

Creating and Passing a Successful Sentencing Commission in California

*An Examination of Failed Attempts in California and Successful Sentencing Commissions
Across the Country*

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MEMORANDUM

TO: Joan Petersilia; California Prison Reform Committee
FROM: Lauren E. Geissler
DATE: January 27, 2006
RE: How to Implement the Most Politically Feasible and Substantially Successful California Sentencing Commission

I. Introduction; California Prison System Needs Reform

“It’s a treadmill; it’s a merry-go-round; it’s a scandal” said former governor of California (and present mayor of Oakland) Jerry Brown of the current California prison system.¹ Speaking to the Little Hoover Commission in 2003 Jerry Brown, who signed the 1977 measure changing California sentencing from indeterminate to determinate, now blames the same sentencing structure for riddling the state with recidivism and is calling for reform. He is not alone. As the California budget crisis worsens, administrators, policy makers, and scholars are calling for serious reevaluation of a prison system that is widely considered a failure on multiple levels.² In addition to high recidivism rates, California currently suffers from gross overcrowding in prisons despite the fact that the state has built an unprecedented number of new prisons at a tremendous cost. Perhaps most disturbing, however, is the confusion, inequity, and inconsistency of the current sentencing structure. A society’s sentencing structure provides the framework that determines who goes to prison and for how long, and for that reason it is the most

¹ Warren, Jenifer, *Jerry Brown Calls Sentence Law a Failure*; LOS ANGELES TIMES, February 18, 2003. See also De Fao, Janine, *Jerry Brown’s About-Face on Criminal Sentencing*; THE SAN FRANCISCO CHRONICLE, February 18, 2003.

² Sterngold, James & Martin, Mark, *Hard Time; California’s Prisons in Crisis High Price of Broken Prisons, Tough Sentencing Creates Overcrowding that Endangers Inmates, Haunts Taxpayers*, SAN FRANCISCO CHRONICLE, July 3, 2005 p. A-1. (<http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/07/03/MNGLMDIMOT1.DTL>)

fundamental cornerstone of the penal system. Lamentably, in California “drive-by” legislation and lack of political insulation has caused the current sentencing structure to lose the uniformity and predictability for which it was adopted.

Several organizations have conducted original research regarding the problems facing the California prison system, and credible solutions have been offered. The most well known reports are written by RAND, The Little Hoover Foundation³, The Blue Ribbon Commission on Inmate Population Management⁴, and the short lived Deukmejian committee. This paper will focus on a solution that has been commonly recommended in policy reports (and even introduced as legislation) for at least fifteen years: the development of a sentencing commission.

Sentencing commissions are not novel or rare. Though meeting political failure in California, other states have successfully instituted state sentencing commissions. Oregon, Washington, Minnesota and Delaware have created especially high achieving sentencing commissions and their similarities are worth assessment.⁵ That various “commissions” have been created and appointed to analyze the California prison system over time⁶ reflects the instinctual need for an insulated group who can monitor and respond to problems. However despite support from academics, policy organizations, and many state politicians the numerous attempts to establish a sentencing commission in

³ *Putting Violence Behind Bars: Redefining the Role of California's Prisons*, Little Hoover Commission, Report # 124; January 1994. (www.lhc.ca.gov/lhedir/124rp.html)

⁴ Blue Ribbon Commission on Inmate Population Management. January 1990. *Final Report*, p. 97. Sacramento, CA: Prison Industry Authority (recommending, “a Sentencing Law Review Commission consisting of representatives of all segments of the criminal justice system should be established to review and make recommendations to the Governor and the legislature regarding...[1] clarification and simplification of the state sentencing structure...[2] the efficacy of establishing sentencing guidelines or a sentencing grid incorporating local and state punishment options.”)

⁵ Tonry, Michael, *The Politics and Processes of Sentencing Commissions*, CRIME AND DELINQUENCY, Vol. 37 No.3, July 1991 p. 307-329.

⁶ Such as the Little Hoover Commission in 1994 and the Deukmejian commission in 2004.

California have failed. This paper offers explanations for those failures, and provides recommendations for how to implement a sentencing commission in California that will enjoy both substantive and political success. First, however, the current sentencing structure and its most pressing problems must be described.

II. How We got Here: The Current Sentencing Structure

Prior to 1976 California operated under an indeterminate sentencing scheme. Under indeterminate sentencing judges could sentence an offender to one year to life in prison. Each inmate would serve his base sentence, and then a parole board would determine when he should be released. The sentencing structure was based on principles of rehabilitation; that “an offender needed treatment and the length of the treatment depended on how well the patient responded to the cure.”⁷ This system was met with widespread criticism by a spectrum of professional fields across different political affiliations.⁸ Major concerns included:

- That criminals should not be given education, treatment, and training that non-criminal citizens cannot even receive
- That forcing change upon an offender was immoral
- That rehabilitation did not work
- That there was a lack of proportionality between crimes and punishments
- That inmates were serving wildly different sentences for the same crimes
- That the decision to release was unequal from inmate to inmate, and often the decisions were based on race.⁹

⁷ Vitiello, Michael and Kelso, Clark, *A Proposal for a Wholesale Reform of California's Sentencing Practice and Policy*, LOYOLA OF LOS ANGELES LAW REVIEW, Vol. 38, p. 115 (2004) (citing M. Frankel, *Criminal Sentences: Law without Order* 89-90 (1973); STRUGGLE FOR JUSTICE 10 (1971).)

⁸ Miller, Marc L. and Wright, Ronald F., *Your Cheatin' Heart(land): The Long Search for Administrative Sentencing Justice*, 2 BUFF. CRIM. L.R.723, 813 (1999).

⁹ *Putting Violence Behind Bars: Redefining the Role of California's Prisons*, Little Hoover Commission, Report # 124; January 1994. (www.lhc.ca.gov/lhdir/124rp.html)

As a result of these concerns, California followed the national trend and abandoned indeterminate sentencing in favor of determinate sentences for most crimes.¹⁰ The Indeterminate Sentence Law was repealed and replaced by the Determinate Sentencing Law, which became operative on July 1, 1977 (SB 42 (Nejedly), Chapter 1139, Statutes of 1976). Since that time, Penal Code Section 1170 has stated that “the Legislature finds and declares that the purpose of imprisonment for crime is punishment.” The goal of rehabilitation was largely abandoned and replaced with “tough on crime” attitudes that sought punishment, social protection, safety, incapacitation, and uniformity across sentences. Under the new system crimes were grouped into four major classifications and each crime had three possible sentences. Judges chose which sentence of the three was appropriate based on mitigating or aggravating factors. Once sentenced, the convicted had an actual release date that only changed minimally for good or bad behavior.

In the subsequent thirty years the system has become complex, inconsistent and very expensive (see Section II supra). Incarceration has risen, recidivism is high, and even after building over 20 new facilities California prisons are gruesomely overcrowded (180% of capacity). California is facing a tremendous budget crisis and the prison budget

¹⁰ See Sterngold, James & Martin, Mark, *Hard Time; California's Prisons in Crisis High Price of Broken Prisons, Tough Sentencing Creates Overcrowding that Endangers Inmates, Haunts Taxpayers*, SAN FRANCISCO CHRONICLE, July 3, 2005 p. A-1 (<http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/07/03/MNGLMDIMOT1.DTL>) (“The foundation of the current problems was laid in the late 1970s, when Gov. Jerry Brown, a Democrat, and Republican officials toughened the state’s criminal-justice policy. As rising crime rates fed a law-and-order mood, Brown signed legislation requiring judges to impose fixed sentences. Other laws provided longer sentences for drug crimes, sex crimes and for habitual offenders, reaching a peak with “three strikes” in 1994, which mandated life sentences for some repeat offenders.”)

is one of the few discretionary spending items that has undergone little scrutiny.¹¹ Further, both national tides and California opinions seem to be moving towards a return to rehabilitation. In 2003 during a speech to the American Bar Association United States Supreme Court Justice Anthony Kennedy gave a speech in which he bemoaned the current system and called for less spending, lower sentences, and less severe punishments.¹² Recently the California Department of Corrections added to its moniker “and Rehabilitation” to reflect the new focus that Governor Arnold Schwarzenegger is placing on rehabilitation¹³. The system is not working, and finally the political climate is ripe for change. The current sentencing structure is not fulfilling the goals that it was created to achieve, nor can new goals of rehabilitation and cost-reduction be reached under the current system.

¹¹ Vitiello, Michael and Kelso, Clark, *A Proposal for a Wholesale Reform of California's Sentencing Practice and Policy*, LOYOLA OF LOS ANGELES LAW REVIEW, Vol. 38, p. 106 (2004) (citing Martin, Mark; Prison Budget Up, Despite no Raise, S.F. Chronicle, May 14, 2004, at A 15).

