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## Clemency: Slim chance these days

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in 1977.

But in California and across the nation, the long-held constitutional right of chief executives to bestow mercy through clemency has died its own death, the victim of a political lethal injection and a public that overwhelmingly supports the death penalty.

Of the 69 people set for execution so far this year in the United States, only one was granted clemency, a Texas man who "confessed" to 600 murders but was found to be in Florida during the one killing for which he received the death penalty.

For most of the 1990s, only one to three death row inmates have been granted clemency every year in the entire nation — out of approximately 60 to 80 executions each year.

This is a dramatic shift from three decades ago, when governors granted clemency in 20 to 25 percent of the death penalty cases they reviewed, according to a 1993 University of Richmond study. The study found, for example, that Florida governors had commuted 23 percent of death sentences between 1924 and 1966. No Florida death penalty sentences have been commuted in the 1990s.

Granting mercy to condemned felons a vanishing practice due to pressure of public sentiment

By Robert Salladay  
EXAMINER CAPITOL BUREAU

SACRAMENTO — Although Gov.-elect Gray Davis would invoke former Gov. Pat Brown's legendary name on the campaign trail, it's unlikely Davis will follow Brown's path on one critical issue: clemency for death row inmates.

Clemency was a decision so painful, Brown once wrote, that it "took something out of me that nothing ... has ever been able to replace." During his two terms, Brown commuted a state record of 23 death sentences, including that of a man who was released on parole and killed again.

As one of his first tasks in office, Davis could face a clemency decision in the case of Jaturun Siripongs, convicted of killing an Orange County store owner and a clerk. A hearing Thursday may decide whether Gov. Wilson unfairly denied Siripongs clemency, and the court's action could push the case past Jan. 4, when Davis will be inaugurated.

Whatever happens this week, the notoriously slow appeal process for death penalty cases is speeding up for the state's 517 death row cases. Davis will undoubtedly have to consider more capital cases than any other governor since the Legislature reinstated the death penalty

### Fairness, not mercy

Governors, in general, are looking only for cases where someone has been unfairly convicted. They have rejected appeals from the pope, Mother Teresa, televangelist Pat Robertson, former prosecutors and even judges and jurors in the cases.

"I think that clearly a miscarriage of justice should be raised, but in other cases, mercy could also come into play," said Rita Radositz, co-director of the Capital Punishment Clinic at the University of Texas and an attorney for Henry Lee Lucas, who was granted clemency this year in Texas. "That's what clemency has historically been about — mercy."

Polls show the public overwhelmingly approves of the death penalty, some surveys putting support as high as 80 percent. Three decades ago, however, only about 50 percent of the public supported the death penalty, making it politically easier then for governors to commute sentences.

Before Brown's record-setting administration, Goodwin Knight commuted six death sentences while governor, and Earl Warren, who later became chief justice of the United States, commuted eight during his stint as governor, attorney Bryan said.

But as public support for death sentences grows, the legal system has slowed considerably. Richard Dieter, executive director of the Death Penalty Information Center, said the time between conviction and execution had gone from just a couple of years to as much as 17 years in modern cases.



That adds to public frustration, and politicians feed off that, he said. A campaigning Bill Clinton may have set the standard in 1992, when, as governor, he rushed back to Arkansas to preside over the execution of a severely mentally retarded man convicted of murder.

"Many politicians have used the death penalty in their campaigns, promising more executions and quicker executions," said Dieter. "It's the answer to the public's fear of crime, so (clemency) just goes against the grain."

### The deep roots of clemency

The idea of clemency is rooted in the foundations of the republic, said Richard Blecker, a professor at New York Law School. Whether it's appointing a Supreme Court

and federal judges who serve for life or giving U.S. senators six-year terms, the founders recognized that some public officials needed to be unencumbered by public passion.

"If you think about it," Blecker said, "we are angry at this individual. This individual has done such a vile, heinous killing. And yet we don't want to put it beyond our ability to change the situation. So now it's 10 years later, emotions have settled, the passion has settled. The question is whether we are going to act on the passions of the earlier moment and forever bind ourselves against rationality later."

Meticulous and rational in most things, Wilson appears to take great pain in reviewing each clemency case.

A close reading of his five clemency rulings shows Wilson's attitudes during his eight years in office have subtly changed. He went from a chief executive concerned about the concept of mercy and child trauma, to a stricter governor who wrote in 1996: "Within the body of Keith Daniel Williams dwells a malignant heart."

Wilson spokesman Sean Walsh said the governor took each clemency case seriously, even reviewing bloody crime scene photographs and forensic evidence, and having his staff conduct independent research beyond what was given to him by attorneys or in the Board of Prison Terms recommendation.

When serious questions were raised last year in the case of Tommy Thompson, convicted of the 1981 stabbing murder and rape of 20-year-old Ginger Fleischli, Wilson personally conducted a clemency hearing. Thompson's attorneys contended that he had had consensual sex with Fleischli, and therefore did not qualify for the death penalty. Wilson disagreed.

Walsh said Wilson would consider granting clemency only when there were serious questions of innocence or if someone appeared to have acted in self-defense. But he said it would be difficult for him to imagine the governor's granting clemency to someone who clearly committed the crimes.

"In all five of these cases," Walsh said, "it has been clear beyond any

reasonable doubt that these individuals not only committed their heinous crimes but have shown little remorse as well."

Wilson did agonize over his first clemency case, which came more than two years after he took office. In 1992, Robert Alton Harris became the first person executed in California in more than two decades, after Wilson denied him clemency, and the courts cleared the way.

Harris was convicted of murdering two San Diego boys in 1978. He told one boy, who begged for God to help him before Harris shot him four times: "God can't help you now, boy, you're going to die."

Experts testified that Harris lacked the mental capacity to form criminal intent, that he suffered organic brain damage as a result of his mother's alcohol abuse during pregnancy and vicious attacks from his father. The issue of fetal alcohol syndrome was important to Wilson and his wife, Gayle.

But Wilson ultimately was unconvinced.

"We must do everything possible to avoid the victimization of children," Wilson wrote in his clemency letter, adding later: "As great is my compassion for Robert Harris the child, I cannot excuse or forgive the choice made by Robert Harris the man. Clemency is denied."

The next case that Wilson considered, that of "Freeway Killer" William G. Bonin, appeared to be easier for the governor. Bonin had been convicted of abducting, sodomizing, torturing and killing 14 boys between the ages of 12 and 19.

Wilson comes down hard on Bonin in his clemency letter, but it also is the only letter in which the governor mentions the word "mercy," saying his powers "are designed to grant mercy when the rigidity of our criminal laws cannot accommodate what justice demands."

In the next three cases, including Siripongs, Wilson cites only legal rulings that clemency should be granted to prevent a "miscarriage of justice."

The more nebulous concept of mercy does not appear again in his clemency letters.