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## Death penalty system is a mess, legal experts tell Calif. panel

### EXPERTS CONFER ON FAILINGS IN STATE SYSTEM

By Howard Mintz  
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Leading judges and scholars provided a grim verdict Thursday on how well the California justice system is carrying out the ultimate punishment as a state commission began an unprecedented review of the death penalty.

From California Chief Justice Ronald George, a death penalty supporter, to law professors who oppose capital punishment, the theme was consistent: The state's death penalty system is a mess.

George and six other witnesses, including a federal appeals court judge and Florida's former chief justice, named a string of reforms to improve death penalty justice in California, where there are now nearly 670 inmates on death row who typically spend decades awaiting execution.

But for the most part, many of the proposals called for spending more money - just as Gov. Arnold Schwarzenegger elsewhere in the building was proposing dramatic cuts in education and prisons to cope with a \$14 billion budget shortfall.

"The current system is not functioning effectively," George told the California Commission on the Fair Administration of Justice. "We're at a point now where choices must be made."

The hearing in Sacramento was the first of three the state commission has scheduled to explore the death penalty system. Thursday's focus was on proposals to ease the nation's biggest backlog of death row appeals, as well as studies that show California has applied the death penalty inconsistently.

Former Attorney General John Van de Kamp, chair of the commission, stressed that the panel will not address the "morality of the death penalty," only issues related to the handling of capital trials and appeals. Two years ago, the Legislature established the commission, a cross-section of prosecutors, defense lawyers and other justice experts, to examine the state's death penalty and other criminal justice issues.

While George and others testified on plans to reduce delays in the appeals process, other witnesses said California could solve some of its problems by limiting the types of crimes eligible for the death penalty. The state now has 33 so-called "special circumstance" crimes that allow prosecutors to seek the death penalty, ranging from typical offenses such as robbery to killing during a carjacking or by causing a train wreck.

Critics say that has clogged death row with killers who are not necessarily "the worst of the worst."

Ellen Kreitzberg, a Santa Clara University law professor, provided a study of nearly 800 California death sentences that shows the current death penalty may be too "expansive." Former

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Florida Supreme Court Chief Justice Gerald Kogan said the overly broad list of crimes that qualify for the death penalty is the root of California's bloated death row.

"That's unfathomable," said Kogan, who advocates roughly five types of crimes, such as double murder or killing a police officer, that should qualify for a death penalty trial. "You are having a problem in this state because the front end of the system is overloaded."

George, meanwhile, formally introduced his controversial proposal to shift a share of death penalty appeals from the state Supreme Court to the state's six intermediate appeals courts, including the San Jose-based 6th District Court of Appeal. Arthur Alarcon, a federal appeals court judge, also supported that plan Thursday, as well as calling for a new super agency of death row appellate lawyers funded by both the state and federal governments to handle state and federal appeals.

George and Alarcon insist that shifting the state appeals would reduce the 10-plus years of delays in getting just the first round of appeals heard by the state Supreme Court. For example, George testified that there are already 80 death penalty appeals ready to be argued in the Supreme Court, but doing so would prevent the state's high court from handling the other crucial civil and criminal issues on its docket.

"Even if the Supreme Court were to become solely a death penalty court, it would take three or four years to process the backlog of appeals," George said.

Several witnesses, including Kogan, speculated that George's plan might actually add to delays and inconsistent rulings in capital cases. George's

proposal would require a constitutional amendment because current state law requires the Supreme Court to hear death row appeals.

The commission also heard from a number of death penalty foes at the conclusion of the hearing, including several parents of murder victims. "I know revenge is not justice," said Lorrain Taylor, whose twin sons were killed in Oakland by a gunman yet to be found.

The commission will meet again in Los Angeles on Feb. 20 to consider testimony from defense lawyers who represent murder suspects in capital trials, as well as prosecutors who've handled death penalty trials.

Contact Howard Mintz at [hmintz@mercurynews.com](mailto:hmintz@mercurynews.com) or (408) 286-0236.

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