¹² *Id.*

¹³ <http://www.corr.ca.gov>

III. Specific Problems that will Need to be Addressed by any Reform

California Needs Balance between Sentencing Policy and Prison Resources

California needs to be more careful and logical about whom it places into prison. Prisons have a finite capacity. California has built 20 new facilities in the past 10 years¹⁴, and yet still California prisons are currently filled to more than 180 % of design capacity.¹⁵ Both the Department of Corrections and the Little Hoover Commission are justifiably concerned that if criminals continue to be packed into already tight prisons the court system will at some point rule (as has happened in other states) that low-end prisoners must be released in a wholesale fashion without reasoned analysis.¹⁶ While this fear may not manifest in reality, at its core is an important idea.

California must start making important choices about who goes to (and remains in) prison and those choices should be logically based on the likelihood that the prisoner will not commit another crime. There simply is not room to house every prisoner for any amount of time determined by laws that were initiated in isolation of each other and without regard to the system as a whole. “California has used policies that show no evidence of effectiveness; all they show is high cost,”¹⁷ said Jeremy Travis, president of the John Jay College of Criminal Justice in New York City. “The state is the poster child

¹⁴ *Putting Violence Behind Bars: Redefining the Role of California's Prisons*, Little Hoover Commission, Report # 124; January 1994. (www.lhc.ca.gov/lhedir/124rp.html)

¹⁵ *Historical Trends 1984-2004*; California Department of Corrections and Rehabilitation, Report # HIST-2, p. 10 (<http://www.corr.ca.gov/OffenderInfoServices/Reports/Annual/HIST2/HIST2d2004.pdf>)

¹⁶ See *Supra* Note 13 at p. 8.

¹⁷ Sterngold, James & Martin, Mark, *Hard Time; California's Prisons in Crisis High Price of Broken Prisons, Tough Sentencing Creates Overcrowding that Endangers Inmates, Haunts Taxpayers*, SAN FRANCISCO CHRONICLE, July 3, 2005 p. A-1. (<http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/07/03/MNGLMDIMOT1.DTL>)

for corrections policies that have no benefit to public safety.”¹⁸ As experts pointed out in a recent San Francisco Chronicle article:

*Even strict law-and-order states such as Mississippi and Louisiana have embraced new models that involve elements like shorter sentences, improved rehabilitation programs and more alternatives to prison. Texas, which has a higher crime rate than California and houses nearly as many inmates, puts only a fraction as many parole violators back in prison.*¹⁹

In short, California is in dire need of a long-range mechanism to monitor the system’s overall cohesiveness as reforms are made in the future. Any and all reforms must realistically work within California’s budgetary limitations and physical prison infrastructure.

The Current Sentencing Scheme Spends too much for Poor Outcomes

The California Department of Corrections and Rehabilitation spends a yearly budget of 6 billion dollars, and incarcerating a single prisoner costs \$30,929 a year on average.²⁰ A major cause of cost and prison overcrowding in California is “a parole system that sends far more released inmates back to prison than other states.”²¹ Further, “[d]ecisions by corrections officials and politicians to de-emphasize rehabilitation

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Facts and Figures*; California Department of Corrections and Rehabilitation, www.corr.ca.gov/communicationsoffice/facts_figures.asp

²¹ See *Supra* Note 16.

programs, lengthen parole periods and send violators back to prison instead of giving them treatment have produced a return rate of about 60 percent, the nation's highest."²²

Prisoners in California are in great need of education and rehabilitation; they have, on average, a seventh grade reading level, and a substantial percent of the prisoners have a substance abuse problem. Yet, when determinate sentences are handed out a prisoner has a set release date that will not change based on their attempts at self-improvement. There is little motivation for them to participate in programs created to address those problems that led to criminal behavior. The inmate population has risen dramatically due to longer prison sentences for non-violent drug offenders who might be better served by treatment rather than prison. Then, parolees are often sent back to prison for violating their parole with the same untreated behavior that led to their initial arrest. Not surprisingly, of all felons paroled in 2001, 59% of males and 48% of females re-entered prisons within three years.²³

Who is released? Most felons are sentenced under a determinate sentencing scheme, including those who have committed manslaughter, assault with a deadly weapon, and armed robbery. Those prisoners are released at a set date without evaluation of their progress and behavior in prison, or of their individual records. An earlier Rand study has shown that the worst types of criminals, violent predators, commit a large percent of all crimes. For example, incarcerating the most active 8 percent of a group of robbers studied could prevent three times as much crime as imprisoning the least active

²²*Id.*

²³ *Recidivism Rates for Three Year Follow up*; California Department of Corrections and Rehabilitation, Risk Management Division; <http://www.corr.ca.gov/OffenderInfoServices/Reports/Annual/RECID3/RECID3d2001.pdf>

half for the same amount of time.²⁴ Further, the Rand study offered a list of predictive characteristics to be used in identifying these violent predators. California needs a more individualized (and less confusing) method for determining how to release those prisoners least likely to commit crime, while continuing to imprison the most violent criminals.

California also needs to seriously consider alternatives to incarceration for offenders such as non-violent drug users, who are not currently treated in prison. As the San Francisco Chronicle reported in 2005, “[i]f [California] could fix its dysfunctional programs, experts say, a department that is projected to spend \$7.3 billion this fiscal year could save hundreds of millions of dollars a year.”²⁵ These changes would lower prison costs by minimizing recidivism rates and incapacitating those criminals committing the majority of the crimes. In order to repair the failing programs and restructure sentencing with these new priorities in mind, California will first need to collect information through a monitoring system that tracks the incarceration and recidivism rates for each type of inmate “classification.”

²⁴ Chaiken, Jan M., Chaiken, Marcia R.; *Varieties of Criminal Behavior: Summary and Policy Implications*, RAND, p. 7 (1982).

²⁵ See *Supra*. Note 15.

The Current Sentencing Structure is Complex, Inconsistent, and Inequitable due to Increased Legislature Aimed at Relieving of the Moment Political Concerns

The determinate sentencing system was created to provide consistency and certainty in sentencing for the victims, criminals and the public at large.²⁶ Originally, the determinate sentencing structure had four offense groups. Within each group were three possible sentences, called a triad, for each offense. The judge had limited discretion to award the lower sentence if mitigating circumstances existed, and the higher sentence if aggravating factors were apparent. However “[t]he numerous ‘drive-by’ sentencing laws have eroded whatever coherence was achieved in 1976.”²⁷ When a particularly horrifying crime receives media attention the legislature adopts layer upon layer of restrictions, requirements, and sentence enhancements. From 1984 to 1991 over 1000 crime bills passed, virtually none of them reducing sentences and many of them imposing sentence enhancements.²⁸

In addition to multiple and complicated sentence enhancements, the legislature has amended the law to maintain somewhere between 10 and 25 offense groups in place of the original four. For example, where there was once a single triad for assault with a deadly weapon there now exists seven different triads for various types of assault with different weapons. If judges and lawyers find the sentencing structure confusing, utilizing worksheets and software to ascertain a single sentence, surely the public will not

²⁶ Vitiello, Michael and Kelso, Clark, *A Proposal for a Wholesale Reform of California’s Sentencing Practice and Policy*, LOYOLA OF LOS ANGELES LAW REVIEW, Vol. 38 (2004).

²⁷ Id at 117.

²⁸ Simpson, Richard, *Jailhouse Blues: Hard Times for County Tax Payers: A Study of Rising Costs of Incarceration in California*, California Counties Foundation (1991).

know the sentences for different crimes. This confusion drains much of the deterrence value from the penal system. The very basis of the current system is that longer sentences deter crime. However, if it is impossible to gauge what sentence will be imposed for a given crime the deterrence goal is lost. It does not matter how long a sentence is if the first time the offender hears it is when he is sentenced—by then he has already completed the crime and will not be deterred.

Further, these highly political legislative enactments are created piecemeal and without consideration of prison costs and overcrowding, and without relevance to other sentences for similar crimes. For example, if a murder is committed while the shooter is in the car his sentence will be enhanced according to Penal Code Section 12022.55 which was adopted by the legislature in 1987 in response to public fear of drive-by shootings. As another example, kidnapping for robbery carries a life sentence while kidnapping with intent to commit rape is not a life sentence and carries an enhanced term of five, eight, or eleven years. The sentences given from one crime to another have little relation, and are often unfair or counterintuitive when compared.

The current sentencing system is confusing, inconsistent and inequitable. While one of the primary goals of determinate sentencing was to sentence the crime and not the criminal, sentences vary greatly among similar crimes and have lost consistency do to the actions of the legislature.

