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State's chief justice calls for death penalty case reform

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The state's Supreme Court Chief Justice made his first public appeal on Thursday to fix what he calls a "dysfunctional" backlog of death review cases that threatens to overwhelm the court.

In a hearing before the Commission on the Fair Administration of Justice at the Capitol, Chief Justice Ronald George summarized his call to change the state's Constitution to allow the state's six appellate courts to shoulder review of capital cases, the largest number in the country.

The radical shift - which one skeptic called a "change in furniture"-would fracture the state Supreme Court's exclusive and automatic hold of such cases since the mid-nineteenth century.

With a surge in the state's Death Row population - which stands at more than 660 inmates - George told the commission that death penalty reviews consume about 20 to 25 percent of the high court's caseload, up from about 5 to 10 percent about two decades ago. He pointed out that the number of Supreme Court justices - seven - has remained the same since 1879. There are 105 state Court of Appeal justices.

George said the state Supreme Court - even if it devoted itself exclusively to capital cases - would take about three to four years to chip away and process the existing backlog.

The chief justice used words such as "peril," "critical" and "disadvantage" to describe how the high court's responsibility to be the "ultimate arbiter" in crucial civil and criminal matters could be compromised by the massive death penalty caseload.

"If the Supreme Court cannot fulfill that role, California - its people, its government, its economy, its public safety - all would suffer," George said.

But Stanford Law School professor Lawrence Marshall later told commissioners that the proposal could, in effect, just add another tier of lengthy legal review, further protracting a notoriously slow process.

"I understand the impetus," the professor said to the panel. "But, on some level, they are rearranging the furniture..."

Marshall, who had been influential in commuting death sentences in Illinois as an advocate

for the wrongfully convicted, said the state's unprecedented backlog is the result of the state's breadth of the more than 30 penal code offenses that qualify for the death penalty.

He proposed that narrowing the scope of death penalty cases to only the "worst of the worst" as a way to greatly diminish the number of inmates at San Quentin's Death Row.

Since voters reinstated the death penalty in 1978, 13 inmates have been executed in the state after an appeals process that averages 17.5 years - the slowest in the country.

Executions in California have been on hold for about two years, pending a federal review on Constitutional questions unrelated to the lengthy appeals process.

The last inmate executed was 76-year-old Clarence Ray Allen in Jan.2006 after he had exhausted nearly a quarter-of-a-century in legal appeals.

George said he would like to see a Legislative Constitutional Amendment on the November 2008 ballot.

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