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### Foes see a flaw in sentence of 'life'

A dread of killers one day going free

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When New Jersey's old capital punishment law was struck down by the courts in 1972, the 21 men on death row all had their sentences reduced to "life" imprisonment. But that did not mean they all stayed behind bars.

Seventeen of them, including the notorious cop-killer Thomas Trantino, were eventually paroled. A dozen spent less than 16 years in prison.

Supporters of a new movement to abolish the state's death penalty, which was re-enacted in 1982, say this time would be different. Opponents are not so sure.

On Tuesday, a state commission recommended that capital punishment be replaced by life imprisonment without possibility of parole. Under its plan, the nine murderers on death row would end their days in a maximum security prison.

"We don't want a Jesse Timmendequas (who raped and strangled 7-year-old Megan Kanka in 1994) to be able to get out," said Assemblyman Wilfredo Caraballo (D-Essex), who is sponsoring legislation to abolish the death penalty. "That's the promise we have to make: that we're going to keep these people in prison for life."

Some doubt that is possible.

"These nine denizens of death row will be paroled at some point," predicted Brian Kincaid, a Parsippany attorney and one of the few witnesses at the commission's five public hearings who favored keeping the death penalty.

"They have to be resentenced to the 'life' sentence that was in place at the time of their convictions," Kincaid continued. "Those 'life' sentences are eligible for parole after 30 years."

Who is right, no one can say for certain. If New Jersey repeals capital punishment -- a move Gov. Jon Corzine and top lawmakers favor -- it will become the first state to do so since 1972, when every death penalty law in the nation was declared unconstitutional by the United States Supreme Court. There is no court-tested precedent for replacing death with life without parole.

But there have been enough court rulings on related issues that "we can feel pretty confident we know what we're doing today," Caraballo said.

Based on history alone, the odds are slim that inmates whose death sentences are struck down can be kept behind bars for life.

After the death penalty was overturned in 1972, all but four of the 21 murderers on death row in New Jersey were eventually paroled. One died in prison, another was fatally shot by police after escaping. Two are still

serving their original terms.

The rest were paroled after serving between 12 and 38 years. Trantino, who murdered two Lodi police officers and served the longest, was repeatedly denied parole and finally freed through a ruling by the state Supreme Court.

"He's out. That's a very scary thing," said Marilyn Flax, whose husband, Irving, was kidnapped and murdered by death row inmate John Martini. Flax said she fears that, like Trantino, the 76-year-old Martini may also be freed if the death penalty is abolished.

"There were over 10 times he said to me: 'One day, if I get arrested, somebody will get you,'" Flax said. "Life without parole' does not make me feel more comfortable. The only thing that would make me feel comfortable is if John Martini got executed."

Sharon Hazard-Johnson said she worries that Brian Wakefield, who was sentenced to die for murdering her parents, will eventually be freed if capital punishment is repealed.

"Brian is in his 20s. If they reverse his death sentence, the Supreme Court of New Jersey will one day let him out," Hazard-Johnson said. "It's not right."

Caraballo said the law has developed so much that what happened 35 years ago is no predictor of what would happen today.

Current law would prevent the nine men on death row from being paroled as quickly as their counterparts in 1972. Like all murderers convicted since 1982, they must serve 30 years before they can be considered for parole.

"The law is far more draconian," said Assistant Public Defender Dale Jones, the office's former director of capital litigation. "In 1972, a 'life' sentence meant 14 years and 11 months before parole eligibility."

But resentencing the nine death row inmates to life without parole presents constitutional obstacles. The law cannot be changed to impose retroactively a punishment that did not exist when the crime was committed.

The commission's proposal attempts to solve that problem by presenting death row inmates with a stark choice. To get out from under their existing capital sentences they would have to ask a judge to reduce them to life imprisonment without parole and waive any further appeals.

"If I am Jesse Timmendequas, why should I do that? I know the governor is not going to execute me," Kincaid said.

But former state Supreme Court Justice James Coleman, who served on the commission, said its proposal would repeal the death penalty "going forward" and would not automatically abolish it for those already on death row.

"Technically, they are still under a sentence of death," Coleman said.

Caraballo said condemned inmates who are reluctant to accept life without parole would have to say to themselves: "I may wind up being the last or one of the last to be put to death in this fashion."

"If we do this right," Caraballo said, "I have absolutely no doubt we can get to a point where we have every single person on death row committed to prison for life without parole."

But he added there are bigger issues involved in whether New Jersey continues to have capital punishment. The commission concluded it serves no legitimate purpose and, because of protracted appeals, prolongs the anguish of victims' families and costs more than life without parole.

Nine murderers should not be allowed to monopolize the debate, Caraballo said.

"We should not be held hostage to them," he said. "That would be further victimizing society."

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