March 12, 2008

California Commission on the Fair Administration of Justice
Attn: John Van de Kamp, Chair
900 Lafayette Street, Suite 608
Santa Clara, California 95050

RE: Response to Questions on Proportionality Review and Data Collection

Dear Mr. Van De Kamp:

Thank you for the opportunity to speak before the Commission about our research on the death penalty at your January 10th hearing. We greatly appreciate the interest in our research and the opportunity to contribute to your important work.

We wish to comment on two of the focused questions issued by the Commission after the January 10th hearing. Specifically, the Commission asked:

1. Should reporting requirements be imposed to systematically collect and make public data regarding all decisions by prosecutors in murder cases whether or not to charge special circumstances and/or seek the death penalty, as well as the disposition of such cases by dismissal, plea or verdict in the trial courts?

10. Is there a need for proportionality review of death penalty sentences in California? If so, how should such a review process be incorporated into California’s death penalty law?

In addition, during the January hearing, Commission Vice-Chair Jon Streeter asked Professor Radelet what type of data collection he would recommend for the state of California. In this letter, we provide answers to these questions.

II. Comparative Proportionality Review

We will begin with the questions about comparative proportionality review. Comparative proportionality review by appellate courts can be an effective remedy against arbitrariness and the appearance of arbitrariness in death sentencing. When properly implemented, it is a critical safeguard, ensuring that individuals are not executed based
on impermissible factors such as race of victim or the location of crime. Of course, such review comes only after a death sentence has been issued and substantial costs have been incurred in trying the case as a capital case, so, ideally comparative proportionality review would be adopted alongside reforms that also reduce the number of less-aggravated cases initially brought as capital cases. Such reforms should include narrowing the scope of the statute and, perhaps, requiring the Attorney General to review and approve all death penalty prosecutions before they proceed to trial. But even without these additional reforms, comparative proportionality review is clearly an effective way to reduce disparities in death sentencing and should be adopted in California.

The Commission next asked: How would proportionality review be incorporated into California’s death penalty law? The simple answer to that question is that the California Legislature could pass a statute or the Judicial Council could adopt a court rule requiring the Supreme Court to conduct an analysis to determine if the sentence of death is disproportionate to sentences in similar cases. The court would then compare the case before it with similar cases, regardless of the sentence imposed in those cases. If the court determines that the death sentence is excessive by comparison, in light of the facts of the crime or the personal history of the defendant, the court would set aside the death sentence and return the case to the Superior Court for the defendant to be sentenced to life without the possibility of parole.

Establishing a process for comparative proportionality review requires decisions to be made on three levels:

(1) What is to be the standard applied by the court, the general standard – whether the death penalty is “excessive” – or additional more specific standards?

(2) What is the universe of cases from which cases “similar” to the one being appealed will be selected for comparison?

(3) What procedures and defining criteria will the court employ for determining which cases are “similar” to the case in question, and what will be the measure of “excessive”?

The first two questions should be answered in the statute or court rule mandating comparative proportionality review. The third question will inevitably be answered by the court in its case-by-case decision-making, but we offer some suggestions about how the court might approach the task. Each of these questions is addressed briefly below.

1) Defining the Standard for Review

Most state statutes simply require the court to determine whether the sentence is “excessive or disproportionate to the penalty imposed in similar cases considering both

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1 Over time, comparative proportionality review will also contribute to reducing the number of cases brought as capital cases as the Supreme Court establishes standards for “excessiveness” and those standards are incorporated into prosecutors’ charging decisions.
the crime and the defendant.” This statutory language is sufficient but lacks precision and clarity. By contrast, the New York statute also required the court to determine: (1) whether the sentence was imposed “under the influence of any arbitrary or legally impermissible factor;” and (2) upon request of the defendant, specifically whether his or her death sentence is “excessive or disproportionate to the penalty imposed in similar cases by virtue of the race of the defendant or a victim of the crime.” Statutory language such as this is preferable because it gives clear direction to the court about the scope and purpose of the proportionality review.

2) Universe of Potential Comparison Cases

The universe of potential comparison cases should be defined to include all cases in which the defendant was convicted of a violation of Penal Code section 187, murder. Only by including every murder conviction can the review capture the overwhelming majority of death-eligible cases in California.

Limiting data collection to only cases where the prosecution sought death or charged special circumstances would unduly restrict the universe of comparison cases and potentially distort the court’s analysis. Prosecutors have complete discretion whether to seek death or charge special circumstances and there appears to be wide variation in practice. For example, prosecutors in one county may choose to charge every robbery-felony murder special circumstance while prosecutors in other counties may rarely if ever charge this special circumstance. If data collection is limited to only cases with special circumstances charged, the reviewing court would be limited to considering only those robbery-murder cases from jurisdictions where this special circumstance is aggressively pursued, even if the majority of robbery-murder cases in the state are not charged with specials. This would prevent a reviewing court from detecting and correcting significant geographic disparities, and potentially significant racial disparities in practice.

3) Procedures and Criteria for Review

After defining the pool of death eligible cases that potentially involve offense and offender circumstances similar to the death sentenced case being reviewed on appeal (i.e., the universe of potentially similar cases), the reviewing court next must identify and compare cases that in fact are roughly similar (recognizing that no two cases are identical) to the case being appealed. Many different techniques may be utilized to identify similar cases for comparative proportionality review. These techniques generally attempt to assess whether cases reflect “similar” culpability, considering relevant offense and offender circumstances.

