time a notice
27 of appeal is filed. Nothing in this section shall be construed to
28 prevent any person having a right to appeal from doing so.

29 (b) It shall be the duty of every attorney representing an indigent
30 defendant in any criminal, juvenile court, or civil commitment
31 case to execute and file on his or her client’s behalf a timely notice
32 of appeal when the attorney is of the opinion that arguably
33 meritorious grounds exist for a reversal or modification of the
34 judgment or orders to be appealed from, and where, in the
35 attorney’s judgment, it is in the defendant’s interest to pursue any
36 relief that may be available to him or her on appeal; or when
37 directed to do so by a defendant having a right to appeal.

38 With the notice of appeal the attorney shall file a brief statement
39 of the points to be raised on appeal and a designation of any
40 document, paper, pleading, or transcript of oral proceedings

1 necessary to properly present those points on appeal when the
2 document, paper, pleading, or transcript of oral proceedings would
3 not be included in the normal record on appeal according to the
4 applicable provisions of the California Rules of Court. The
5 executing of the notice of appeal by the defendant’s attorney shall
6 not constitute an undertaking to represent the defendant on appeal
7 unless the undertaking is expressly stated in the notice of appeal.

8 If the defendant was represented by appointed counsel on the
9 trial level, or if it appears that the defendant will request the
10 appointment of counsel on appeal by reason of indigency, the trial
11 attorney shall also assist the defendant in preparing and submitting
12 a motion for the appointment of counsel and any supporting
13 declaration or affidavit as to the defendant’s financial condition.
14 These documents shall be filed with the trial court at the time of
15 filing a notice of appeal, and shall be transmitted by the clerk of
16 the trial court to the clerk of the appellate court within three judicial
17 days of their receipt. The appellate court shall act upon that motion
18 without unnecessary delay. An attorney’s failure to file a motion
19 for the appointment of counsel with the notice of appeal shall not
20 foreclose the defendant from filing a motion at any time it becomes
21 known to him or her that the attorney has failed to do so, or at any
22 time he or she shall become indigent if he or she was not previously
23 indigent.

24 (c) The State Public Defender shall, at the request of any
25 attorney representing a prospective indigent appellant or at the
26 request of the prospective indigent appellant himself or herself,
27 provide counsel and advice to the prospective indigent appellant
28 or attorney as to whether arguably meritorious grounds exist on
29 which the judgment or order to be appealed from would be reversed
30 or modified on appeal.

31 (d) The failure of a trial attorney to perform any duty prescribed
32 in this section, assign any particular point or error in the notice of
33 appeal, or designate any particular thing for inclusion in the record
34 on appeal shall not foreclose any defendant from filing a notice of
35 appeal on his or her own behalf or from raising any point or
36 argument on appeal; nor shall it foreclose the defendant or his or
37 her counsel on appeal from requesting the augmentation or
38 correction of the record on appeal in the reviewing court.

39 ~~(e) (1) In order to expedite certification of the entire record on~~
40 ~~appeal in all capital cases, the defendant’s trial counsel, whether~~

1 retained by the defendant or court-appointed, and the prosecutor
 2 shall continue to represent the respective parties. Each counsel's
 3 obligations extend to taking all steps necessary to facilitate the
 4 preparation and timely certification of the record of all trial court
 5 proceedings.

6 ~~(2) The duties imposed on trial counsel in paragraph (1) shall~~
 7 ~~not foreclose the defendant's appellate counsel from requesting~~
 8 ~~additions or corrections to the record on appeal in either the trial~~
 9 ~~court or the California Supreme Court in a manner provided by~~
 10 ~~rules of court adopted by the Judicial Council.~~

11 *SEC. 18. Section 1335 of the Penal Code is amended to read:*

12 1335. ~~(a) When a defendant has been charged with a public~~
 13 ~~offense triable in any court, he or she in all cases, and the people~~
 14 ~~in cases other than those for which the punishment may be death,~~
 15 ~~may, if the defendant has been fully informed of his or her right~~
 16 ~~to counsel as provided by law, have witnesses examined~~
 17 ~~conditionally in his or her or their behalf, as prescribed in this~~
 18 ~~chapter.~~