IV. Past Legislative Attempts to Create a Sentencing Commission in California & Recommendations for Future Political Success

Since 1984 the California legislature has made at least seven notable attempts to create a sentencing commission. (See Table 1).

Table 1

Year	Bill Number	Bill Author	Result of Bill
1984	SB 56	Vasconcellos/Presley	Vetoed by Deukmejian
1992	SB 25	Lockyer	Vetoed by Pete Wilson
1994	AB 43	Polanco	Died in Committee
1994	AB 2944	Vasconcellos	Vetoed by Pete Wilson
1995	SB 166	Polanco	Died in Committee
1995	AB 1036	Vasconcellos	Died in Committee
1998	SB 670	Vasconcellos	Stalled in Assembly

* Text of some bills can be found in Appendix A-D.

These bills have originated from both the assembly and the senate, and three of the bills were actually passed but later vetoed by California Governors. Below is a summary of the substantive differences between the more successful bills, the support and sponsorship for each bill, and the reasons why each bill may have failed. Especially enlightening are the Governors' veto messages in which they reveal the weaknesses they believe existed in the proposed changes.

Senate Bill (SB) 56

SB 56 was authored by Senator Presley and brought before the legislature in 1984. The bill passed, but was later vetoed by Governor George Deukmejian. SB 56 would have created a 19 member California Sentencing Commission as well as a Judicial Advisory Committee to provide sentencing guidelines for felony offenses. Governor Deukmejian states in his “veto message” to the California Senate that he “see[s] no compelling reason for the establishment of a sentencing commission,” as “California’s Determinate Sentencing Law...is working very well.”²⁹ Clearly Governor Deukmejian saw the establishment of a sentencing commission as an unambiguous end to determinate sentencing.

Deukmejian’s “tough on crime” attitudes are apparent throughout his message. When citing the successes of determinate sentencing he explains that “the Legislature has been active in raising basic prison sentences, providing enhancements for prior convictions, increasing consecutive sentencing, restoring habitual offender laws and enacting mandatory and presumptive prison sentencing for various crimes.”³⁰ He later states that “[t]here can be little doubt that determinate sentencing has had a direct impact on the reduction in major crime in this state during the last three years.”³¹

Most notably, Governor Deukmejian explains that he “strongly believes” that the responsibility for setting the ranges of prison sentences should rest with the Legislature, as the Legislature is directly responsible to the voters of California and as the

²⁹ Governor George Deukmejian, Governor’s Office, Sacramento, Sept.27, 1984. Recorded in THE CALIFORNIA JOURNAL OF THE STATE, 1983-1984 Regular Session, Vol. 6, p. 14331.

³⁰ *Id.*

³¹ *Id.*

Legislature's committee structure has the resources to study the system. In sum, the failure of SB 56 can be attributed to the following:

- 1.) The bill contained too much anti-determinate sentencing language. The point of a sentencing commission is an honest and impartial review of all forms of sentencing. Any proposal seeking to institute a sentencing commission should avoid specific reference to indeterminate or determinate sentencing in an effort to avoid turning the proposal into a political battle.
- 2.) The "tough on crime" preferences that existed in 1984 strongly colored the Governor's view of the bill. Any new proposal must include credible studies that prove that the current sentencing structure, specifically determinate sentencing, has not in fact had a direct impact on the reduction of major crime. Crime will be reduced when sentences are meaningful and based on individualized assessment of the prisoner. Further, crime will be reduced when the number of non violent, first time criminals in prison declines, and the number of violent, repeat offenders in prison increases. The misperceptions about crime, fueled by public fear and campaign donations, must be addressed in any successful sentencing commission proposal. Any proposal should show how other states have been successful in reducing crime without imprisoning more people, and how revisions of states' sentencing structures has led to proportionate sentences that keep violent and unrepentant criminals in prison longer while rehabilitating those who are non-violent, low risk offenders.
- 3.) The fact that sentencing commissions may not be directly accountable to the voters must be addressed. This is a very legitimate concern that is difficult to remedy. On

the one hand, part of the appeal of a sentencing commission is the fact that it would be politically insulated. Public outcry in response to particularly newsworthy (but atypical) crimes creates bad, inconsistent legislation and there is merit to the idea that the public cannot hold accountable a system that is too complicated to understand. When Senator John Vasconcellos, who at the time was the chair of the Senate Public Safety Committee, was asked why a bill similar to SB 56 failed he stated that “it’s politicians trying to be popular with people’s fear, that is as simple as I can say it.”³² Further, since the California Correctional Peace Officers Association is one of the most aggressive lobbying groups in the state, politicians may not currently be truly accountable to the voters anyway. As described by Daniel Macallair, the Executive Director of the Center on Juvenile and Criminal Justice in San Francisco, “[e]lected officials who oppose or even question the CCPOA’s dictates risk political ostracism, retaliation, and electoral defeat...the union has established itself as a nearly unchecked political force.”³³

On the other hand, accountability is a popular political buzz word, and it is important for any new proposal not to be labeled as “lacking accountability.” Drafters of the proposal must carefully select the number of members it will contain, and must specify the inclusion of civilian members, as well as representatives appointed by both political parties, and also by both the Governor and the legislature. The sentencing commission proposal must have early support by diverse organizations. Lastly, sympathetic members of the media must be provided with interviews, sound bites, and press releases explaining exactly what role the commission will play.

³² Jones, Steven T. *Prisons, Politics and Public Perceptions*; MONTEREY COUNTY WEEKLY, July 23, 1998. <http://www.montereycountyweekly.com/articles/2492>.

³³ Macallair, Daniel, *Prisons: Power Nobody Dares Mess With*, The Sacramento Bee. Feb. 9,

Studies show that the public, when given even a small amount of information and then questioned in depth, do not have as irrational beliefs about crime as is often reflected by opinion polls.

Senate Bill (SB) 25

SB 25 was authored by Lockyer and brought before the legislature in 1992. It was passed but later vetoed by Governor Pete Wilson. According to the veto message issued by the Governor's Office, the Governor felt that the bill lost its intended purpose of "remov[ing] the arbitrary limitations on prison terms" by accepting sentencing schedules "to broaden the appeal of the proposal."³⁴ It appears from his statement that the Governor was especially troubled by the proposed change from sentence triads to sentence ranges, expressing concern that judicial discretion would be broadened. And "[e]ven more alarming" to him was "the likelihood that ranges [would] result in lower sentences."³⁵

The Governor did seem to agree that there was "inequity in the current sentencing law which allows for disproportionate decreases, and sometimes even elimination, of additional penalties for the commission of multiple offenses."³⁶ Lastly, Governor Wilson expressed discontent at the possibility that a change in sentencing of this magnitude could not be seamless and would possibly result in reversed cases.³⁷ It appears from the Governor's statement that SB 25 was joined with numerous bills that he "enthusiastically

³⁴ Governor Pete Wilson; Governor's Office, State Capital, Sacramento, Sept. 26, 1992. Recorded in CALIFORNIA JOURNAL OF THE SENATE, 1991-1992, Regular Session Vol. 4, p. 8310.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

supported,”³⁸ which may be indicative of a contentious relationship between the legislature and the Governor, but surely demonstrates the Governor’s strength of conviction in vetoing SB 25. In sum, the failure of SB 25 can be attributed to the following:

- 1.) The bill suffered from confusion, and included too many differing solutions reflecting different positions. SB 25 would have instituted a new sentencing structure at the same time that it created a sentencing commission. A new proposal should be clear and simple in its purpose: the establishment of a sentencing commission. It should be conveyed that the proposal is not a guise for a shift to a specific sentencing scheme, and that the proposal has no opinion on sentencing structure outside of the fact that the current structure is failing. It is the commission’s job to create new sentencing structures based on informed analysis.
- 2.) The bill did not provide safeguards for easy policy transitions. While the current sentencing structure is flawed it is possible, as with any policy transition, that things could get worse before they get better. Any new proposal for a sentencing commission must contemplate and plan for an easy transition. It could be emphasized that the commission will need a length of time to research and develop any plan before it is instituted. Further the proposal could recommend that the commission budget include funds for the training of judges and practitioners.
- 3.) Again, the proposal needed to emphasize that it is not soft on crime, but rather is softer on soft crime and harder on hard crime. The idea is individualized assessment, and in many cases that will mean higher sentences for more serious offenders.

³⁸ *Id* at 8311.

4.) Lastly, the bill caused fear of too much judicial discretion. Any new proposal should explain that states with successful commissions have very low rates of judicial departure from sentencing standards. It should also be emphasized that minimizing random judicial discretion is one of goals of a sentencing commission, it is in fact one of the major factors considered in the assessment of a commission.