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2 NY CPL 470.30 (3) (a), (b).
3 In our research, we have seen that, in many cases where the defendant was found guilty of second degree murder, the defendant was factually death-eligible and was convicted of second degree murder as a result of jury leniency or prosecutorial discretion (often as a result of a plea bargain). Limiting the universe of cases to those convicted of murder will not, of course, capture all death-eligible cases because some factually death-eligible defendants (e.g. robbery-murderers) are allowed to plead guilty to manslaughter, often in return for their testimony against co-defendants.
The different techniques employed, which are not mutually exclusive (and, indeed, tend to be most effective when used in combination) include:

(1) Identifying the special circumstances established in cases, and relying on the presence or absence of those factors to compare cases;

(2) Identifying both the aggravating and the mitigating factors present in cases, and then weighing those factors to assign an overall culpability level to each case, and for comparison to other cases;

(3) Making intuitive judgments about critical variables that are likely to influence sentencing decisions (e.g., the certainty that the defendant is a deliberate killer, whether a close or prior relationship existed between the defendant and the victim, and the relative vileness or heinousness of the killing), and making comparative culpability judgments about cases based on the presence or absence of those variables; and

(4) Using empirical and statistical techniques to identify the aggravating and mitigating factors that influence sentencing decisions, and then ranking cases according to culpability scales derived through such quantitative analyses.

Ideally, a reviewing court would use a combination of these techniques. To facilitate this, the data collection process must collect a broad range of information and that information must then be made available to the court in a form that will permit the court to use each technique. Empirical and statistical techniques are particularly important because they provide a concrete means of ensuring that the reviewing court is employing similar means to select comparison cases for proportionality review in all cases it considers.

III. Scope of Data Collection

We believe that collecting data about California’s death penalty is crucial first and foremost because it will provide greater transparency to the system. The public has a right to know how the death penalty is administered in this state, both because of the severity of the punishment and because of the incredible amount of state resources used by the system. Data collection is also necessary to facilitate comparative proportionality review. Currently, almost no information is systemically collected and made available to about the death penalty. This must change. What follows are some initial suggestions: we recognize that decisions about what data to collect can be made only after input from multiple interested parties.

Potentially useful data may be perishable and difficult to reconstruct. Thus, data collection should be as broad as reasonably practicable because it is difficult to predict precisely what information will be needed for sentence review, and because data not recorded and preserved will be difficult to retrieve months or years after trials have been completed. On the other hand, the more extensive data collection is, the more time
consuming and costly the practice will be. In a state like California, given its size and the relatively large number of homicides, we recognize that it may be financially impractical to collect all of the data that we as researchers would like to have available.

Accordingly, we here identify the type of data that we believe at a minimum should be collected in California to allow policy makers and the public some insight into how California’s death penalty functions in practice and to facilitate comparative proportionality review. We then review the more extensive data that was collected in practice in New York and which, ideally, would also be collected in California. Our experience has suggested that all or most of this information may be obtained from the pre-sentence probation report, and, for that reason, we first recommend that, in every case where the defendant is convicted of murder, such a report be prepared and made available to the reviewing court. Additional information could be captured through the use of a simple questionnaire to be completed by the trial judge after sentencing, as is the current practice in Washington and was the practice in New York.⁴

A. Minimum Data that Should be Collected

Below is the minimum data that we recommend be collected in California, based on the statutory scheme used in this state to determine death eligibility and death sentencing.

1) Basic Case Information

The most basic case information must be collected including:

Docket number(s) for the case
Court location(s)
County of offense and county of trial
Names of key participants (e.g., all attorneys and judges)
Dates of the offense, filing of the charges (complaint, indictment or information), preliminary hearing, conviction and sentencing.
Charges, including each special circumstance and priors alleged, and the results for each (e.g., true/ not true, convicted/ not convicted/ dismissed)
Sentence imposed and date

2) Basic Demographic Information

For the defendant and all victims and co-defendants, the following must be collected:

Race, ethnicity, citizenship and nation of birth
Gender
Date of birth

3) Special Circumstances Involved

⁴ Copies of the Washington and New York questionnaires are attached.
Data must be collected on whether any of the 32 special circumstances listed in Penal Code section 190.2 were involved in the case, regardless of whether the special circumstance was charged. For example, in every case where the facts demonstrate a robbery-felony murder, this must be recorded even if that special circumstance was not charged. This can be accomplished with a simple checklist to be completed by the judge based on review of the pre-sentence probation report.

4) Aggravating and Mitigating Factors Present

Similarly, data must be collected on whether any of the 12 aggravating and mitigating factors listed in Penal Code section 190.3, other than "circumstances of the crime," which will be addressed in the context of the special circumstances, were involved in the case, regardless of whether they were argued or found true by the jury. For example, in every case where the evidence demonstrates that the defendant suffers from a severe mental illness, this should be recorded. As with the special circumstances, this can be accomplished with a simple checklist to be completed by the judge based on review of the pre-sentence probation report.


While the above defines the minimum data needed, more comprehensive data collection would allow a more nuanced system of comparative proportionality review. As one example of what is possible, below is a list of the additional data that were collected by the State of New York in all cases where the defendant was indicted for first degree murder. The data collection instrument used in New York is also attached.

1) Death Penalty Charging Decision

The New York court collected the most basic information as to whether the prosecution filed a notice of intent to seek death and if that notice was ever withdrawn.

