

# Fed judges' order California to devise plan to slash prison population

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SACRAMENTO — In a decision that could dramatically reshape California's criminal justice system, a panel of federal judges Tuesday ordered Gov. Arnold Schwarzenegger and state legislators to find ways to cut the prison population by **40,000**, or about **one-quarter of all inmates**.

The ruling was a stark milestone in the years-long saga of two lawsuits charging that California allows inhumane conditions to fester in its prisons because of severe overcrowding. Law-and-order advocates say such cuts would result in inmates being returned to the streets early or being turned over to cash-strapped counties to jail. The Schwarzenegger administration signaled that it would likely appeal the case to the U.S. Supreme Court.

The three-judge panel gave the governor and lawmakers 45 days to present a plan to cut the inmate population from about 150,000 to 110,000 over two years. The judges delivered a stern message about conditions that are so poor in some prisons that they violate inmates' constitutional rights.

"The medical and mental health care available to inmates in the California prison system is woefully and constitutionally inadequate, and has been for more than a decade," the judges wrote in a 184-page ruling. "Tragically, California's inmates have long been denied even (a) minimal level of medical and mental health care, with consequences that have been serious, and often fatal. ... A significant number of inmates have died as a result."

The judges described **some prisons operating at nearly 300 percent of capacity**, with **inmates housed in triple bunk beds placed in gymnasiums and day rooms**.

"In these overcrowded conditions, inmate-on-inmate violence is almost impossible to prevent, infectious diseases spread more easily, and lockdowns are sometimes the only means by which to maintain control," the judges wrote.

In general, **the 33-prison system is at nearly double its capacity**. Even under the judicial order, the system would remain overcrowded, at 137.5 percent of capacity.

Matthew Cate, secretary of the Department of Corrections and Rehabilitation, acknowledged that the prisons are severely overcrowded and that conditions in many facilities have been substandard. But the situation has improved dramatically in recent

years, he argued, enough so that the federal courts should not be dictating how California runs its correctional system.

"We've made enough progress to turn this back over to the state," Cate said.

He said the administration has plans to alleviate overcrowding by building more prison facilities, arranging with other states to house more of California's inmates and changing sentences for some crimes. Schwarzenegger also recently called for deporting illegal immigrants serving time in California prisons for nonviolent crimes.

The governor's proposal also would allow some low-level offenders to serve the last 12 months of their sentences on house arrest or, in the case of elderly, infirm inmates, in medical facilities. Others convicted of nonviolent crimes would be given credit for time served.

But in the best case, the governor's plan would trim the prison population by about 27,000, well short of the federal judges' demand. And Republican legislators have vowed to resist cuts of even that amount.

The three-judge panel — Stephen Reinhardt, U.S. Circuit Judge for the 9th Circuit Court of Appeals; Lawrence Karlton, U.S. District Judge for Eastern District Court of California; and Thelton Henderson, U.S. District Judge for Northern District of California — did not directly mandate that California reduce its inmate population. But it came close, ordering that Schwarzenegger and legislators deliver a plan to do so within 45 days. If after that period the judges remain dissatisfied and order a cap on the prison population, the administration would appeal to the U.S. Supreme Court, Cate said.

"To the extent it requires us to open the gates (to state prisons), we're going to appeal," he said.

As it happens, state lawmakers are expected this month to debate how to trim the state corrections budget by \$1.2 billion. A cut of that size was mandated by the recently approved budget plan, but the proposal left for later details on how to realize the savings.

While the federal judges opined that the prison population could be pared without endangering public safety — through sentencing and parole reform, among other changes — critics were not convinced.

"I just think these judges are totally out of touch and overstepping their bounds," said state Sen. Bob Huff, R-Glendora. "Are they then going to be responsible for the increase in crime that will inevitably happen or the increased costs of apprehending and imprisoning criminals?"

State Senate Leader Darrell Steinberg, D-Sacramento, said in a statement that lawmakers would return from their summer recess later this month "to produce reform that saves money, protects public safety, and takes back the control of our prison system."

Dissension in the Legislature has stifled prison reform in California for years. Tuesday's ruling creates a major test for the state's political system and its ability to fix what even defenders of the prison system concede are serious shortcomings.

"They're really under the gun now," said Don Specter, director of the Prison Law Office, which has long advocated for improved prison conditions.

Robert Weisberg, a law professor and director of the Stanford Criminal Justice Center, said the governor and legislators may have to confront California's high rate of recidivism, which leads all states. Parolees, he said, are routinely sent back to prison for technical violations such as missing meetings with their parole officers.

That drives up the prison population and unnecessarily costs the state a lot of money, said Weisberg, who served on a panel that advised a federal judge who oversaw one of the cases that resulted in Tuesday's ruling.

"This is kind of stern reminder," Weisberg said, "that the problem has to be solved. But it gives them a fair amount of time and flexibility to reduce the (prison) number without a threat to public safety."

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To read the full rulings online:

[www.cdcr.ca.gov/news/docs/OpinionandOrder.pdf](http://www.cdcr.ca.gov/news/docs/OpinionandOrder.pdf)