Assembly Bill (AB) 2944

AB 2944 was authored by Assembly Members Vasconcellos, Lee, Bates, Bornstein, and Gotch in 1994. The bill passed, but was vetoed by Governor Pete Wilson. Though not the most recent legislation, AB 2944 is significant because has the largest recorded history of the bills contained here.

Tone of AB 2944

Even at first glance it is clear that the bill disfavors determinate sentencing. AB 2944 would delete the initial declaration of the current law which states that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the legislature. In its place the bill expresses different findings and declarations, most notably that

[t]he Legislature finds and declares, that after more than a decade of experience with the determinate sentencing model, the determinate sentencing system that became effective in this state in 1977 needs reform which the Legislature has attempted to address each year. In doing so, however, sentencing practices have become exceedingly complex and inconsistent. These frequent amendments to the original provisions of the determinate sentencing system have resulted in confusion and difficulties

*for victims, witnesses, defendants, judges, and lawyers in the sentencing court and on appeal.*³⁹

Later, the bill states that one of the responsibilities of the commission will be to review the history of determinate and indeterminate sentencing, considering an expansion of the use of indeterminate sentencing for violent offenders. It furthers that the commission should consider a full indeterminate sentencing scheme.

Composition and Structure of the Commission

AB 2944 provided detailed provisions for who would serve on the 16 member committee, which would be chaired by a Governor's appointee. The sentencing commission membership would have included four ex officio members:

- 1.) The Attorney General
- 2.) The Director of Corrections
- 3.) The Director of Finance
- 4.) The State Public Defender

Next, the bill required the commission to have six members appointed by the Governor, including:

- 1.) A prosecuting attorney
- 2.) A chief of police or sheriff
- 3.) A public member who has never been an attorney, judge, or law enforcement agent
- 4.) One person who is serving as an adult parole or probation officer, or who has served in that capacity
- 5.) One retired member of the California Supreme Court or a California Court of Appeal
- 6.) One public member

³⁹ Assembly Bill 2944, Feb. 17, 1994, <http://www.leginfo.ca.gov/bilinfo.html>

The Speaker of the Assembly would appoint three members as follows:

- 1.) One public member who is not and has not ever been an attorney, judge, or law enforcement officer
- 2.) One prosecuting attorney
- 3.) One public member who is currently active in criminology research or academia in California

The Senate Committee on Rules would appoint three members as follows:

- 1.) One public member who is not and has not ever been an attorney, judge, or law enforcement officer
- 2.) One public defender
- 3.) One faculty member of a law school within this state⁴⁰

The members of the commission (except ex officio members) would have served terms of four years and would have been reimbursed for travel and expenses “actually and necessarily” incurred by them in the performance of their duties.⁴¹ The bill would have also established a six member Judicial Advisory Committee to assist the commission, as well as a permanent staff. The budget for the Commission was determined by the appropriations committee to be approximately \$250,000 (which would, of course, be a much larger number today due to inflation).

The Responsibilities of the Commission

As discussed earlier, the commission would have been charged with reviewing the determinate sentencing scheme and considering an indeterminate sentencing system, and then creating a new, revised sentencing structure. The commission was to submit the results of this analysis as well as the new proposed sentencing structure by January 1, 1997 (which would have been approximately two and a half years later). In addition, the sentencing commission was instructed to devise a system of granting and rescinding

⁴⁰ Assembly Bill 2944, Feb. 17, 1994, Section 1171, Article 2. <http://www.leginfo.ca.gov/bilinfo.html>

⁴¹ Id at Section 1171, Article 2, Subsection (3)f

sentence credits based upon individual inmate treatment plans. The commission was also granted power by the bill to regularly monitor and conduct studies on the prison system's present and future capacity, and take the results of that research into account when devising or revising sentencing guidelines. The commission was also charged with regularly analyzing legislation that would modify sentencing. Every two years the commission was instructed to recommend Legislative revisions or modifications to the sentencing guidelines. The new sentencing guidelines would not have applied retroactively.

Opposition and Support for AB 2944

AB 2944 received 45 “aye” votes and 25 “no” votes when it passed. It received formal support from the California Council of Churches, the California Public Defenders Association, Judge William F. Ferroggiaro, Jr., the Superior Court of Eureka, the Little Hoover Commission, the Santa Clara County Board of Supervisors, and the California Probation, Parole and Correctional Association. The bill was opposed by the Department of Corrections, the California District Attorneys Association, the California Peace Officers Association, and the Office of Criminal Justice Planning.

After passing in the Assembly and Senate, the bill was vetoed by Governor Pete Wilson. In his veto message of September 28, 1994, the Governor noted that the “legislative intent” favored a return to indeterminate sentencing.⁴² This troubled the Governor as he felt that “indeterminate sentencing...was widely discredited in the 1970's [and] remains in disfavor with the law enforcement community.”⁴³ His dislike of the indeterminate sentencing structure seemed to stem from the idea that discretion “may be

⁴² Governor Pete Wilson; Governor's Office, State Capital, Sacramento, Sept. 28, 1994. Recorded in CALIFORNIA JOURNAL OF THE ASSEMBLY, 1991-1992, Regular Session, p. 9431.

⁴³ *Id.*

abused by a lenient Board of Prison Terms,”⁴⁴ and also his feeling that indeterminate sentencing “eliminates the certainty in justice which the public desires.”⁴⁵ The Governor concludes his message with a statement that has been widely quoted in newspapers writing on the subject: “The growth of California’s prison population is caused by many deplorable factors. Long prison sentences has not been one of them.”⁴⁶

In sum, this bill failed due to many of the same deficiencies evident in SB 56, which was also written primarily by Assembly member John Vasconcellos. The bill included less, but still too much, indeterminate sentencing language. Any new sentencing commission proposal should stick to the problems with the current system that need to be addressed, without referring to the problems as exclusive to or characteristic of “determinate sentencing.” Additionally, it is clear from his references that Pete Wilson was strongly influenced by both the law enforcement community and the public, as was Deukmejian in 1984.

AB 2944 is helpful, however, in that it offers a good structure for new law. Much thought was given to who would serve on the committee, and the membership division seems quite wise and similar to that of other successful state commissions.

⁴⁴ *Id.*

⁴⁵ *Supra* Note 41, p. 9431.

⁴⁶ *Id.* at 9432.

Senate Bill (SB) 166

SB 166 died in committee. This fact is unfortunate as the text of the bill is the closest to what this analysis would recommend in a sentencing commission proposal for its objectivity and its framing of the issue.⁴⁷ The bill does not explicitly reference “indeterminate sentencing” but nonetheless paints an accurate picture of the problems associated with the current system. The drafters of SB 166 argued that California’s sentencing requirements are excessively complex and burdensome as a result of piecemeal modifications over the last decade. Moreover, they explained that the current system lacks a coordinated oversight mechanism that both punishes the criminal offender and ensures public safety.⁴⁸ As a solution to this problem, the drafters and supporters of SB 166 suggested creating the California Sentencing Commission “with the responsibility of crafting a plan to restructure the present sentencing system, the authority to analyze future legislative sentencing proposals and report on their impact, and the ongoing duty to monitor the sentencing system for inequities and propose reforms.”⁴⁹ This statement of intent is clearly not specifically political, and simply asserts a need for long term reform and maintenance.

⁴⁷ See text of SB 166 in Appendix C

⁴⁸ See Assembly Bill 166, Jan. 30, 1995, Section 1171, Article 2, Section 1(b)-(c). (<http://www.leginfo.ca.gov/bilinfo.html>) (“The present sentencing system lacks a coordinated oversight mechanism to ensure that these goals are met and that balance and equity are maintained within the system as necessary changes are made...[T]he result is a system that has been modified in a piecemeal fashion over time, leading to complexity and inequities”)

⁴⁹ Assembly Bill 166, Jan. 30, 1995, Section 1171, Article 2, Section 1(d). (<http://www.leginfo.ca.gov/bilinfo.html>)

The bill text then made clear that the sentencing commission should make lowering cost and overcrowding a priority by creating sentences that were truly proportionate to crimes:

*The commission shall be guided by the intent of the Legislature, which is to provide longer sentences for career criminals, habitual offenders, and those convicted of violent crimes, with lesser sentences or alternative sentencing mechanisms for first-time and nonviolent offenders.*⁵⁰

It is also important to note that the above passage included mention of the commission following the intent of the legislature. This type of language could be used to assuage fears of rogue sentencing commissions with **no** political accountability.