2) Circumstances of the Crime

The New York court collected detailed information about the circumstances of the crime. This included factors which research and experience have found to be highly relevant to the decision to impose death, even though they are not legally "aggravating factors," including the following:

- Number of victims killed and number injured
- Location of homicide
- Method of killing
- Others involved in the offense
- Role of the defendant and any co-defendants in the offense
- Evidence against the defendant
- Listed "non-statutory" aggravating factors such as:
• Victim suffered severe physical or emotional distress from the attack
• Victim was sexually assaulted, mutilated, bound, gagged or held hostage
• Victim was killed in presence of family members
• Defendant threatened victim’s family members
• Defendant was the prime mover in the killing
• Defendant showed no remorse or expressed pleasure in the killing

“Context” of the killing, including:

• Revenge
• Jealousy
• Immediate rage
• Domestic dispute

3) Defendant Information

In addition to the basic demographic information about race, gender and age, the New York court also collected the following:

Birth place, residency and citizenship
Religion
Sexual orientation
Level of education
Language ability
Occupation and employment status
Criminal record
Military record
Record of incarcerations or supervision by criminal justice system
Mental health and any history or evidence of mental illness
Physical health and/or disabilities
Family history, including history of physical, sexual or verbal abuse, family support or the absence of family support
Current family structure, including whether the defendant has children, whether the defendant had a relationship with his or her children, and who the defendant lived with at the time of the offense

4) Victim Information

All of the above demographic information was also collected on the victim as well as the victim’s relationship with the defendant.
IV. Conclusion

Again, we thank the Commission for the opportunity to contribute to this important discussion about the future of California’s death penalty. We urge the Commission to recommend that comparative proportionality review and comprehensive data collection be implemented in California. Please feel free to contact any of us if we can provide the Commission with other information.

Sincerely,

Ellen Kreitzberg
Professor of Law
Santa Clara Law
Director, Death Penalty College

Michael Radelet
Professor & Chair, Dept. of Sociology
University of Colorado

Steven Shatz
Philip & Muriel Barnett Professor
University of San Francisco School of Law
REPORT OF THE TRIAL JUDGE

Aggravated First Degree Murder Case

Superior Court of ___________________________ County, Washington
Cause No. _________________________________
State v. __________________________________

INSTRUCTIONS: Please answer each question. If you do not have sufficient information to supply an answer, please so indicate after the specific question. If sufficient space is not allowed on the questionnaire form for answer to the question, use the back of the page, indicating the number of the question which you are answering, or attach additional sheets.

If more than one defendant was convicted of aggravated first degree murder in this case, please make out a separate questionnaire for each such defendant.

The statute specifies that this report shall, within thirty (30) days after the entry of the judgment and sentence, be submitted to the Clerk of the Supreme Court, to the defendant or his or her attorney, and to the prosecuting attorney.
(1) Information about the Defendant

(a) Name: ___________________________ Date of Birth: ____________
   Last,       First          Middle

   Sex:   M □                      Marital Status:  Never Married □
          F □                     Married □
                           Separated □
                           Divorced □
                           Spouse Deceased □

   Race or ethnic origin of defendant: ____________________________
                                        (Specify)

(b) Number and ages of defendant's children:

(c) Defendant's Father living:            Yes □      No □
    If deceased, date of death: ____________________________

    Defendant's Mother living:           Yes □      No □
    If deceased, date of death: ____________________________

(d) Number of children born to defendant's parents: ______________

(e) Defendant's education--check highest grade completed:

   □ □ □ □ □ □ □ □ □ □ □ □ College: □ □ □ □
   1  2  3  4  5  6  7  8  9 10 11 12

   Intelligence Level:  Low □
                        Medium □
                        Above Average □
                        High □

   IQ Score: ______

Further explanation or comment:
(f) Was a psychiatric evaluation performed: Yes □ No □
   If yes, did the evaluation indicate that the defendant was:
   (i) able to distinguish right from wrong? Yes □ No □
   (ii) able to perceive the nature and quality of his or her act? Yes □ No □
   (iii) able to cooperate intelligently in his or her own defense? Yes □ No □

(g) Please describe any character or behavior disorders found or other pertinent psychiatric or psychological information:

(h) Please describe the work record of the defendant:

(i) If the defendant has a record of prior convictions, please list:

<table>
<thead>
<tr>
<th>Offense</th>
<th>Date</th>
<th>Sentence Imposed</th>
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(j) Length of time defendant has resided in:

Washington: ______________ County of conviction: ______________
(2) Information about the Trial

(a) How did the defendant plead to the charge of aggravated first degree murder?:

   Guilty □
   Not Guilty □
   Not Guilty by reason of insanity □

(b) Was the defendant represented by counsel?: Yes □ No □

(c) Please indicate if there was evidence introduced or instructions given as to any defense(s) to the crime of aggravated first degree murder:

<table>
<thead>
<tr>
<th>Evidence</th>
<th>Instruction(s)</th>
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<tbody>
<tr>
<td>Excusable Homicide</td>
<td>□</td>
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<tr>
<td>Justifiable Homicide</td>
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<tr>
<td>Insanity</td>
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<td>Duress</td>
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<td>Entrapment</td>
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<td>Alibi</td>
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<td>Intoxication</td>
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Other specific defenses:

_________________________________________ □ □

_________________________________________ □ □
(d) If the defendant was charged with other offenses which were tried in the same trial, list the other offenses below and indicate whether the defendant was convicted:

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<tr>
<th>Aggravating Circumstances Alleged</th>
<th>Convicted</th>
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<td>Yes □</td>
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<td>Yes □</td>
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<td>Yes □</td>
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(e) What aggravating circumstances, as set forth in Laws of 1981, ch. 138 § 2, were alleged against the defendant and which of these circumstances were found to have been applicable?:

