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Death penalty's survival uncertain, state finds

El Dorado County prosecutor agrees

By Roger Phelps The Telegraph

Some 71 years after the last hanging of an inmate at Folsom Prison, California's death penalty is fatally flawed, according to a state commission report.

The California Commission on the Fair Administration of Justice was established in 2004 in part to determine the extent to which the state's legal system has caused wrongful executions. It reported June 30 that the state must narrow its death penalty, in part because the penalty is impossibly expensive to continue in its current broad form.

Under the statute now in effect, a full 87 percent of California's first-degree murders are "death eligible," and could be prosecuted as death cases, the commission noted. Any of a total of 22 "special circumstances" can be cited by local prosecutors in seeking a death penalty. The list includes drive-by murder. A federal Justice Department study in 2000 found numerous racial and geographic disparities applied to death penalty sentences.

Bill Clark, chief assistant district attorney for El Dorado County, said the state report seemed to blame local district attorneys for too much of the state's problem. One commission recommendation is that each county district attorney be required to file a copy of a policy on how his or her office decides to seek a death penalty.

"They said, 'The system is screwed up, and it's the DA's fault,'" Clark said. "But, to be honest, we don't have the money to continue. The penalty is dysfunctional."

Clark referred to murderer James Odle, convicted in 1983, in saying, "I was a 26-year-old police officer when Odle was sentenced. I'm a 52-year-old prosecutor now. I've got a better chance of dying than he does."

Excessive delay in appointing counsel for appeals, a severe backlog in reviewing appeals and ineffective counsel combine to put the system on the verge of breakdown, ready to "fall of its own weight," the commission reported.

"The death penalty is the law of this state -- however, it is the law in name only, and not in reality," the commission's report states. "Thus far, federal courts have rendered final judgment in 54 ... challenges to California death-penalty judgments. Relief in the form of a new guilty trial or a new penalty hearing was granted in 38 of the cases, or 70 percent Whether the death penalty has a deterrent effect is a hotly contested issue. If there is a deterrent value, however, it is certainly dissipated by long intervals between judgment of death and its execution."

California now takes more than 20 years between judgment and execution. It has the largest death row in the nation, with 673 people awaiting execution at San Quentin State Prison in Marin County. And, the state has planned since 2003 to build a new death row at San Quentin, whose estimated cost has burgeoned since that time from \$220 million to more than \$336 million, said Terry Thornton, spokeswoman for the state Department of Corrections and Rehabilitation.

The report studied, but rejected, alternative recommendations of abolishing the death penalty in California in favor of life imprisonment without parole, and of increased funding to speed up availability of qualified legal counsel to inmates for appeals of the penalty.

The commission estimated annual costs of the present system at \$137 million per year. Reforming the system to make it more just would cost around \$233 million a year, it found. Significantly narrowing the special-circumstances list would cut costs to \$130 million per year, and imposing a maximum penalty of lifetime incarceration would cut cost to \$11.5 million a year.

The commission quoted a remark this year by U.S. Supreme Court Justice John

Paul Stevens, who said, "The time for a dispassionate, impartial comparison of the enormous

costs that death penalty litigation imposes on society with the benefits

that it produces has certainly arrived."

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death penalty, report, special circumstances

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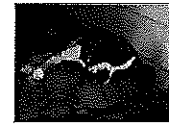
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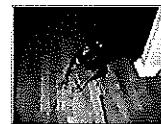
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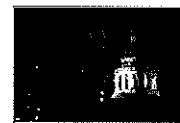
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