Opponents of SB 166 argued that the creation of a sentencing commission was not necessary. They claimed that the judiciary branch was best suited to establish rules to guide trial judges in the exercise of the discretion afforded to them in sentencing under the law.⁵¹ It should therefore be noted in any future proposal that the judiciary branch would be highly represented on the committee. Further, as it currently stands, many of the problematic sentencing laws were passes by legislation and voter-initiated propositions that judges never would have supported. In any event, the Judicial Council themselves supported SB 166. In an effort to avoid this argument in the future, any new proposal should seek early endorsement by judges and judicial groups. This can be done by asking well respected judges to aid in the drafting of the legislation, and by using well known law school faculty to endorse the proposal to the judges through law school “Speaker Series” sessions or through hosting seminars that might prompt judges to get involved.

⁵⁰ *Id* at Section 1(e).

⁵¹ SB 166 Bill Analysis, completed by Martin Gonzalez for the Assembly Committee on Public Safety, July 2, 1996. (www.leginfo.ca.gov)

As a counter-argument to the suggestion that the judiciary should be able to maintain complete control over sentencing, any new proposal could mention that sentencing commissions, as a central group, would be much more responsive to immediate changes that need to be made—for example the issuing of the now infamous Blakely decision. As was reported in State News by the Council of State Governments shortly after that event:

*Immediately after the Blakely opinion was issued, sentencing commissions in several states sprang into action. With dedicated staff and proficiency in evaluating the impact of case law and legislation, sentencing commissions were well-suited to quickly determine the impact of Blakely on states' criminal justice systems. Indeed, states' responses to Blakely may be partially identified by the recommendations put forth by these commissions. States with strong commissions appear to be crafting solutions that maintain their presumptive sentencing structures.*⁵²

Judges are a helpful tool in restructuring California's sentencing framework, and they will be invaluable members of the commission. However it is not their only concern as judges with busy case loads. A sentencing commission, on the other hand, will have no other purpose or competing business beyond the examination of sentencing in California, and therefore can adopt a more thoughtful, long-term plan.

SB 166 was supported by the California Probation, Parole and Correctional Association, the Little Hoover Commission, and the Judicial Council. The bill was opposed by the Office of Criminal Justice and Planning, the Doris Tate Crime Victims Bureau, and the California Correctional Peace Officers Association.⁵³

⁵² Council of State Governments, *Supreme Court decision focuses State attention on sentencing regimes: after Blakely v. Washington, states seek to protect or revise their sentencing structures*. STATE NEWS, June 1, 2005, No. 6, Vol. 48; Pg. 20.

⁵³ *Supra* Note 49.

The structure of the actual commission was very similar the former bills, including 13 members from across a full spectrum of criminal law representation.⁵⁴ The bill provided for three full time employees and projected a cost of \$250,000.⁵⁵ (Please see Appendix C for full text). As the bill died in committee there is no clear explanation or documentation as to why it failed. SB 166 was in committee around the same time AB 2944 was being proposed in the House, so it could be assumed that the senate bill received the same criticisms.

V. Common Components of Successful State Sentencing Commissions & Substantive Recommendations for California

California is not alone in dealing with sentencing complexity, inequality, and inconsistency. Many other state legislatures have responded to these problems by creating sentencing commissions to study and reform the state's entire criminal code. Often commissions are employed to answer the need for a mechanism to balance the sometimes competing goals underlying a well-conceived sentencing structure.⁵⁶ Not all state sentencing commissions have been successful. In New York and South Carolina temporary commissions created binding sentencing structures only to have them rejected by the legislature.⁵⁷ In Maine and Connecticut the commissions decided against adopting sentencing guidelines.⁵⁸ Studying the successes (and failures) of other state sentencing commissions can offer insight into the substantive qualities that a new sentencing

⁵⁴ *Supra* Note 49.

⁵⁵ *Supra* Note 51.

⁵⁶ *Putting Violence Behind Bars: Redefining the Role of California's Prisons*, Little Hoover Commission, Report # 124; January 1994, p. 18. (www.lhc.ca.gov/lhedir/124rp.html)

⁵⁷ *Id.*

⁵⁸ *Id.*

commission must have in order to achieve its goals. Below are descriptions of what many consider to be the most effective state sentencing commissions, as well as explanations of the characteristics that make them so successful.

Minnesota Sentencing Guidelines Commission

The Minnesota Sentencing Guidelines Commission defines itself as an on-going policy making body created by the Minnesota Legislature in 1978. The Commission developed and now maintains a model for rational and consistent sentencing standards for felony offenders.⁵⁹ The guidelines that it created are effective for crimes committed on or after May 1, 1980.⁶⁰ The Commission also collects and analyzes information on actual sentencing practices as compared to the sentences recommended by the guidelines, otherwise known as “sentencing departures.” The Commission, which typically meets monthly, consists of 11 members representing the criminal justice system, the public, and victims.

Minnesota’s commission is an example of a commission that was created with maximum power and insulation from politics in mind.⁶¹ In an effort to create maximum insulation, the Commission was excused from administrative procedure act requirements⁶²; protected from at-will removal of membership by the executive; subject

⁵⁹ Minnesota Sentencing Guidelines Commission Website; Commission History. (<http://www.msgc.state.mn.us/Data%20Reports/background.pdf>)

⁶⁰ *Id.*

⁶¹ Barkow, Racheal E., *Administering Crime* 52 UCLA L. REV. 715, 772 (2005).

⁶² Minnesota limits the applicability of its state administrative procedure act to the Commission’s promulgation of guidelines. Minn. Stat. 244.09(5) (2002) (noting that “sections 14.001 to 14.69 [of the Minnesota Administrative Procedure Act (APA)] do not apply to the promulgation of the sentencing guidelines”). The only requirements from the state APA that apply to the Commission are the procedures for promulgating rules.

to waiting periods before their rules take effect.⁶³ Additionally, the Minnesota commission also proposes new or revised guidelines regularly to the legislature for its **passive** review. This means that if the legislature does not take action on the proposal it will become adopted after a specified period of time. Taken together, the elements of this structure provides for maximum insulation.

Despite being administratively insulated, however, the Minnesota Commission recognized the importance of its relationship to the political branches. Dale Parent, the first director of the Minnesota Sentencing Guidelines Commission, points out that it “viewed guideline development as a political task.”⁶⁴ The Commission’s rather politically astute members realized that the commission would have to satisfy everyone from the interest groups concerned with criminal justice to the media to get their reforms accepted by the legislature.⁶⁵ As Parent puts it: [The] commission ... had to face political realities: the guidelines would be stillborn if a majority of legislators opposed them. The commission simultaneously had to identify and nurture its supporters and convert or neutralize its critics.”⁶⁶ Parent then explains that to do so “it needed to know who the players were and where they stood on various issues. It needed a forum in which it could both receive and convey information”.⁶⁷

Therefore the Minnesota Sentencing Guidelines Commission involved the public and interest groups as much as possible during the process. The commission held

⁶³ *Supra* Note 61 at 773.

⁶⁴ Parent, Dale G., What Did the United States Sentencing Commission Miss?, 101 Yale L.J. 1773, 1775 (1992).

⁶⁵ See Richard S. Frase, Sentencing Reform in Minnesota, Ten Years After: Reflections on Dale G. Parent’s Structuring Criminal Sentences: The Evolution of Minnesota’s Sentencing Guidelines, 75 Minn. L. Rev. 727, 730 (1991); see also Parent, *supra* note 64, (observing that the Minnesota Commission sought to develop interest group participation as a way of gaining support and accommodating potential opponents).

⁶⁶ *Supra* Note 64 at 1776.

⁶⁷ *Id.*

numerous open forums and town hall meetings, specifically solicited participation by interest groups, and made relationships with the media. The Commission director met with legislators to lobby for the guidelines acceptance and support. The Commission began a full scale public relations campaign. It must, at this point, be noted that the potential for these actions to be replicated will depend wholly on the abilities and strengths of the commission members and director. Both Minnesota and Washington were blessed with extremely hard working, politically savvy, and well respected commission members, and this fact was without a doubt hugely instrumental in their success.

According to the Minnesota Sentencing Guidelines Commission website, the Commission modifies the guidelines each year, “in response to legislative changes, case law, problems identified by the monitoring system, and issues raised by various groups.”⁶⁸ The Commission publishes comprehensive annual reports each year which include analysis of sentencing changes, new or changing data trends, and recommendations for how to deal with issues raised in the past year. For example, in the 2006 Minnesota Sentencing Guidelines Commission Report to the Legislature the Commission included a complete analysis of the recent Blakely decision and its implications for Minnesota sentencing. The report offered ways to amend Minnesota sentencing laws and practices in order to be in compliance with Blakely.⁶⁹

⁶⁸ *Supra* Note 59.

⁶⁹ Minnesota Sentencing Guidelines Commission *Report to the Legislature*, Jan. 2006. (<http://www.msgc.state.mn.us/Data%20Reports/LegReportJan06.pdf>)

As stated by the Minnesota Sentencing Guidelines Commission's website, the Commission makes these recommendations with the following goals in mind:

1. To Promote Uniformity in Sentencing:

Offenders who are convicted of similar crimes and who have similar criminal records are to be similarly sentenced.