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<tr>
<th>Aggravating Circumstances Alleged</th>
<th>Found Applicable</th>
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<td>Yes □</td>
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<td>Yes □</td>
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<td>Yes □</td>
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<td>Yes □</td>
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(f) Please provide the names of each other defendant tried jointly with this defendant, the charges filed against each other defendant, and the disposition of each charge:

Name: ____________________________

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<tr>
<th>Name</th>
<th>Offenses Charged</th>
<th>Disposition</th>
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Name: ________________________________

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<th>Disposition</th>
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(3) Information Concerning the Special Sentencing Proceeding

(a) Date of Conviction: ____________________________
    Date special sentencing proceeding commenced: ____________________________

(b) Was the jury for the special sentencing proceeding composed of the same jurors as the jury that returned the verdict to the charge of aggravated first degree murder? Yes [ ] No [ ]

    If the answer to the above question is no, please explain:

(c) Was there, in the court's opinion, credible evidence of any mitigating circumstances as provided in Laws of 1981, ch. 138, § 7? Yes [ ] No [ ]

    If yes, please describe:
(d) Was there evidence of mitigating circumstances, whether or not of a type listed in Laws of 1981, ch. 138, § 7, not described in answer to (3)(c) above? Yes □ No □

If yes, please describe:

(e) How did the jury answer the question posed in Laws of 1981, ch. 138, § 6(4), that is: "Having in mind the crime of which the defendant has been found guilty, are you convinced beyond a reasonable doubt that there are not sufficient mitigating circumstances to merit leniency?"

Yes □ No □

(f) What sentence was imposed?

(4) Information about the Victim

(a) Was the victim related to the defendant by blood or marriage? Yes □ No □

If yes, please describe the relationship:

(b) What was the victim's occupation, and was the victim an employer or employee of the defendant?
(c) Was the victim acquainted with the defendant, and if so, how well?

(d) If the victim was a resident of Washington, please state:
   Length of Washington residency: ____________________________
   County of residence: ____________________________
   Length of residency in that county: ____________________________

(e) Was the victim of the same race or ethnic origin as the defendant?
   Yes ☐ No ☐
   If no, please state the victim's race or ethnic origin:

(f) Was the victim of the same sex as the defendant?
   Yes ☐ No ☐

(g) Was the victim held hostage during the crime?
   Yes ☐ No ☐
   If yes, for how long: ____________________________

(h) Please describe the nature and extent of any physical harm or torture inflicted upon the victim prior to death:
(i) What was the age of the victim?

(j) What type of weapon, if any, was used in the crime?

(5) Information about the Representation of Defendant

(If more than one counsel represented the defendant, answer each question separately as to each counsel. Attach separate sheets containing answers for additional counsel.)

(a) Name of counsel:  

(b) Date on which counsel was secured:  

(c) Was counsel retained or appointed? If appointed, please state the reason therefor:  

(d) How long has counsel practiced law, and what is the nature of counsel's practice?  

(e) Did the same counsel serve at both the trial and the special sentencing proceeding, and if not, why not?
(6) General Considerations

(a) Was the race or ethnic origin of the defendant, victim, or any witness an apparent factor at trial?

   Yes □  No □

If yes, please explain:

(b) What percentage of the population of the county is the same race or ethnic origin as the defendant?

<table>
<thead>
<tr>
<th>Race</th>
<th>Ethnic Origin</th>
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<tbody>
<tr>
<td>Under 10%</td>
<td>□</td>
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<td>10 - 25%</td>
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<td>25 - 50%</td>
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<td>50 - 75%</td>
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<td>75 - 90%</td>
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<tr>
<td>Over 90%</td>
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If there appears to be any reason to answer this question with respect to a county other than the county in which the trial was held, please explain:
(c) How many persons of the defendant's or victim's race or ethnic origin were represented on the jury?

   Defendant: ____________________
   Victim: ____________________

   Further explanation or comment:

(d) Was there any evidence that persons of any particular race or ethnic origin were systematically excluded from the jury?

   Yes ☐       No ☐

   If yes, please explain:

(e) Was the sexual orientation of the defendant, victim, or any witness an apparent factor at trial?

   Yes ☐       No ☐

   If yes, please explain:
(f) Was the jury specifically instructed to exclude race, ethnic origin, or sexual preference as an issue?

   Yes ☐    No ☐

(g) Was there extensive publicity in the community concerning this case?

   Yes ☐    No ☐

(h) Was the jury instructed to disregard such publicity?

   Yes ☐    No ☐

(i) Was the jury instructed to avoid any influence of passion, prejudice or any other arbitrary factor when considering its verdict or its findings in the special sentencing proceeding?

   Yes ☐    No ☐

(j) Please describe the nature of any evidence suggesting the necessity for instructions of the type described in 6(f) through 6(i) above which were given:
(k) General comments of the trial judge concerning the appropriateness of the sentence, considering the crime, the defendant, and other relevant factors:

(7) Information about the Chronology of the Case

(a) Date of offense: ______________________

(b) Date of arrest: ______________________

(c) Date trial began: ____________________

(d) Date jury returned verdict: __________

(e) Date post-trial motions ruled on: ______

(f) Date special sentencing proceeding began: ______________________

(g) Date sentence was imposed: __________

(h) Date this trial judge's report was completed: __________

______________________________________

TRIAL JUDGE
CAPITAL CASE DATA REPORT

______________________________ COURT

______________________________ COUNTY OF ____________________________

________________________________________________________________________x

PEOPLE OF THE STATE OF NEW YORK.

-against-

Ind. No. __________________________

Trial Judge _______________________

________________________________________________________________________x

Defendant.

