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Commission: Abolish or limit death penalty

Commission finds problems galore with 'broken system'

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California should either consider scrapping the death penalty or undertake drastic changes to its costly and "dysfunctional" capital punishment system, according to a 107-page report issued Monday by a divided state justice commission.

While the California Commission on the Fair Administration of Justice fell short of recommending abolition of the state's death penalty, the report painted a bleak picture of a "broken system."

The report called for a number of changes aimed at ridding the state of the worst death row backlog in the nation, speeding up an appellate process that drags on for decades, improving death row representation and forcing prosecutors to be more selective in the cases they choose to press for capital punishment.

"The commission was unanimous that doing nothing would be the worst possible course we could take," said former Attorney General John Van de Kamp, who chaired the 22-member commission.

The report is the final chapter for the commission, established by the state Senate in 2004 to explore all aspects of California's criminal justice system. The commission has already recommended several changes that were approved by the Legislature, such as safeguards to ward off false confessions, faulty eyewitness testimony and the overuse of jailhouse informants. However, all of them were vetoed by Gov. Arnold Schwarzenegger, who cited their impacts on public safety.

A broken system

Van de Kamp said it is now up to the Legislature or the voters to address the report's findings. Senate Majority Leader Gloria Romero, D-Los Angeles, said the report should spur action. "The death penalty in California is broken," Romero said.

The death penalty report comes amid a de facto moratorium on executions in California as a result of legal challenges to lethal injection. Two separate cases challenging the state's lethal injection method are currently bogged down in the courts, putting executions on hold indefinitely.

Meanwhile, the commission's death penalty report devoted much of its length to the delays in California's system, where 670 inmates are now on death row and an average of 25 years pass between trial and execution. Thirteen inmates have been executed since the death penalty resumed in 1978.

"It is the law in name only, and not in reality," the report said.

Among the report's findings and recommendations:

- The state could choose to eliminate the death penalty and convert the maximum punishment to life in prison without the possibility of parole, saving hundreds of millions of dollars a year. The reality is

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"most California death sentences are actually sentences of lifetime incarceration."

- If the state retains the death penalty, the number of crimes eligible for a death sentence should be slashed to just five special circumstances: multiple murder; killing a law enforcement official; committing murder in a prison or jail; murdering witnesses or others involved in a case, such as prosecutors and judges; and torture. The move would cut California's death row population nearly in half, and reduce the future number of death sentences.

There are currently 21 special circumstance crimes that qualify for the death penalty. Critics of this portion of the report say it would eliminate crimes such as murder in the course of a rape, kidnapping or lewd act on a child.

- Establish a statewide "death penalty review" panel to monitor how such cases are handled. Among the key issues: how prosecutors in each county choose to seek the death penalty; the report found most prosecutors across the state reluctant to share such information, although Santa Clara and San Mateo counties did cooperate. The commission said the data is needed to evaluate whether there are geographical disparities in how the death penalty is applied.

- Vastly expand two state defender organizations to eliminate the long delay in finding lawyers to handle death penalty appeals. The report calls for expanding the Habeas Corpus Resource Center from 30 to 150 lawyers, and to nearly double the state public defender's office.

- Ensure that every county meets the American Bar Association's standards for lawyers who handle death penalty trials, including guaranteeing two defense lawyers in any capital case. Many counties

do not adhere to ABA standards.

Plenty of dissent

The commission, however, was far from unanimous on the general tone of the report. Seven of the commission members, primarily law enforcement officials, wrote separately to criticize the report, saying it "indirectly assaults California's death penalty."

"The problem is that the final report is entirely unbalanced," Ventura County District Attorney Gregory Totten wrote for five of those members. "It gives weight only to those who seek to limit or eliminate the death penalty, and ignores views in favor."

Meanwhile, seven other members wrote that the report did not go far enough, calling for a repeal of the death penalty. Two other members said the law should either be abolished or scaled back significantly. Those dissenters included a number of prominent members of the defense bar, as well as a former federal magistrate judge, John Moulds of Sacramento.

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