19 ~~(b) When a defendant has been charged with a serious felony~~
 20 ~~or in a case of domestic violence, the people or the defendant may,~~
 21 ~~if the defendant has been fully informed of his or her right to~~
 22 ~~counsel as provided by law, have a witness examined conditionally~~
 23 ~~as prescribed in this chapter, if there is evidence that the life of the~~
 24 ~~witness is in jeopardy.~~

25 ~~(c) As used in this section, "serious felony" means any of the~~
 26 ~~felonies listed in subdivision (c) of Section 1192.7 or any violation~~
 27 ~~of Section 11351, 11352, 11378, or 11379 of the Health and Safety~~
 28 ~~Code.~~

29 ~~(d) If a defendant has been charged with a case of domestic~~
 30 ~~violence and there is evidence that a victim or material witness~~
 31 ~~has been or is being dissuaded by the defendant or any person~~
 32 ~~acting on behalf of the defendant, by intimidation or a physical~~
 33 ~~threat, from cooperating with the prosecutor or testifying at trial,~~
 34 ~~the people or the defendant may, if the defendant has been fully~~
 35 ~~informed of his or her right to counsel as provided by law, have a~~
 36 ~~witness examined conditionally as prescribed in this chapter.~~

37 ~~(e) For the purposes of this section, "domestic violence" means~~
 38 ~~any public offense arising from acts of domestic violence as defined~~
 39 ~~in Section 13700.~~

40 *SEC. 19. Section 1509 is added to the Penal Code, to read:*

1 1509. (a) *This section applies to any petition for writ of habeas*
2 *corpus filed by a person in custody pursuant to a judgment of*
3 *death. A writ of habeas corpus made pursuant to this section is*
4 *the exclusive procedure for collateral attack on a judgment of*
5 *death. A petition filed in any court other than the court which*
6 *imposed the sentence shall be transferred to that court unless good*
7 *cause is shown for the petition to be heard by another court. A*
8 *petition to be filed in or transferred to the court which imposed*
9 *the sentence shall be assigned to the original trial judge unless*
10 *that judge is unavailable or there is other good cause to assign*
11 *the case to a different judge.*

12 (b) *After the entry of judgment in the trial court, that court shall*
13 *offer counsel to the defendant as provided in Section 68662 of the*
14 *Government Code. Counsel's appointment terminates upon the*
15 *final disposition of the petition, including appellate review. The*
16 *court may appoint counsel to represent the petitioner on a*
17 *successive petition only if there is a reasonable basis to believe*
18 *that the petitioner may be able to meet the criteria for a successive*
19 *petition under subdivision (e).*

20 (c) *Either party may appeal the decision on the petition to the*
21 *court with jurisdiction over the appeal from the underlying criminal*
22 *judgment. A successive petition shall not be used as a means of*
23 *reviewing a denial of habeas relief.*

24 (d) *Except as provided in subdivisions (e) and (h), the initial*
25 *petition shall be filed within one year of the order entered pursuant*
26 *to Section 68662 of the Government Code.*

27 (e) *An initial petition which is untimely pursuant to subdivision*
28 *(d), or a successive petition whenever filed, shall be dismissed*
29 *unless the court finds, by a preponderance of all available*
30 *evidence, whether or not admissible at trial, that the defendant is*
31 *actually innocent of the crime of which he or she was convicted*
32 *or is ineligible for the sentence. A stay of execution shall not be*
33 *granted for the purpose of considering a successive or untimely*
34 *petition unless the court finds that the petitioner has a substantial*
35 *claim of actual innocence or ineligibility for the sentence of death.*
36 *Ineligibility for the sentence of death means that circumstances*
37 *exist placing that sentence outside the range of the sentencer's*
38 *discretion. Claims of ineligibility include a claim that none of the*
39 *special circumstances specified in subdivision (a) of Section 190.2*
40 *is true, a claim that the defendant was under the age of 18 at the*

1 *time of the crime, or a claim that the defendant is intellectually*
2 *disabled as defined in Section 1376. A claim based on voluntary*
3 *intoxication, a claim based on mental disease or defect other than*
4 *intellectually disabled, or a claim relating to the sentencing*
5 *decision pursuant to Section 190.3 is not a claim of actual*
6 *innocence for the purposes of this section.*