________________________________________________________________________x

This form is required to be completed pursuant to Section 211-a of the Judiciary Law in every
criminal action in which the defendant is indicted for Murder in the First Degree (P.L. §125.27),
including those actions resolved by pleas of guilty. to assist the Court of Appeals in determining
whether a particular sentence of death is disproportionate or excessive in the context of penalties
imposed in similar cases.

Instructions:

1. This data report should be prepared by the clerk of the trial court, or the clerk's
designee, by reviewing the record and upon consultation with the prosecutor and
the attorney(s) for the defendant(s).

2. Every question must be completed. Unless otherwise stated, if a question requests
current status, the answer must be the status on the date of the commission of the
crime.

3. Questions should be answered by checkmark unless another response is specified.

4. Upon completion of the data report, the clerk must show the report to the
prosecutor and defense counsel, who shall have an opportunity to comment. The
clerk may amend the report in response to those comments.

5. The completed data report should be forwarded to the Clerk of the Court of
Appeals within 45 days of the disposition of the action.

6. The data report should not be completed if the indictment was dismissed or if the
defendant was acquitted of all charges.

Was a prior capital case data report submitted to the Court of Appeals for this defendant in this
case?

☐ Yes. Specify date of most recent report submitted

/ (month) / (day) / (year)

☐ No
Case Information

Name of Defendant:

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1. a. Date of offense:  / / (month)  / / (day)  / / (year)
   b. Date of arrest:  / / (month)  / / (day)  / / (year)
   c. Date of verdict or plea:  / / (month)  / / (day)  / / (year)
   d. Date of sentence:  / / (month)  / / (day)  / / (year)

2. Subparagraph(s) of Penal Law §125.27(1)(a) for which defendant was indicted or convicted (check all that apply):

   Indicted  Convicted

   a. Subparagraph i (victim was a police officer)
   b. Subparagraph ii (victim was a peace officer)
   c. Subparagraph iii (victim was a corrections department employee)
   d. Subparagraph iv (defendant was serving life sentence)
   e. Subparagraph v (victim was witness or family member of witness)
   f. Subparagraph vi (defendant killed victim pursuant to agreement to receive pecuniary value)
   g. Subparagraph vii (defendant killed victim in course of commission of other felony)
   h. Subparagraph viii (defendant killed additional person as part of same crime)
   i. Subparagraph ix (defendant had prior murder conviction)
   j. Subparagraph x (victim was tortured)
   k. Subparagraph xi (defendant killed two or more additional persons within 24-month period)
   l. Subparagraph xii (victim was a judge)
3. Disposition of case:

☐ a. Conviction resulting from guilty plea
☐ b. Conviction resulting from verdict of guilty

based upon:  ☐ b.1 Jury trial
☐ b.2 Judge/bench trial

4. Did the prosecutor serve notice of intent to seek the death penalty?

☐ a. Yes      ☐ b. No

4A. If yes, did the prosecutor withdraw this notice?

☐ a. Yes      ☐ b. No

5. Specify Penal Law section(s), other than Penal Law §125.27, under which the defendant was convicted:

☐ a.__________  ☐ d.__________

☐ b.__________  ☐ e.__________

☐ c.__________  ☐ f.__________

6. Sentence imposed:

☐ a. Death sentence
☐ b. Life imprisonment without parole
☐ c. Other (specify most severe sanction) ________________________________

7. Did the court sentence the defendant upon a finding pursuant to CPL §400.27(12) that the defendant is mentally retarded?

☐ a. Yes
☐ b. No
8. Did the sentence result from a separate sentencing proceeding held in this case?

☐ a. Yes
☐ b. No

8A. If a separate sentencing proceeding was held, was:

☐ a. Sentence imposed by judge
☐ b. Sentence determined by same jury that determined guilt
☐ c. Sentence determined by separate sentencing jury

9. If retrial, this case is:

☐ a. First retrial
☐ b. Second retrial
☐ c. Third retrial
☐ d. Not applicable

9A. If a retrial was conducted, was it conducted:

☐ a. Solely for sentencing
☐ b. For both a guilt determination and sentencing

10. Defendant's legal representation: (check all that apply)

☐ a. CDO
☐ b. Legal Aid
☐ c. Public Defender
☐ d. Roster
☐ e. 18-B
☐ f. Other assigned counsel
☐ g. Retained counsel
☐ h. Pro bono counsel
☐ i. Pro se
Defendant Information

11. Defendant's date of birth: \( \frac{\_}{\_} \) (month) \( \frac{\_}{\_} \) (day) \( \frac{\_}{\_} \) (year)

12. Defendant's race/ethnicity:

☐ a. White
☐ b. Black
☐ c. Asian or Pacific Islander
☐ d. Native American
☐ e. Other (specify) ____________________________
☐ f. Unknown

12A. Is defendant of Hispanic origin?

☐ a. Yes
☐ b. No

13. Defendant's sex:

☐ a. Male
☐ b. Female

14. Defendant's religion:

☐ a. Protestant
☐ b. Catholic
☐ c. Jewish
☐ d. Muslim
☐ e. Other ____________________________
☐ f. None
☐ g. Unknown

15. Defendant's ability to speak or understand the English language:

☐ a. Proficient in English
☐ b. Speaks or understands some English
☐ c. Does not speak or understand English
16. Defendant's sexual orientation and behavior: (check all that apply)

☐ a. Heterosexual
☐ b. Homosexual
☐ c. Bisexual
☐ d. Transvestite
☐ e. Unknown

17. Defendant's living arrangements prior to apprehension: (check all that apply)

☐ a. Living alone
☐ b. Living with spouse
☐ c. Living with children
☐ d. Living with friend(s) or acquaintance(s)
☐ e. Living with intimate partner
☐ f. Living with parent(s) or relative(s)
☐ g. Inmate of correctional institution
☐ h. Homeless
☐ i. Other (specify) ________________________________
☐ j. Unknown

18. Does the defendant have children?

☐ a. Yes ☐ b. No ☐ c. Unknown

18A. If yes, did the defendant support and/or regularly see his/her children prior to apprehension:

☐ a. Yes ☐ b. No ☐ c. Unknown

19. Was defendant a New York resident at the time of the offense?

☐ a. Yes ☐ b. No ☐ c. Unknown

19A. If defendant was a New York resident, in what county did the defendant reside?