2. To Promote Proportionality in Sentencing:

The guidelines support a "just deserts" philosophy by recommending to the sentencing judge a proportionally more severe sentence based first, on the severity of the conviction offense and second, on the offender's criminal history.

3. To Provide Truth and Certainty in Sentencing:

The period of time to be served in prison is pronounced by the judge at sentencing and that time is fixed. Those sentenced to prison will serve at least two-thirds of their executed sentences in prison.

4. To Coordinate Sentencing Practices with Correctional Resources:

To assure available resources, the guidelines recommend who should be imprisoned and for how long. The need for prison resources is therefore more predictable and the Legislature can fund accordingly.⁷⁰

The Sentencing guidelines that the commission created, and the commission's subsequent recommendations have truly reflected these goals. For example, the Minnesota Sentencing Guidelines Commission has been successful in reducing the percentage of non-violent offenders in prison while increasing the percentage of violent and habitual offenders in prison by giving judges choice between a significant number of intermediate punishments and alternatives to incarceration. The guidelines exist on a "grid" in which one axis is the crime and the other is the level representing the offender's criminal history. By incarcerating the violent repeat offenders and offering treatment to the non-violent first time offenders (like drug users) Minnesota has managed to work within the bounds of its prison resources. Minnesota's success in revising its sentencing

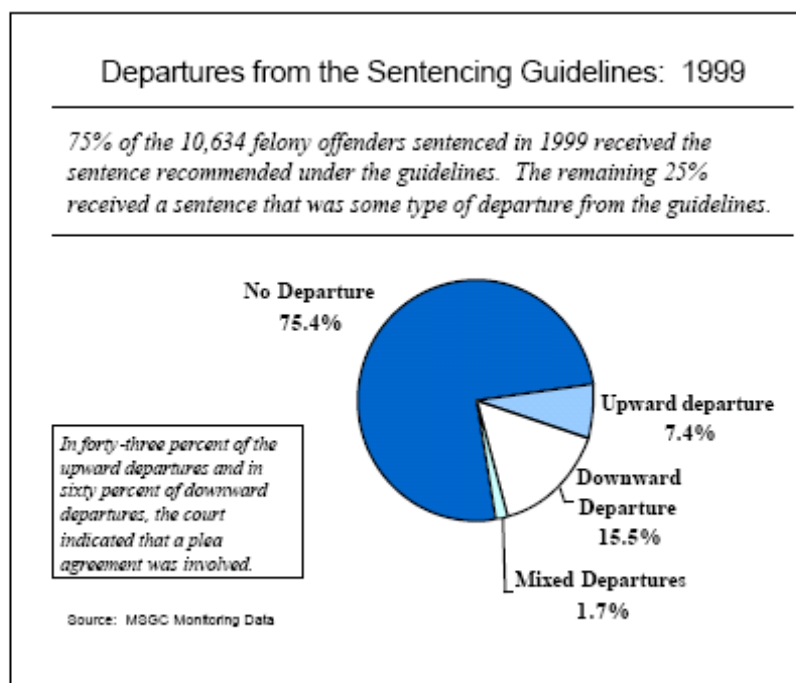
⁷⁰ Minnesota Sentencing Guidelines Commission Website; Commission History. (<http://www.msgc.state.mn.us/Data%20Reports/background.pdf>)

system is well documented. As Dale Parent, the first director of the Minnesota Sentencing Guidelines Commission stated, “guidelines created more uniform and proportional sentences than those of the pre-guidelines era; appellate review fine-tuned and complemented the guidelines; and nonviolent offenders became more likely to receive community sanctions as punishment, thereby averting prison crowding and disruption of court workloads.”⁷¹ In these respects Minnesota’s Sentencing Guidelines Commission has proven to be a sweeping success.

Lastly, the Minnesota Sentencing Guidelines Commission has further achieved its goals by establishing a sentencing scheme with a narrow range of judicial choice. The rate of judicial compliance with the guidelines is high at around 75 %, and the deviations that do exist have generally been to mitigate the sentences downward. In many cases of judicial departure from the guidelines the court indicated that a plea agreement was involved in the situation. (See Table 2 on next page). This compliance is important because it indicates that judges support and respect the guidelines. Further, it is only when the guidelines are actually followed that they become meaningful.

⁷¹ Parent, Dale G., *What did the United States Sentencing Commission Miss?* 101 Yale L.J. 1773, 1774 (1992).

Table 2⁷²



Perhaps most importantly, the Minnesota Sentencing Guidelines Commission has been successful in constructing a large database that monitors all sentenced felons individually. According to a past Executive Director of the Commission, Deb Dailey, the information collected helps to lend the commission impact statements and legislative recommendations a tremendous amount of credibility.⁷³ Further, this data helps in determining which sentence structures are working and what effect legislation has on prison populations. To aid in the compiling of this data, the Minnesota Sentencing

⁷² Minnesota Sentencing Guidelines Commission Publication, *Minnesota Sentencing Guidelines Background Information and Summary Statistics*, May 2001.
(<http://www.msgc.state.mn.us/Data%20Reports/background.pdf>)

⁷³ *Putting Violence Behind Bars: Redefining the Role of California's Prisons*, Little Hoover Commission, Report # 124; January 1994, p. 20. (www.lhc.ca.gov/lhedir/124rp.html)

Guidelines Commission has a staff of six employees and a budget of \$872,000, which comes out of the General Fund appropriations.⁷⁴

Lastly, the Minnesota Sentencing Guidelines Commission holds regular training sessions and publishes training materials to keep criminal law professionals aware of new changes and familiar with the guidelines.

Washington State Sentencing Guidelines Commission

The Washington Sentencing Guidelines Commission derives its authority from the Sentencing Reform Act of 1981, which directs the Commission to evaluate and monitor adult and juvenile sentencing policies and practices, recommend modifications to the Governor and the Legislature and serve as a clearinghouse and information center on adult and juvenile sentencing.⁷⁵ The Commission's mission is to promote accountability and equity in adult and juvenile sentencing, provide accurate and timely information about sentencing, and recommend improvements in the criminal justice system.⁷⁶ The Commission developed a sentencing grid by 1982, and it was adopted by the legislature in 1983. The new sentencing guidelines apply to those who committed crimes on or after July 1, 1984.

The Washington State Sentencing Commission is comprised of twenty voting members and four legislators who serve as non-voting members. Sixteen of the members are appointed by the Governor and serve three year long terms. The commission uses a

⁷⁴ State of Minnesota 2006-2007 Biennial Budget, Jan. 25, 2005 (http://www.budget.state.mn.us/budget/profiles/sentencing_guidelines_profile.pdf)

⁷⁵ Washington State Sentencing Guidelines Commission Homepage, Jan.2006, (<http://www.sgc.wa.gov/>)

⁷⁶ *Id.*

staff of eight to aid in research and data collection and analysis. Much like the Minnesota Commission, the Washington commission states as its goals:

1. Promote respect for the law by providing punishment which is just;
2. Ensure that the punishment imposed on any offender is commensurate with the punishment imposed on others committing similar offenses;
3. Protect the public;
4. Offer the offender an opportunity to improve him or herself;
5. Make frugal use of the state's and local governments' resources; and
6. Reduce the risk of re-offending by offenders in the community.⁷⁷

These goals have notable similarities with the Minnesota goals, most notably a stated desire for proportionate sentences and frugality with state resources.

Unlike Minnesota's commission, however, Washington's commission was not granted as much inherent power or administrative insulation. The Washington Commission makes recommendations to the legislature, but the recommendations never have force of law until acted upon by the legislature. Therefore Washington's Sentencing Commission is less politically insulated; "[w]ithout the power to promulgate legally binding rules on its own, the Commission's power must come from its ability to persuade and override legislative inertia."⁷⁸ Consequently, the Washington Commission has developed a working relationship with the legislature. Four non-voting members of the commission are in fact from the legislature, and the commission has frequent interaction with other politicians in an effort to maintain support for the recommendations. Over time the Washington State Sentencing Guidelines Commission developed a reputation for producing high quality data, projections and cost estimates. The commission's currency

⁷⁷ State of Washington Sentencing Guidelines Commission Homepage, Jan. 2006, (http://www.sgc.wa.gov/Informational/About_SGC.htm)

⁷⁸ *Supra* Note 61 at 778.

is its information collection and analysis, and the legislature often asks the commission to present multiple recommendations with differing budgets for comparison.