7 *(f) A petitioner claiming innocence or ineligibility for the death*
8 *sentence pursuant to subdivision (e) shall disclose all material*
9 *information relating to guilt that is in the possession of the*
10 *petitioner or present counsel for the petitioner. If the petitioner*
11 *willfully fails to make the disclosure required by this subdivision*
12 *to authorize disclosure by counsel, the petition shall be dismissed.*

13 *(g) Proceedings held pursuant to this section shall be conducted*
14 *as expeditiously as possible, consistent with a fair adjudication.*
15 *In the typical case, the superior court shall render a decision on*
16 *the petition within one year of filing, and the Supreme Court shall*
17 *decide the appeal from the decision of the superior court within*
18 *one year. All cases shall be decided within two years unless the*
19 *court finds that a delay is necessary to resolve a substantial claim*
20 *of actual innocence.*

21 *(h) This section shall apply to all cases where a judgment of*
22 *death is entered after the effective date of the act adding this*
23 *section, and to all cases where a judgment was entered earlier but*
24 *no application for habeas corpus has been filed as of the effective*
25 *date of the act adding this section. If a habeas petition is pending*
26 *on the effective date of the act adding this section, the court may*
27 *transfer it to the court which imposed the sentence. If no habeas*
28 *petition has been filed prior to the effective date of this section, a*
29 *motion that would otherwise be barred by subdivision (d) may be*
30 *filed within one year of the effective date, or within the time*
31 *allowed under law as it existed prior to the effective date of the*
32 *act adding this section, whichever is earlier.*

33 *SEC. 20. Section 3600 of the Penal Code is repealed.*

34 ~~3600. (a) Every male person, upon whom has been imposed~~
35 ~~the judgment of death, shall be delivered to the warden of the~~
36 ~~California state prison designated by the department for the~~
37 ~~execution of the death penalty, there to be kept until the execution~~
38 ~~of the judgment, except as provided in subdivision (b).~~

39 ~~(b) Notwithstanding any other provision of law:~~

1 ~~(1) A condemned inmate who, while in prison, commits any of~~
2 ~~the following offenses, or who, as a member of a gang or disruptive~~
3 ~~group, orders others to commit any of these offenses, may,~~
4 ~~following disciplinary sanctions and classification actions at San~~
5 ~~Quentin State Prison, pursuant to regulations established by the~~
6 ~~Department of Corrections, be housed in secure condemned~~
7 ~~housing designated by the Director of Corrections, at the California~~
8 ~~State Prison, Sacramento:~~

9 ~~(A) Homicide.~~

10 ~~(B) Assault with a weapon or with physical force capable of~~
11 ~~causing serious or mortal injury.~~

12 ~~(C) Escape with force or attempted escape with force.~~

13 ~~(D) Repeated serious rules violations that substantially threaten~~
14 ~~safety or security.~~

15 ~~(2) The condemned housing program at California State Prison,~~
16 ~~Sacramento, shall be fully operational prior to the transfer of any~~
17 ~~condemned inmate.~~

18 ~~(3) Specialized training protocols for supervising condemned~~
19 ~~inmates shall be provided to those line staff and supervisors at the~~
20 ~~California State Prison, Sacramento, who supervise condemned~~
21 ~~inmates on a regular basis.~~

22 ~~(4) An inmate whose medical or mental health needs are so~~
23 ~~critical as to endanger the inmate or others may, pursuant to~~
24 ~~regulations established by the Department of Corrections, be~~
25 ~~housed at the California Medical Facility or other appropriate~~
26 ~~institution for medical or mental health treatment. The inmate shall~~
27 ~~be returned to the institution from which the inmate was transferred~~
28 ~~when the condition has been adequately treated or is in remission.~~

29 ~~(e) When housed pursuant to subdivision (b) the following shall~~
30 ~~apply:~~

31 ~~(1) Those local procedures relating to privileges and~~
32 ~~classification procedures provided to Grade B condemned inmates~~
33 ~~at San Quentin State Prison shall be similarly instituted at~~
34 ~~California State Prison, Sacramento, for condemned inmates~~
35 ~~housed pursuant to paragraph (1) of subdivision (b) of Section~~
36 ~~3600. Those classification procedures shall include the right to the~~
37 ~~review of a classification no less than every 90 days and the~~
38 ~~opportunity to petition for a return to San Quentin State Prison.~~

