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From the Los Angeles Times

## Legal experts weigh death penalty reform

State's chief justice wants appellate judges to handle most of the review process. But others are not so certain that is the best solution.

By Eric Bailey  
Los Angeles Times Staff Writer

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SACRAMENTO — A procession of legal experts declared Thursday that the state's manner of meting out the death penalty had become so bogged down and dogged by inequities that wholesale repair was needed.

But during the first of three hearings by a state criminal justice commission there was little agreement on what would constitute the best fix.

The state's chief justice pushed a constitutional amendment that would spread the heavy load of death penalty cases now weighing down the seven-member California Supreme Court among the state's 105 appellate judges.

Several law professors, meanwhile, suggested that California -- with the nation's most populous death row -- has stretched its legal net too wide and needs to narrow the number of cases that qualify for capital punishment.

Outside the hearing room, death penalty foes talked up fiscal restraint. As Gov. Arnold Schwarzenegger unveiled plans to slash a \$14.5-billion deficit, they argued it would save money to drop the death penalty and sentence the convicted to life without parole.

John Van de Kamp, former state attorney general and chairman of the California Commission on the Fair Administration of Justice, said the 22-member commission hoped to adopt recommendations in the next six months to ensure that the state's death penalty is carried out "fairly, justly and in a more timely manner."

California has the biggest backlog of death penalty cases, and the time between conviction and execution is double the national average, legal experts say. The current wait averages more than 17 years.

The state has more than 660 convicts facing death, but has conducted 13 executions since reinstating capital punishment three decades ago. In the meantime, about 50 inmates have died of natural causes on death row. At least 30 inmates have seen their appeals stretch more than a quarter century.

Chief Justice Ronald George told the commission that the state Supreme Court has been overwhelmed by death penalty reviews, which now constitute about a quarter of its workload.

Late last year, the justices unanimously agreed to request that a constitutional amendment to change to the state's death penalty appeal process be put before voters, perhaps as soon as November.

Under the proposal, the constitutional requirement that all cases be subject to Supreme Court review would be adjusted to funnel most cases to the appellate courts. The high court would consider only cases that could set legal precedent or that required quick review. It would, however, retain the authority to review appellate court decisions.

George said he considered the growing backlog of cases "a real crisis" that needed to be fixed or it would "undermine the rule of law."

The proposal could face long odds in the statehouse, where many lawmakers are content with a system that has produced a de facto moratorium on executions. Death penalty supporters could wind up seeking a ballot initiative to bypass lawmakers.

Several legal experts took exception to George's proposal during the daylong hearing, saying it might slow the process further by adding another layer of review.

With more judges reviewing cases instead of a single high court, it also could further fuel complaints that the death penalty is unfairly applied, they said.

Gerald Kogan, a former Florida chief justice and co-chairman of a nationwide review of the death penalty, said California's problem was "you're making too many people eligible for the death penalty."

With 33 "special circumstance" crimes that can qualify a murder suspect for the death penalty, California has both the slowest and the most aggressive approach to capital punishment in the nation, he said.

"I'm quite frankly astounded . . . at how long it takes," he said.

To keep the system from bogging down, California should reserve capital punishment "for the most heinous offenses and culpable offenders," Kogan said.