Enter county name ________________________________

19B. If defendant was not a New York resident, indicate the defendant's place of residence at the time of the offense:

☐ a. U.S. resident outside of New York State
   (specify state or territory) ________________________________

☐ b. Resident of another country
   (specify country) ________________________________
20. Defendant's birthplace:

☐ a. New York
☐ b. Other state or territory in the United States (specify state or territory) __________________________
☐ c. Other (specify country) __________________________
☐ d. Unknown

21. Defendant's citizenship/residency status:

☐ a. United States citizen
☐ b. Documented resident
☐ c. Undocumented resident
☐ d. Documented foreign visitor
☐ e. Undocumented foreign visitor
☐ f. Unknown

22. Defendant's education: (check highest level achieved)

☐ a. Never attended school
☐ b. Did not go beyond 6th grade
☐ c. Did not go beyond 8th Grade
☐ d. High school dropout
☐ e. High school graduate
☐ f. High school equivalency diploma (GED)
☐ g. Some college
☐ h. College degree
☐ i. Graduate school
☐ j. Unknown

23. Defendant's primary occupational skill at the time of the offense:

☐ a. Executive or manager
☐ b. Professional (lawyer, doctor, teacher, etc.)
☐ c. Technician (nursing, computer technician, etc.)
☐ d. Sales, clerical, or administrative support (e.g., secretary, mail carrier, bank teller)
☐ e. Protective service (police, firefighting, corrections, etc.)
☐ f. Household or personal service (janitor, cook, waiter, etc.)
☐ g. Farming, forestry, or fishing

(question continues on next page)
□ h. Mechanic, repairer, construction, or precision production
□ i. Machine operator or assembler; transportation (e.g., truck driver)
□ j. Military
□ k. Student
□ l. Homemaker
□ m. No particular skill; sporadic odd jobs
□ n. Outside of workforce (retired, receiving government support)
□ o. Extralegal activities (narcotics trafficker, thief, etc.)
□ p. Other (specify) ____________________________
□ q. Unknown

24. Defendant's employment status at the time of the offense:
□ a. Full-time employee or self-employed in the labor force
□ b. Part-time employee
□ c. Employed, unknown if full- or part-time
□ d. Unemployed less than six months
□ e. Unemployed six months or more
□ f. Unknown

25. Defendant's military record: (check all that apply)
□ a. No prior military service
□ b. Honorable discharge
□ c. Other than honorable discharge
□ d. Combat experience
□ e. Decorations
□ f. In the military at time of offense
□ g. Unknown
26. Defendant's mental health and physical condition at time of offense: (check all that apply)

Yes    No    Unknown

☐ ☐ ☐   a. Prior institutionalization for mental illness
☐ ☐ ☐   b. History of psychiatric problems
☐ ☐ ☐   c. Prior institutionalization for drug or alcohol abuse
☐ ☐ ☐   d. History of drug abuse
☐ ☐ ☐   e. History of alcohol abuse
☐ ☐ ☐   f. Classified as mentally retarded (specify IQ, if known: _____)
☐ ☐ ☐   g. Classified as borderline mentally retarded (IQ 70 to 79)
☐ ☐ ☐   h. Physical disability (specify) ________________________________
☐ ☐ ☐   i. Physical illness or injury impairing mental capacity (specify) ________________________________
☐ ☐ ☐   j. History of physical illness (specify) ________________________________
☐ ☐ ☐   k. Classified as learning disabled

27. Defendant's childhood history: (check all that apply)

Yes    No    Unknown

☐ ☐ ☐   a. History of abuse or neglect
☐ ☐ ☐   b. Institutionalization following adjudication as juvenile delinquent or person in need of supervision
☐ ☐ ☐   c. History of foster care
☐ ☐ ☐   d. Acute physical injury (e.g., head trauma)

28. Defendant's felony record at time of sentencing: (check and complete all that apply)

☐ a. No felony convictions
☐ b. New York State felony conviction(s): (specify section(s) of law of offense(s) under which defendant convicted and date of conviction)

Felony Convictions
#1. ___________________________ ___________________________
#2. ___________________________ ___________________________
#3. ___________________________ ___________________________
#4. ___________________________ ___________________________

(attach additional listing if necessary)
- Out-of-state or federal felony conviction(s): (specify name of offense(s), jurisdiction and date of conviction(s))

<table>
<thead>
<tr>
<th>Felony Conviction</th>
<th>Jurisdiction</th>
<th>Date of Conviction</th>
</tr>
</thead>
<tbody>
<tr>
<td>#1</td>
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<td>#4</td>
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<tr>
<td>#5</td>
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<td></td>
</tr>
</tbody>
</table>

(attach additional listing if necessary)

29. Criminal justice supervision of defendant at time of offense:

- a. No supervision
- b. Probation or conditional discharge
- c. Parole
- d. Bail
- e. Incarceration
- f. On escape from incarceration
- g. Suspended or deferred proceeding
- h. Unknown
Victim Information

APPLICABLE TO VICTIM WHOSE DEATH IS THE SUBJECT OF THE HOMICIDE CHARGE. IF MORE THAN ONE VICTIM, COMPLETE SUPPLEMENTAL VICTIM FORM(S) AS NECESSARY.