39 ~~(2) Similar attorney-client access procedures that are afforded~~
40 ~~to condemned inmates housed at San Quentin State Prison shall~~

1 ~~be afforded to condemned inmates housed in secure condemned~~
2 ~~housing designated by the Director of Corrections, at the California~~
3 ~~State Prison, Sacramento. Attorney-client access for condemned~~
4 ~~inmates housed at an institution for medical or mental health~~
5 ~~treatment shall be commensurate with the institution's visiting~~
6 ~~procedures and appropriate treatment protocols.~~

7 ~~(3) A condemned inmate housed in secure condemned housing~~
8 ~~pursuant to subdivision (b) shall be returned to San Quentin State~~
9 ~~Prison at least 60 days prior to his scheduled date of execution.~~

10 ~~(4) No more than 15 condemned inmates may be rehoused~~
11 ~~pursuant to paragraph (1) of subdivision (b).~~

12 ~~(d) Prior to any relocation of condemned row from San Quentin~~
13 ~~State Prison, whether proposed through legislation or any other~~
14 ~~means, all maximum security Level IV, 180-degree housing unit~~
15 ~~facilities with an electrified perimeter shall be evaluated by the~~
16 ~~Department of Corrections for suitability for the secure housing~~
17 ~~and execution of condemned inmates.~~

18 *SEC. 21. Section 3600 is added to the Penal Code, to read:*

19 *3600. Every person, upon whom has been imposed the judgment*
20 *of death, shall be delivered to the warden of the state prison*
21 *designated by the department for the execution of the death penalty.*
22 *The inmate shall be kept in a state prison until execution of*
23 *judgment. The department may transfer the inmate to another state*
24 *prison which the department determines provides a level of security*
25 *sufficient for that inmate. The inmate shall be returned to the prison*
26 *designated for execution of the death penalty after an execution*
27 *date has been set.*

28 *SEC. 22. Section 3601 of the Penal Code is repealed.*

29 ~~3601. Every female person, upon whom has been imposed the~~
30 ~~judgment of death, shall be delivered to the warden of the Central~~
31 ~~California Women's Facility, there to be held pending decision~~
32 ~~upon appeal.~~

33 *SEC. 23. Section 3602 of the Penal Code is repealed.*

34 ~~3602. Upon the affirmance of her appeal, the female person~~
35 ~~sentenced to death shall thereafter be delivered to the warden of~~
36 ~~the California state prison designated by the department for the~~
37 ~~execution of the death penalty, not earlier than three days before~~
38 ~~the day upon which judgment is to be executed; provided, however,~~
39 ~~that in the event of a commutation of sentence said female prisoner~~

1 shall be returned to the Central California Women’s Facility, there
2 to be confined pursuant to such commutation.

3 *SEC. 24. Section 3603 of the Penal Code is amended to read:*

4 3603. The judgment of death shall be executed within the walls
5 of the California State Prison at San Quentin a state prison facility
6 to be determined by the Secretary of the Department of Corrections
7 and Rehabilitation.

8 *SEC. 25. Section 3604 of the Penal Code is amended to read:*

9 3604. (a) The punishment of death shall be inflicted by the
10 administration of a lethal gas or by an intravenous injection of a
11 substance or substances in a lethal quantity sufficient to cause
12 death, by standards established under the direction of the
13 Department of Corrections and Rehabilitation. Lethal gas may
14 include, but is not limited to, a nontoxic gas administered in a
15 lethal manner, such as by displacing oxygen. The department shall
16 at all times maintain the capability to execute a sentence of death
17 by either means.

18 (b) Persons sentenced to death prior to or after the operative
19 date of this subdivision shall have the opportunity to elect to have
20 the punishment imposed by lethal gas or lethal injection. This
21 choice shall be made in writing and shall be submitted to the
22 warden pursuant to regulations established by the Department of
23 Corrections and Rehabilitation. If a person under sentence of death
24 does not choose either lethal gas or lethal injection within 10 days
25 after the warden’s service upon the inmate of an execution warrant
26 issued following the operative date of this subdivision, the penalty
27 of death shall be imposed by lethal injection.

