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From the Los Angeles Times

California's death penalty process is 'dysfunctional,' panel finds

The time from sentencing to execution is twice the national average. A state commission says delays undermine the system and recommends more sentences of life without parole instead.

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California's administration of the death penalty is "close to collapse" and would require massive new state spending or changes in sentencing laws to end decades of delay and dysfunction, a state commission reported Monday.

The findings, by the California Commission on the Fair Administration of Justice, grew out of the first comprehensive look at the state's death penalty in the 30 years since capital punishment was restored in California.

Santa Clara University law professor Gerald Uelman, executive director of the commission, called the report "kind of like poking a stick in a hornet's nest" but said he hoped it would provoke debate.

The 22-member commission, created by the state Senate to recommend improvements in the criminal justice system, included prosecutors, defense lawyers, victims advocates and police.

Although commissioners were unanimous on some core issues, including that nearly \$100 million in additional annual spending was needed for reform, they strongly disagreed on others, and the report was accompanied by several dissenting statements.

In one, five law enforcement commissioners complained that the majority was "seeking to undermine public confidence" in the death penalty and that the report "unmistakenly reveals a personal bias" against capital punishment.

Eight other commissioners wrote a separate report calling for abolition of capital punishment.

Four signed a statement saying "the time may be right" for a ballot measure to end the death penalty and alternately proposed limiting capital offenses to less than 10% of first-degree murders.

Monday's report said that 87% of all such murders in California now carry a possible penalty of death.

In polls, Californians have supported capital punishment by a margin of 2 to 1 and have repeatedly voted to toughen sentencing laws.

The main report did not advocate abolishing the death penalty but did note that California could save more than \$100 million a year if the state replaced the punishment with sentences of life in prison without possibility of parole. Death row prisoners cost more to confine, are granted more resources for appeals, have more expensive trials and usually die in prison anyway, the commission said.

The time from death sentence to execution in California is 20 to 25 years, compared with the national average of 12 years, the commission said. Thirty inmates have been on death row more than 25 years, 119 for more than 20 years and 240 for more than 15, according to the report. The state spends about \$138 million a year on the death penalty and has executed 13 people over the last three decades, the commission said.

"The system's failures create cynicism and disrespect for the rule of law . . . weaken any possible deterrent benefits of capital punishment, increase the emotional trauma experienced by murder victims' families and delay the resolution of meritorious capital appeals," the commission concluded.

The commission learned of "no credible evidence" that the state had executed an innocent person but said the risk remained. Fourteen people convicted of murder in California from 1989 through 2003 were later exonerated. Six death row inmates who won new trials were acquitted or had their charges dismissed for lack of evidence.

Among the panel's findings:

* A 1978 voter initiative that expanded the kinds of murders subject to the death penalty dramatically increased the number of death sentences in the state. In the year before passage of the so-called Briggs Initiative, seven people were

sentenced to death. By 2000, death sentences were averaging 32 a year. They have since leveled off to about 20 a year.

* California's death row inmates whose sentences or verdicts were later overturned waited an average of 16.75 years for their reprieves.

* Seventy-nine death row inmates have not obtained lawyers to handle their first appeals, which are by law automatic, and 291 inmates lack lawyers to bring constitutional challenges based on facts that the trial courts did not hear. It takes inmates an average of 12 years to obtain a state high court ruling on their first appeals.

* The California Supreme Court has such a backlog that only one appeal from a conviction after 1997 has been resolved.

* California does not meet the federal standard for paying private lawyers to handle death cases, and the state's method of paying these attorneys -- sometimes with flat-fee contracts -- violates American Bar Assn. standards.

Since the death penalty's restoration, 40 death row inmates have died of natural causes, 14 have committed suicide and 98 have left death row because their convictions or sentences were overturned, according to figures by the commission and the state Department of Corrections and Rehabilitation. The state now has 673 inmates on death row.

The commission recommended that lower courts should hear appeals and constitutional challenges of death sentences to take pressure off the California Supreme Court, which now is the only state court to decide such appeals.

There are currently at least 21 circumstances that qualify a defendant for the death penalty. One of the most frequently used in California is felony murder, in which a person is killed during the course of another felony, such as a robbery, the report said. The death penalty can be given to anyone who participated in the robbery, not just the person who did the killing.

If the state chooses to reduce the number of qualifying offenses for death, the sentences of inmates whose crimes would no longer be punishable by execution should be commuted to life without possibility of parole, the commission said.

"Taking this step would actually have little impact for the death row inmates involved," the commission said. "Most of them will never be executed but will die in prison."

Reaction to the report was mixed, with supporters of the death penalty more critical.

Kent S. Scheidegger, legal director of the Criminal Justice Legal Foundation, said he was disappointed that the commission failed to recommend other measures that would reduce delays, including limiting inmate appeals and holding attorneys to tight deadlines.

But he agreed with some of the commission's proposals. "Nobody has ever been satisfied with the way things are, and people on the pro-death penalty side are just as dissatisfied as the anti- side, perhaps more," Scheidegger said.

Natasha Minsker, death penalty policy director for the ACLU of Northern California, said she was surprised that the diverse commissioners were unanimous in deciding that an additional \$100 million a year was needed to reform the system.

But she doubted the state would follow through because "that means spending money we don't have."

Several of the commissioners who advocated abolishing the death penalty complained that it was too costly, biased by race, geography and income, prone to error and failed to consider an inmate's possible redemption.

The commission, established four years ago, went out of business Monday with the issuance of its final report. Gov. Arnold Schwarzenegger has vetoed three bills that grew out of the commission's previous recommendations. Another bill became law. Other commission proposals could be implemented without the need for legislative action.

Commission director Uelmen predicted it would take five to six years before the commission's legacy was known.

Borrowing a line from a former New Jersey chief justice, Uelmen added: "The criminal justice system is not a sport for the short-winded."

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