



## High court eyes Calif's landmark prison case

By **Greg Lucas** | 05/12/11 12:00 AM PST

It's the "Sword of Damocles" hanging over California's head, according to Gov. Jerry Brown.

He should know. As attorney general, Brown filed the U.S. Supreme Court appeal that – so far – has prevented the sword from falling.

But the day of reckoning could be at hand.

The Democratic governor used the phrase to describe the possible release of more than 35,000 state inmates – the equivalent of at least six prisons – if the Supreme Court upholds an order by a special three-judge panel demanding overcrowding be reduced to improve the health care received by inmates.

A decision by the high court is expected in June.

Brown mentioned the long-running court case in April at a Capitol press conference touting his budget plan to shift as many as 30,000 parolees and non-violent state prison inmates to counties for monitoring and incarceration.

Facing the possibility of a court order demanding the release of 21 percent of state prison inmates over two years makes his realignment plan "the only path forward," Brown insisted.

By the middle of June, Brown said, the Supreme Court "will be rendering a decision which in all probability will demand the release of tens of thousands of people currently housed in our prisons.

"The only question is: Are we going to handle it properly with a plan or are we just going to react, without the money, without the realignment in a way that will be ultimately self-defeating?"

Schwarzenegger vs. Plata is the first major case involving 1996's federal Prison Litigation Reform Act and the power of courts to release inmates because of overcrowding.

In passing the law, Congress tried to define the powers courts could wield over prison operations.

Plata is a consolidation of two class action lawsuits brought against the state over medical care for inmates. The second lawsuit, Coleman vs. Schwarzenegger, involving mental health services for prisoners, was initially filed in 1991. Plata, 10 years later.

Both claim that care for inmates violates the Eighth Amendment of the U.S. Constitution, which prohibits cruel and unusual punishment of the incarcerated.

Among the specific allegations is substandard screening for inmates at reception centers, slow response to emergencies and insufficient nurses and doctors.

The cases have led to special masters being appointed by federal judges, a receiver who now controls decision-making on prison medical care and more than 70 orders from federal judges mandating various policy changes in the state's 33 prisons.

There have also been legal tussles between the state and the receiver over how much money is needed to solve the problem as well as legislation aimed at building more medical facilities, speeding the release of inmates and reducing the number of parolees returning to state prison.

A three-judge panel – the only entity that can issue an overcrowding reduction order under federal law – held a four-month trial ending in February 2009 and concluded overcrowding was the chief cause of the substandard inmate health care.

In a 183-page ruling, the panel ordered California's inmate population reduced to 137.5 percent of prison design capacity. As of July 31, 2009, inmate population was 167,200. "Design capacity" means one inmate per cell.

State prisons are currently operating at 172 percent of capacity.

The order is on hold until the high court issues its ruling.

An initial plan by the state to comply with the ordered reduction over five years was rejected by the judges. A subsequent two-year plan increasing good-time credits for some inmates, reducing parole revocations and using alternate means of incarceration was approved in January 2010.

If the Supreme Court upholds the order as written, within six months the state must reduce the prison population to 167 percent of design capacity, to 155 percent within one year, 147 percent within 18 months and – at the two-year mark – 137.5 percent.

In its appeal, California contends the three-judge panel was convened too soon and didn't give the state and the court-appointed receiver enough time to implement changes to reduce prison population and improve care for inmates.

The three-judge panel's order is "extraordinary and unprecedented," California's Washington, D.C.-based lawyer, Carter Phillips, told the high court in November oral arguments.

"At a minimum it is extraordinarily premature," Phillips said. "What the district court has done here is leapfrogged a series of steps that should have been taken ahead of going this particular route."

The state also says release of so many prisoners imperils public safety, an argument that resonated with several of the high court's more conservative justices during the oral arguments.

Lawyers for inmates counter there is no threat to public safety and that convening of the panel – and its ruling – are justified because the only way to create enough space for clinics and on-site care is by reducing the state's prison population.

"For 20 years, the overcrowding crisis has caused prisoners suffering from psychosis and life-threatening illnesses to languish in their cells because treatment

facilities have no room for them," Donald Specter of the Berkeley headquartered Prison Law Office told the justices in November.

"Prisoners are committing suicide at a rate twice the national average and more than two-thirds of those suicides are preventable."

Here's what the state's current statistics say:

The Department of Corrections and Rehabilitation's April inmate count is 162,925. The state's peak of 173,479 occurred in October of 2006.

There has also been a significant drop in what the department officially calls "non-traditional" beds which in prison vernacular are known as "bad" or "ugly" beds. Ugly beds are ones erected in what would normally be common space.

In August 2007, 19,618 inmates were in ugly beds. Now, the number is 6,600.

"We're not nearly as crowded as we were and the number of non-traditional beds is what tells the story," says Terry Thornton, a spokeswoman for the corrections department. "We're no longer housing practically 20,000 people in day rooms and gymnasiums."

The receiver also files monthly reports on inmate medical care. The April report, which has statistics for March, shows that nearly 90 percent of the 193,898 requests for medical care by inmates were honored.

Of the 10 percent that weren't, 4 percent were the fault of the health care provider, mainly because of cancellation or scheduling error.

"Medical care has improved," says Joyce Hayhoe, director of legislation for the receiver's office. "But almost all of our institutions are still sorely lacking in adequate clinical facilities for treating inmates in-house."

A fact the receiver's monthly report makes clear.

Through March, prison guards logged 51,869 hours transporting inmates to receive medical care. Of that total, 50,564 hours were overtime at a cost of \$2.2 million.

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