The Washington State Sentencing Guidelines Commission has enjoyed a number of different successes over its lifetime. First, it created a sentencing structure under which only 3.5 percent of judges deviate. The Washington sentencing structure uses an individualized analysis of each offender, which includes first looking at the “Offense Seriousness Level” table, then at the “Offender Score” and finally the “Standard Sentence Ranges and Enhancements.” Under this sentencing structure Washington has achieved its goal of confining the violent offenders; the imprison rate of violent offenders increased from 48.8 % in 1982 to 65.1% in 1985, one year after the implementation of its guidelines.⁷⁹ In that vein, Washington has also implemented a number of successful alternatives to imprisonment for qualifying non-violent criminals.

VI. Final Recommendations for a Complete California Sentencing Commission Proposal

The most successful state sentencing commissions employ sentencing structures with a narrow range of judicial choice, and which take into account both the seriousness of the crime and the criminal history of the offender. Further, these sentencing structures consider mitigating and aggravating factors, and provide intermediate sentences for non-violent offenders. These commissions place a high premium on balancing sentencing policy and prison needs. High achieving sentencing commissions create valuable reports and monitoring systems based on detailed data from each year, and are given the funding needed to complete such studies. Lastly, these commissions are given insulation and

⁷⁹ State of Washington Sentencing Guidelines Commission. *A Comprehensive Review and Evaluation of Sentencing Policy in Washington State: 2000-2001*. Olympia, Washington: State of Washington Sentencing Guidelines Commission, 2001.

authority through the initial structure of the commission, but then use mechanisms and members to reach out to the public and government.

California faces an uphill battle in trying to create a sentencing commission, but the rewards would far outweigh the difficulty. Essentially the current prison system is getting far too expensive and that fact will be the point at which differing political groups may begin to collaborate. As David Boerner, past Washington Sentencing Guidelines Commission Chairman stated of Washington: “the fiscal crisis has brought together the folks who think sentences are too long with the folks who are perfectly happy with the sentences but think prison is costing too much.”⁸⁰ To successfully create a sentencing commission, the proposal will have to solicit and receive wide support from judges, community members, scholars and practitioners early on in the process. The commission will have to be well funded, and the members of the board will need to be especially dynamic, innovative, and well connected. The focus of the debate, at this point in time, should be the rising and practically prohibitive cost of the current system. Please see the next page for a useful brief summary of the major recommendations.

⁸⁰ See David Boerner, The Role of the Legislature in Guidelines Sentencing in “The Other Washington,” 28 Wake Forest L. Rev. 381, 388 (1993)

California Prison Reform
Brief Take-Away Points and Recommendations

Establishing a Politically and Substantively Successful Sentencing Commission

Anticipated Benefits

- 1. Information Collection and Monitoring of Prisoners / Results**
 - This benefit is practically certain—common benefit in most state commissions
 - Save money—California already spends money to collect and study crime statistics...this would be outside, consistent group
 - Creates ability to monitor which sentencing changes are working to achieve goals
- 2. A Better Sentencing Structure---**In Minnesota and Washington sentencing commissions created presumptive sentencing guidelines that
 - *Held prison populations within existing correctional capacity*
 - Generated *greater consistency in sentencing*
 - Diverted *many property offenders from prison to provide room for violent offenders*
 - Won support from judges, probation officers, etc.
 - Predictability / simplicity helps with deterrence
 - *Reduced prison crowding:*

Table 1: Incarceration Rates⁸¹

	California	Washington
1980	98 per 100,000	106 per 100,000
1985	181 per 100,000	156 per 100,000
1990	303 per 100,000	152 per 100,000

- 3. Reduce Long Term Costs**
 - By lowering prison population
 - By minimizing the Prison Guards Union's influence and expensive campaigns
 - By keeping information collection "in house"
- 4. Aligns with Rehabilitation Efforts**

⁸¹ Tonry, Michael, *The Politics and Processes of Sentencing Commissions*, Crime & Delinquency, Vol. 37 No. 3, July 1991 p.307-329; U.S. Bureau of Justice Statistics (1990, p.3)

5. Brings Credibility to System, Educates Public and Controls Panic

- Involves public in the process but in a way where they are not controlling debate

6. Insulates Politicians and Allows them to “pass the hot potato” of Crime Legislation to the Commission

- The commission will be relatively politically insulated, and its existence may make the legislature slower to adopt drive-by legislation that is against the recommendation of the commission.

What a Sentencing Commission Needs to Succeed

1. Strong Purpose

- Maine and Connecticut sentencing commissions just decided against sentencing guidelines and disbanded
- Must include that “in developing the sentencing guidelines, the council shall take into consideration...the effective capacity of state and local corrections facilities.”

2. Political Atmosphere of Support

- 3 Sentencing Commissions have created guidelines that were never ratified by legislature. NY—too many politics within the committee, DC—too tough, not politically feasible, SC)
- Willingness to scrap mandatory minimum sentences?
- This can be achieved by getting politicians involved early and keeping them involved

3. Adequate Resources

- To project effects of alternative policy choices on case flows, caseloads, guilty plea rates, and other programming the commission will need funds
- 1996 Commission proposal estimates were around 250,000 a year. This is likely to be insufficient even when adjusted for inflation.
- Minnesota’s Commission budget is around \$800,000 a year

4. Adequate People

- Strong commissions have had very well respected members, including popular politicians, noted experts and consensus builders
- Need to agree, in advance, that for these purposes they are policy makers first, politicians second
- Part-time commission members meddle less in the research
- Excellent staff

5. Consensus Building

- Must be considered “open political process” from the onset

- Use media early and often
- Involve Assembly committees often (increases likelihood of passing of legislation)
- Hold open forum meetings for community and interested parties
- Start the information campaign now

6. Keep the Initial Legislation Creating the Sentencing Commission Neutral

- It is the sentencing commission's job to determine a sentencing system. The legislation cannot be seen as merely a vehicle to return back to indeterminate sentencing.

APPENDIX A
Bill Text AB 43

AMENDED 08/12/94
BILL TEXT

AMENDED IN SENATE AUGUST 12, 1994
AMENDED IN ASSEMBLY APRIL 18, 1994

INTRODUCED BY Assembly Member Polanco

FEBRUARY 3, 1994

An act to add Article 2 (commencing with Section 1171) to Chapter 4.5 of Title 7 of Part 2 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 43, as amended, Polanco. Sentencing: California Sentencing Commission.

Existing law requires the Judicial Council to prescribe rules for sentencing for trial courts in sentencing persons convicted of crimes.

Existing law provides that the penalty for conviction of a felony is usually one of 3 specified terms, the imposition of the highest term requiring aggravating circumstances and the lowest term requiring mitigating circumstances.

This bill would establish the California Sentencing Commission, with specified membership and terms, to devise sentencing guidelines. The commission would be required to submit, on or before January 1, 1996, to the Legislature, a report containing the sentencing guidelines. The commission would be required to monitor the sentencing system, as specified, and make recommendations to the Legislature as needed at least once every 2 years beginning in 1998, regarding proposed changes in sentencing law, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares as follows:

(a) The function of sentencing in this state is to punish each criminal offender appropriately and ensure the safety of the public.

(b) The present sentencing system lacks a coordinated oversight mechanism to ensure that these goals are met and that balance and equity are maintained within the system as necessary changes are made.

(c) The result is a system that has been modified in a piecemeal fashion over time, leading to complexity and

inequities.

(d) The Legislature, therefore, is creating the California Sentencing Commission with the responsibility of crafting a plan to restructure the present sentencing system, the authority to analyze future legislative sentencing proposals and report on their impact, and the ongoing duty to monitor the sentencing system for inequities and propose reforms.

(e) The commission shall be guided by the intent of the Legislature, which is to provide longer sentences for career criminals, habitual offenders, and those convicted of violent crimes, with lesser sentences or alternative sentencing mechanisms for first-time, nonviolent offenders.

SEC. 2. Article 2 (commencing with Section 1171) is added to Chapter 4.5 of Title 7 of Part 2 of the Penal Code, to read:

Article 2. California Sentencing Commission

1171. There is created in state government the California Sentencing Commission. The commission shall consist of {- seven -} {+ eight +} voting members and four ex officio members.

(a) The following four members are ex officio members:

(1) The State Attorney General.

(2) The state public defender.

(3) The Director of the Department of Corrections.

(4) The Chairman of the Board of Prison Terms.

(b) The seven voting members shall be appointed in the following manner:

(1) The Governor shall appoint {- three -} {+ four +} members, the Speaker of the Assembly shall appoint two members, and the Senate Committee on Rules shall appoint two members.

(2) The membership shall include as individuals one prosecuting attorney, one public defender, one chief of police or county sheriff, one person who is a parole {- or -} {+ administrator or chief +} probation officer or who has served in that capacity, one {+ active and one +} retired member of the California Supreme Court or California Court of Appeal, one public member who is active in a prisoners' rights group in California, and one member of the public who is not and has never been an attorney, judge, or law enforcement official.