28 (c) Where the person sentenced to death is not executed on the
29 date set for execution and a new execution date is subsequently
30 set, the inmate again shall have the opportunity to elect to have
31 punishment imposed by lethal gas or lethal injection, according to
32 the procedures set forth in subdivision (b).

33 (d) Notwithstanding subdivision (b), if either manner of
34 execution described in subdivision (a) is held invalid, has been
35 enjoined by a court of competent jurisdiction, or is unavailable
36 for any reason, the punishment of death shall be imposed by the
37 alternative means specified in subdivision (a).

38 (e) The provisions of Chapter 3.5 (commencing with Section
39 11340) of Part 1 of Division 3 of Title 2 of the Government Code

1 shall not apply to standards, procedures, or regulations
2 promulgated pursuant to this section.

3 (f) The court which rendered the judgment of death has exclusive
4 jurisdiction to hear any claim by the condemned inmate that the
5 method of execution is unconstitutional or otherwise invalid. A
6 claim shall be made within one year of the adoption of the method
7 or within one year of the enactment of the act adding this
8 subdivision, whichever is later. If the method is found invalid, the
9 court shall order the use of a valid method of execution. The
10 execution of judgment shall not be prevented or substantially
11 delayed under any circumstances. If the use of a method of
12 execution is enjoined by a federal court, the department shall
13 promptly adopt a method that conforms to federal requirements
14 as found by that court. If the department fails to perform any duty
15 needed to enable it to execute judgment, the court which rendered
16 the judgment of death shall order it to perform that duty on its own
17 motion, on the motion of the district attorney or Attorney General,
18 or on motion of any victim of the crime as specified in subdivision
19 (c) of Section 28 of Article I of the California Constitution.

20 SEC. 26. Section 3604.1 is added to the Penal Code, to read:

21 3604.1. (a) The identity and personal identifying information
22 of the members of the execution team, medical professionals who
23 assist in or consult on executions, persons who perform ancillary
24 functions in an execution, and persons who supply drugs, medical
25 supplies or medical equipment for an execution is privileged
26 official information.

27 (1) This information shall not be subject to disclosure pursuant
28 to Government Code Chapter 3.5 (commencing with Section 6250)
29 of Division 7 of Title 1 of the Government Code.

30 (2) This information shall not be subject to discovery in any
31 civil, criminal or administrative proceeding absent a court order
32 made pursuant to subdivisions (b) to (f), inclusive.

33 (b) A party seeking the discovery or disclosure of the information
34 specified in subdivision (a) shall file a written motion with the
35 appropriate court or administrative body upon written notice to
36 the governmental agency which has custody and control of the
37 information. The written notice shall be given at the times
38 prescribed by subdivision (b) of Section 1005 of the Code of Civil
39 Procedure. Upon receipt of the notice the governmental agency

1 *served shall expeditiously notify the individual whose information*
2 *is being sought.*

3 *(c) The motion shall include all of the following:*

4 *(1) A specific description of the information sought.*

5 *(2) Identification of the proceeding in which discovery or*
6 *disclosure is sought, the identity of the party seeking discovery or*
7 *disclosure, the governmental agency which has custody and control*
8 *of the information, and the time and place at which the motion for*
9 *discovery or disclosure shall be heard.*

10 *(3) Affidavits showing good cause for the discovery or disclosure*
11 *sought, setting forth the materiality thereof to the subject matter*
12 *involved in the pending litigation, and stating upon reasonable*
13 *belief that the governmental agency identified has the information.*
14 *Good cause in a criminal case consists of a substantial showing*
15 *that the information sought is material to the guilt of the defendant.*
16 *Good cause in a civil case or administrative proceeding consists*
17 *of a substantial showing that the information sought is critical to*
18 *the ultimate issue to be decided by the trier of fact.*

19 *(d) No hearing upon a motion for discovery or disclosure shall*
20 *be held without full compliance with the notice provisions of this*
21 *section except upon a waiver of the hearing by the governmental*
22 *agency identified as possessing the information and by the person*
23 *whose information is being sought.*