30. Victim’s age to nearest year: ____________________________

30A. If age unknown, indicate life period:

☐ a. Aged adult (65 plus)
☐ b. Middle-aged adult (35-64)
☐ c. Young adult (20-34)
☐ d. Teenager (13-19)
☐ e. Child (7-12)
☐ f. Preschooler (1-6)
☐ g. Infant (less than 1)
☐ h. Unknown

31. Victim’s race/ethnicity:

☐ a. White
☐ b. Black
☐ c. Asian or Pacific Islander
☐ d. Native American
☐ e. Other (specify) ____________________________
☐ f. Unknown

31A. Was victim of Hispanic origin?

☐ a. Yes
☐ b. No

32. Victim’s sex:

☐ a. Male
☐ b. Female
33. Victim's sexual orientation and behavior: (check all that apply)

☐ a. Heterosexual
☐ b. Homosexual
☐ c. Bisexual
☐ d. Transvestite
☐ e. Unknown

34. Did the victim have a family or dependent(s)? (check all that apply)

☐ a. No
☐ b. Spouse
☐ c. Minor child(ren) (under 19)
☐ d. Dependent parents or dependent adult children
☐ e. Other dependent relatives or persons
☐ f. Unknown

35. Victim's education:

☐ a. Never attended school
☐ b. Did not go beyond 8th Grade
☐ c. High school dropout
☐ d. High school graduate or high school equivalency diploma (GED)
☐ e. Some college
☐ f. College degree
☐ g. Graduate school
☐ h. Unknown

36. Victim's primary occupational skill:

☐ a. Executive or manager
☐ b. Professional (lawyer, doctor, teacher, etc.)
☐ c. Technician (nursing, computer technician, etc.)
☐ d. Sales, clerical, or administrative support (e.g., secretary, mail carrier, bank teller)
☐ e. Protective service (police, firefighting, corrections, etc.)
☐ f. Household or personal service (janitor, cook, waiter, etc.)
☐ g. Farming, forestry, or fishing

(question continues on next page)
☐ h. Mechanic, repairer, construction, or precision production
☐ i. Machine operator or assembler; transportation (e.g., truck driver)
☐ j. Military
☐ k. Student
☐ l. Homemaker
☐ m. No particular skill; sporadic odd jobs
☐ n. Outside of workforce (retired, receiving government support)
☐ o. Extralegal activities (narcotics trafficker, thief, etc.)
☐ p. Other (specify)________________________
☐ q. Unknown

37. Did the victim have any prior felony convictions?
   ☐ a. Yes       ☐ b. No       ☐ c. Unknown

37A & B. Victim's felony record:

   ☐ A. New York felony conviction(s): (specify section(s) of law of offense(s) for which victim convicted)

   #1. ____________________________

   #2. ____________________________
   (attach additional listing if necessary)

   ☐ B. Out-of-state or federal felony conviction(s): (specify name of offense(s))

   #1. ____________________________

   #2. ____________________________
   (attach additional listing if necessary)

38. Victim's mental and physical capacity: (check all that apply)

   ☐ a. Mentally retarded
   ☐ b. Mentally ill or other impaired mental capacity
   ☐ c. Serious physical illness or injury (specify)________________________
   ☐ d. Physically disabled (specify)________________________
   ☐ e. Pregnant
   ☐ f. Physically frail
   ☐ g. No impairment
   ☐ h. Unknown

13
39. Victim's relationship to defendant prior to the events immediately preceding the homicide:

Victim was to defendant a(n):

☐ a. Spouse
☐ b. Ex-spouse
☐ c. Live-in partner
☐ d. Ex-live-in partner
☐ e. Romantic friend
☐ f. Ex-romantic friend
☐ g. Grandparent
☐ h. Parent
☐ i. Child
☐ j. Sibling
☐ k. Other relative

☐ l. Friend
☐ m. Acquaintance
☐ n. Neighbor
☐ o. Employer
☐ p. Employee
☐ q. Co-worker
☐ r. Stranger
☐ s. Other (specify)__________________________

☐ t. Nature of relationship unknown
Circumstances of Crime

40. a. Total number of deceased victims: __________
   b. ☐ unknown

41. a. Total number of persons physically injured by defendant, other than deceased victims: __________
   b. ☐ unknown

42. Where did the homicide occur? (check all that apply)

   Residence
   ☐ a. Residence of victim
   ☐ b. Residence of defendant
   ☐ c. Residence of co-defendant
   ☐ d. Hotel, motel, or short-term residence
   ☐ e. Other residence (specify): __________
   ☐ f. Unknown

   Business
   ☐ g. Defendant's place of business or employment
   ☐ h. Victim's place of business or employment
   ☐ i. Co-defendant's place of business or employment
   ☐ j. Service station
   ☐ k. Bar or restaurant
   ☐ l. Store or commercial establishment
   ☐ m. Other place of business (specify): __________
   ☐ n. Unknown

   Public Place or Public Institution
   ☐ o. Street or sidewalk
   ☐ p. Jail or prison
   ☐ q. Park or school grounds
   ☐ r. Parking lot area
   ☐ s. Field or woods
   ☐ t. Other public place or public institution (specify) __________
   ☐ u. Unknown
Vehicle

