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State sentencing commission under study

By Andy Furillo, The Sacramento Bee
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SACRAMENTO — Facing a population cap and court decision that threatens to wipe out the state's sentencing law, the Department of Corrections and Rehabilitation is considering a sentencing commission that would help decide who goes to prison and for how long.

"We are willing to engage in sentencing reform," Corrections Secretary James Tilton said last week, adding that as part of the discussion, the Schwarzenegger administration is looking at establishing a sentencing commission.

Such panels can allow states to manage prison populations by altering the approach to sentencing. The idea was rejected seven times in California between 1984 and 1998 — three times by gubernatorial vetoes and four times by legislative committees.

But a new urgency has slammed down on the state's prison system. Legal motions filed last week in three pending federal cases already decided in favor of the defendants are demanding that the prison system cap its population. Meanwhile, the U.S. Supreme Court is deliberating on a case that could render to the trash heap the way judges have been sentencing defendants in California for nearly 30 years.

Details on a commission proposal have yet to be fleshed out. But with the prison population rising, the corrections budget projected by the Legislative Analyst's Office to exceed \$9 billion next year and inmates rights lawyers monitoring every move, the administration now views a commission as a possible salvation.

Talk of the commission has resurfaced in recent months as the prisons' overcrowding crisis has worsened.

Last week, inmates rights lawyers filed motions with judges who have been friendly to them to fix an unconstitutional level of overcrowding by imposing the population cap. That matter is subject of a Dec. 11 hearing in U.S. District courts in Sacramento and San Francisco.

Lurking in the background is the pending U.S. Supreme Court decision targeting the state's 1977 determinate sentencing law.

The Cunningham v. California case is challenging trial judges' triple-option sentencing structure created under determinate sentencing. It has allowed judges to pick from a low-, middle- or high-term sentencing range depending on whatever aggravating or mitigating circumstances they find.

But in piling on extra years, the Cunningham case charged that the defendant's sentencing judge made findings of aggravation not presented to the jury. The case was filed after the high court tossed out a similar sentencing scheme in the state of Washington in 2004. The Supreme Court is expected to issue its decision by the middle of next year.

If the result mirrors the Washington case, it could clear the way for creating a state sentencing commission.

California's 33 prisons are jammed to more than twice their designed capacity, with the system housing 173,434 inmates. Even before he got hit with the legal motions to limit the population, Tilton already imposed a limit. By midsummer, he said, he will literally run out of every inch of space to house incoming prisoners. At that point, he said, he will only accept inmates from counties as space becomes available — one out, one in.

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