24 *(e) The court shall hold the hearing outside the presence of any*
25 *party other than the holder of the information, the person whose*
26 *information is being sought, and their counsel, except that the*
27 *person whose information is being sought may waive his or her*
28 *presence. At the in camera hearing, the agency in possession of*
29 *the information and the person whose information is being sought*
30 *may offer evidence which would tend to disclose, or which*
31 *discloses, the information sought, to aid the court in its*
32 *determination of whether there is a reasonable possibility that*
33 *nondisclosure might deprive the moving party of a fair trial or*
34 *hearing. A court reporter shall be present at the in camera hearing.*
35 *Any transcription of the proceedings at the in camera hearing, as*
36 *well as any physical evidence presented at the hearing, shall be*
37 *ordered sealed by the court, and only a court may have access to*
38 *its contents.*

39 *(f) Unless a protective order is waived by the agency possessing*
40 *the information and the person whose information is being sought,*

1 *the court shall make any protective order which justice requires*
2 *to protect the person or agency from unnecessary annoyance,*
3 *embarrassment or oppression including but not limited to the*
4 *following:*

5 *(1) Limiting disclosure of the information sought to the moving*
6 *party, counsel of record for the moving party, and investigators*
7 *who are working on that case.*

8 *(2) Prohibiting further disclosure of the information by the*
9 *parties to any other person or entity.*

10 *(3) Ordering that the information disclosed or discovered may*
11 *not be used for any purpose other than a court proceeding pursuant*
12 *to applicable law.*

13 *(4) Redacting the information to avoid identifying the person*
14 *whose information is sought.*

15 *SEC. 27. Section 3604.2 is added to the Penal Code, to read:*

16 *3604.2. Any pharmacy operated by the Department of*
17 *Corrections and Rehabilitation shall be required to obtain and*
18 *provide any drugs or other controlled substances and medical*
19 *supplies necessary for the execution procedure and for any practice*
20 *sessions. Notwithstanding who is in control of the pharmacy for*
21 *any other purpose, the Secretary of the Department of Corrections*
22 *and Rehabilitation shall maintain ultimate authority over the*
23 *pharmacy for purposes of obtaining and providing supplies and*
24 *controlled substances to be used in executions.*

25 *SEC. 28. Section 3604.3 is added to the Penal Code, to read:*

26 *3604.3. (a) It being in the best interest of the state and the*
27 *condemned to secure the participation of medical professionals*
28 *to assure that the execution process is effective and humane, the*
29 *infliction of the punishment of death by administration of the*
30 *required lethal substances in the manner required by this chapter*
31 *shall not be construed to be the practice of medicine.*

32 *(1) A physician may not be compelled by the state to perform*
33 *an execution.*

34 *(2) The state may employ a physician for the purpose of ensuring*
35 *that the execution protocol is effective and humane.*

36 *(3) The state may employ a physician to be present during an*
37 *execution for the purpose of ensuring that the execution is*
38 *performed with minimal distress and discomfort to the inmate. A*
39 *physician who is so employed may intervene in an execution to*

1 *correct any deficiencies he or she observes that may cause*
2 *unnecessary distress or discomfort to the condemned inmate.*

3 *(b) The state may employ a physician for purposes of*
4 *pronouncing death after an execution.*

5 *(c) Notwithstanding any provision of law to the contrary, no*
6 *licensing board, department, commission or accreditation agency*
7 *which oversees or regulates the practice of health care or certifies*
8 *or licenses healthcare professionals may censure, reprimand,*
9 *suspend, revoke, or take any other disciplinary action against any*
10 *licensed health care professional, including, but not limited to,*
11 *physicians, nurses, pharmacists, and pharmaceutical compounders,*
12 *for participating in or providing assistance with the execution of*
13 *any convicted person carried out under this article or the*
14 *formulation of an execution protocol.*

15 *(d) The purchase of drugs, medical supplies or medical*
16 *equipment necessary to carry out an execution shall not be subject*
17 *to the provisions of Chapter 9 (commencing with Section 4000) of*
18 *Division 2 of the Business and Professions Code, and any*
19 *pharmacist, or supplier, compounder or manufacturer of*
20 *pharmaceuticals is authorized to dispense drugs and supplies to*
21 *the Secretary or the Secretary's designee, without prescription,*
22 *for carrying out the provisions of this section.*