☐ v. Cab, bus, or other public transportation vehicle
☐ w. Private vehicle of victim
☐ x. Private vehicle of defendant or co-defendant
☐ y. Other vehicle (specify) ____________________________
☐ z. Unknown

43. Method of killing: (check all that apply)

☐ a. Shooting; type of firearm
   ☐ a.1. Handgun
   ☐ a.2. Rifle or shotgun
   ☐ a.3. Assault weapon
   ☐ a.4. Other (specify) ____________________________

☐ b. Multiple gun shots
☐ c. Stabbing
☐ d. Multiple stabbing
☐ e. Throat slashing
☐ f. Drowning
☐ g. Punching
☐ h. Strangling or suffocating
☐ i. Poisoning
☐ j. Clubbing or stomping
☐ k. Bombing
☐ l. Burning
☐ m. Throwing from high place
☐ n. Other (specify) ____________________________

44. Were there co-perpetrators in the homicide or contemporaneous offense?

☐ a. No, defendant acted alone
☐ b. Yes
☐ c. Unknown
45. Role of co-perpetrator:
   - a. Technical accomplice only (e.g., driver, lookout)
   - b. Committed homicidal act together with other(s)
   - c. Primary assailant
   - d. Unknown

46. Co-defendants (check and complete all that apply):
   - a. No co-defendants
   - b. Co-defendant(s): (specify number) ________________
   - c. Co-defendant received same or similar sentence as defendant
   - d. Co-defendant received greater sentence than defendant
   - e. Co-defendant received lesser sentence than defendant
   - f. Co-defendant pleaded guilty
   - g. Co-defendant cooperated with prosecutors

47. Non-statutory aggravating circumstances relating to killing: (check and complete all that are known to apply)
   - a. Person(s) other than deceased victim harmed
   - b. Victim bound or gagged
   - c. Victim sexually assaulted
   - d. Victim mutilated
   - e. Victim killed in presence of family or others close to the victim
   - f. Victim endured severe physical suffering
   - g. Victim endured severe mental suffering
   - h. Victim held hostage
   - i. Defendant the prime mover in the killing
   - j. Defendant engaged in commission of another offense when killing occurred (list offense(s) and specify whether or not defendant was charged or convicted of such offense(s)):

(continues on next page)

* This box may be checked only after consultation with the prosecutor and upon the prosecutor advising that disclosure of this information will not jeopardize the safety of any individual.
k. Killing unnecessary to successfully complete the underlying offense
l. Defendant motivated by racial or other bias
m. Defendant committed killing for monetary gain
n. Defendant committed killing through an act of terrorism

o. Defendant on escape from jail or prison
p. Defendant lay in wait or ambushed victim, or lured victim
q. Defendant showed no remorse for homicide
r. Defendant expressed pleasure with the homicide
s. Defendant, in victim's presence, threatened relative of victim or other person victim cared about

t. No known aggravating circumstances
u. Other aggravating circumstance(s) (specify) _______________________________

48. Mitigating circumstances at time of the killing: (check and complete all that are known to apply)

a. Defendant committed offense while under duress or domination of another
b. Defendant's mental capacity impaired at time of offense
c. Defendant mentally or emotionally disturbed at time of offense
d. Defendant used alcohol or drugs immediately before the crime
e. Defendant's participation in offense relatively minor
f. Victim physically assaulted defendant
g. Victim physically assaulted person defendant cared about
h. Victim verbally assaulted or threatened defendant or person defendant cared about
i. Victim was armed
j. Victim was under influence of drug or alcohol
k. Defendant cooperated with authorities
l. Defendant surrendered to authorities shortly after homicide
m. No known mitigating circumstances
n. Other mitigating circumstance(s) (specify) ________________________________

49. Were there mitigating circumstances occurring since the killing?

a. No known mitigating circumstances
b. Yes (specify) ________________________________
50. Killing occurred in the context of: (check all that apply)

☐ a. Domestic dispute
☐ b. Long-term hatred of victim
☐ c. Revenge for prior harm to defendant
☐ d. Jealousy
☐ e. Immediate rage
☐ f. None of these factors was present

51. Evidence against defendant: (check all that apply)

☐ a. Pretrial identification of defendant occurred
☐ b. Defendant identified by someone who knew him or her
☐ c. Defendant identified by police officer
☐ d. Defendant identified by two or more witnesses
☐ e. Defendant confessed to murder
☐ f. Defendant made incriminating statements
☐ g. Co-perpetrator testified against defendant
☐ h. Weapon found linking defendant to murder
☐ i. Scientific evidence linking defendant to murder (e.g., DNA evidence, fingerprints)
☐ j. Physical evidence linking defendant to murder
☐ k. Testimony of primary witness was corroborated
☐ l. Defendant had motive to commit murder
☐ m. None of the above
☐ n. Other evidence against defendant (specify)
52. If the prosecutor sought the death sentence and the case proceeded to the sentencing phase of trial, check whether evidence was presented concerning the two special statutory aggravating factors and whether the jury found those factors:

<table>
<thead>
<tr>
<th>Evidence Presented</th>
<th>Found by Jury</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ ☐</td>
<td>a. Killing committed through an act of terrorism</td>
</tr>
<tr>
<td>☐ ☐</td>
<td>b. Defendant previously convicted of two or more felonies (specify section(s) of law for felony, or if out-of-state or federal felony, name of felony)</td>
</tr>
<tr>
<td>☐</td>
<td>c. Neither factor present in case.</td>
</tr>
</tbody>
</table>

Clerk of Court: ____________________________  Date: ____________________________
(month)  (day)  (year)