23 *SEC. 29. Section 3605 of the Penal Code is amended to read:*

24 *3605. (a) The warden of the state prison where the execution*
25 *is to take place shall be present at the execution and shall, subject*
26 *to any applicable requirement or definition set forth in subdivision*
27 *(b), invite the presence of the Attorney General, the members of*
28 *the immediate family of the victim or victims of the defendant,*
29 *and at least 12 reputable citizens, to be selected by the warden.*
30 *The warden shall, at the request of the defendant, permit those*
31 *ministers of the Gospel, not exceeding two, as the defendant may*
32 *name, and any persons, relatives or friends, not to exceed five, to*
33 *be present at the execution, together with those peace officers or*
34 *any other Department of Corrections employee as he or she may*
35 *think expedient, to witness the execution. But no other persons*
36 *than those specified in this section may be present at the execution,*
37 *nor may any person under 18 years of age be allowed to witness*
38 *the execution.*

39 *(b) (1) For purposes of an invitation required by subdivision*
40 *(a) to members of the immediate family of the victim or victims*

1 of the defendant, the warden of the state prison where the execution
 2 is to take place shall make the invitation only if a member of the
 3 immediate family of the victim or victims of the defendant so
 4 requests in writing. In the event that a written request is made, the
 5 warden of the state prison where the execution is to take place
 6 shall automatically make the invitation 30 days prior to the date
 7 of an imminent execution or as close to this date as practicable.

8 (2) For purposes of this section, “immediate family” means
 9 those persons who are related by blood, adoption, or marriage,
 10 within the second degree of consanguinity or affinity.

11 (c) No physician or any other person invited pursuant to this
 12 section, whether or not employed by the Department of
 13 Corrections, shall be compelled to attend the execution, and any
 14 physician’s attendance shall be voluntary. A physician’s or any
 15 other person’s refusal to attend the execution shall not be used in
 16 any disciplinary action or negative job performance citation.

17 (d) *If a condemned inmate has been sentenced to death in one*
 18 *or more criminal proceedings in this state, or has been sentenced*
 19 *to death in this state and by one or more courts of competent*
 20 *jurisdiction in another state, or pursuant to federal authority, or*
 21 *any combination thereof, and this state has priority to execute the*
 22 *defendant, the warden shall invite the prosecuting attorney, or his*
 23 *or her designee, the judge, and the chief law enforcement official,*
 24 *from each jurisdiction where any death sentence has issued, to*
 25 *attend the execution.*

26 *SEC. 30. Section 3700.5 of the Penal Code is amended to read:*
 27 *3700.5. Whenever a court makes and causes to be entered an*
 28 *order appointing a ~~day upon~~ 30-day period during which a*
 29 *judgment of death shall be executed upon a defendant, the warden*
 30 *of the state prison to whom such defendant has been delivered for*
 31 *execution or, if the defendant is a female, the warden of the Central*
 32 *California Women’s Facility, shall notify the ~~Director of~~*
 33 *Corrections Secretary of the Department of Corrections and*
 34 *Rehabilitation who shall thereupon select and appoint three*
 35 *alienists psychiatrists or licensed psychologists, all of whom must*
 36 *be from the medical staffs of the ~~Department of Corrections~~*
 37 *department, to examine the defendant, under the judgment of death,*
 38 *and investigate his or her sanity. It is the duty of the ~~alienists~~*
 39 *psychiatrists or licensed psychologists so selected and appointed*
 40 *to examine ~~such~~ the defendant and investigate his or her sanity,*

1 and to report their opinions and conclusions thereon, in writing,
2 to the Governor,~~to the warden of the prison at which the execution~~
3 ~~is to take place, or, if the defendant is female, the warden of the~~
4 ~~Central California Women’s Facility, and to the warden~~ at least
5 20 days prior to the *first day of the 30-day period* appointed for
6 the execution of the judgment of death upon the defendant. The
7 warden shall furnish a copy of the report to counsel for the
8 defendant upon his or her request.

9 *SEC. 31. If any provision of this act, or any part of any*
10 *provision, or if its application to any person or circumstance is*
11 *held to be invalid or unconstitutional for any reason, the remaining*
12 *provisions and application that can be given effect without the*
13 *invalid or unconstitutional provisions or application shall not be*
14 *affected, but shall remain in full force and effect, and, to this end,*
15 *the provisions are severable.*

16 *SEC. 32. This act shall only become operative if Senate*
17 *Constitutional Amendment No. _____ of the 2013–14 Regular*
18 *Session is approved by the voters.*