(3) All members of the commission, except ex officio members, shall serve terms of four years and until their successors are appointed and confirmed. However, initial members shall be appointed to staggered terms as follows:

(A) The term of one member shall expire after one year.

(B) The terms of two members shall expire after two years.

(C) The terms of two members shall expire after three years.

(D) The terms of two members shall expire after four years.

(c) The members of the commission shall be reimbursed for travel and other expenses actually and necessarily incurred by them in the performance of their duties.

1171.1. The commission may appoint an executive director and deputy executive director both of whom shall be exempt from civil service classification. The commission may employ a full-time staff, who shall be civil service employees.

1171.2. (a) The California Sentencing Commission shall develop sentencing guidelines applicable to persons convicted of

felonies punishable by imprisonment in state prisons. The commission shall design the guidelines to control commitment to state and local correctional facilities; the term or range of confinement; and the requirement, duration, conditions, and revocation consequences of parole and probation.

(b) In developing the guidelines, the commission shall take into account the intent language in the bill that enacted this article and the following findings and declarations of the Legislature:

(1) The primary function of sentencing is to punish each criminal offender appropriately and to ensure public safety. Other functions include addressing the needs of victims and their families, fostering responsibility in inmates, and maximizing the benefit derived from correctional resources.

(2) Factors relevant to appropriate sentencing include severity of the offense, criminal history of the offender, aggravating and mitigating circumstances of the offense, performance under probationary supervision, deference, rehabilitation, prevention of recidivism, effective capacity of state and local corrections facilities, and other sentencing sanctions available.

(3) Sentencing guidelines are intended to guide and coordinate, but not diminish, the importance of judicial discretion in sentencing. {- The court may impose a sentence outside the presumptive sentence or sentence range for a specific offense if there are substantial and compelling reasons justifying the deviation, which will be set forth in a written opinion. -}

(4) Efficient use of correctional resources requires use of the most effective criminal sanction possible to achieve the purposes of the sentence which is punishment and the protection of public safety.

1171.3. The commission shall present its sentencing guidelines reform package, in bill form, to the Legislature by January 1, 1996. The Legislature shall have 90 days to conduct hearings and review the package.

1171.4. The commission shall analyze bills that are introduced that would modify, impact, or modify and impact sentencing. The commission shall report to the appropriate legislative committees in a timely manner about the potential effect of the proposed legislation in terms of sentencing equity, prison capacity, costs, and benefits. To accomplish this, the commission shall establish a data base to track crime statistics, sentencing outcomes, and other pertinent information, including experience in other states. As such, the commission shall act as a centralized clearinghouse and information center for the collection, analysis, and dissemination of information on sentencing practices.

1171.5. The commission shall monitor the sentencing system to assess whether the goals described in Section 1171.2 are met and maintained. The review and analysis of the system shall take into account the following:

(a) The nature of the offense with the degree of danger the offense presents to society.

(b) The penalty for the offense as compared to penalties for offenses that are in their nature more serious.

(c) The penalty for the offense as compared to the penalties

for the same offense in other jurisdictions.

(d) The penalty for the offense as compared to recommendations for sentencing suggested by national commissions and other academic bodies.

1171.6. The commission shall make recommendations to the Legislature as needed at least once every two years beginning in 1998 regarding proposed changes in the criminal code, criminal procedures, and any aspects of sentencing that may impede the implementation and effectiveness of the guidelines.

1171.7. Nothing in this article is intended to prevent counties from establishing sentencing commissions similar to the commission created by this article. The county commissions may evaluate local departments of corrections and make recommendations regarding local sentencing practices.

APPENDIX B
Bill Text AB 2944

BILL NUMBER: AB 2944 ENROLLED 08/30/94
BILL TEXT

PASSED THE ASSEMBLY AUGUST 30, 1994
PASSED THE SENATE AUGUST 26, 1994
AMENDED IN SENATE AUGUST 9, 1994
AMENDED IN ASSEMBLY APRIL 26, 1994

INTRODUCED BY Assembly Members Vasconcellos, Lee, Bates,
Bornstein, and Gotch

FEBRUARY 17, 1994

An act to amend Section 1170 of, and to add Article 2
(commencing with Section 1171) to Chapter 4.5 of Title 7 of Part
2 of, the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2944, Vasconcellos. Sentencing: California Sentencing
Commission.

Existing law declares, among other things, that the
elimination of disparity and the provision of uniformity of
sentences can best be achieved by determinate sentences fixed by
statute in proportion to the seriousness of the offense as
determined by the Legislature to be imposed by the court with
specified discretion.

This bill would delete this declaration. The bill would
express different findings and declarations of the Legislature
and would provide that it is the intent of the Legislature that
an integrated system be created for a sentencing model in this
state that can avoid the need for frequent amendments in the
future.

Existing law requires the Judicial Council to prescribe rules
for sentencing for trial courts in sentencing persons convicted
of crimes.

Existing law provides that the penalty for conviction of a
felony is usually one of 3 specified terms, the imposition of
the highest term requiring aggravating circumstances and the
lowest term requiring mitigating circumstances.

This bill would establish the California Sentencing
Commission, with specified membership and terms, to devise
sentencing guidelines. The bill would also create a Judicial
Advisory Committee composed of judges, as specified, to assist
the commission. The commission would be required to submit, on
or before January 1, 1997, to the Legislature, a report
containing the sentencing guidelines. Factors in establishing
the ranges would include prison capacity. The commission would
be required to, among other things, conduct studies concerning
the state prison system's present and future capacity.

This bill would also authorize each county to form a

sentencing commission for the purpose of establishing sentencing guidelines for county jail sentences for misdemeanors.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature in establishing a sentencing commission to attain goals, including, but not limited to, the following:

(a) Providing longer sentences for career criminals, habitual offenders, and those convicted of violent crimes, with lesser sentences or alternative sentencing mechanisms for offenders with few or no previous offenses or for those convicted of nonviolent offenses.

(b) Attempting to establish some correlation between the number of persons sent to prison and the ability of the state to provide adequate, safe housing facilities.

(c) Providing the citizens of California, the judiciary, the criminal justice system, and the Legislature with a method to devise a mutually agreed upon sentencing structure.

(d) Establishing an indeterminate or modified indeterminate sentencing structure based on the seriousness of a crime, and taking into account the offender's record of past criminal convictions.

SEC. 2. Section 1170 of the Penal Code is amended to read:

1170. (a) (1) (A) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances.

(B) The Legislature finds and declares, that after more than a decade of experience with the determinate sentencing model, the determinate sentencing system that became effective in this state in 1977 needs reform which the Legislature has attempted to address each year. In doing so, however, sentencing practices have become exceedingly complex and inconsistent. These frequent amendments to the original provisions of the determinate sentencing system have resulted in confusion and difficulties for victims, witnesses, defendants, judges, and lawyers in the sentencing court and on appeal.

It is the intent of the Legislature that an integrated system be created for a sentencing model in this state that can avoid the need for frequent amendments to the sentencing provisions in the future. The Legislature finds and declares that it is essential to a future court and prison system that the state's sentencing system remain stable and predictable without frequent periodic changes to the procedure and terms imposed.

(2) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison for 16 months, two or three years; two, three, or four years; two, three, or five years; three, four, or five years; two, four, or six years; three, four, or six years; three, five, or seven years; three, six, or eight years; five, seven, or nine years; five, seven, or 11 years, or any other specification of three time periods, the

court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term which it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law which imposes the death penalty, which authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence, including any period of parole under Section 3000, shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the Director of Corrections. However, the sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the Director of Corrections.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports including reports received pursuant to Section 1203.03 and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under Section 667.5, 1170.1, 12022, 12022.4, 12022.5, 12022.6, or 12022.7 or under any other section of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period as provided in Section 3000.

(d) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the

Director of Corrections, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the Director of Corrections or the Board of Prison Terms, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(e) Any sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and any other applicable provisions of law.

(f) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

SEC. 3. Article 2 (commencing with Section 1171) is added to Chapter 4.5 of Title 7 of Part 2 of the Penal Code, to read:

Article 2. California Sentencing Commission

1171. There is hereby established in state government the California Sentencing Commission. The commission shall consist of 16 members, one of whom the Governor shall appoint as chairperson.

(a) The following four members are ex officio members:

- (1) The Attorney General.
- (2) The Director of Corrections.
- (3) The Director of Finance.
- (4) The State Public Defender.

(b) The Governor shall appoint six members as follows:

- (1) One prosecuting attorney.
- (2) One chief of police or sheriff.
- (3) One public member who is not and has not ever been an attorney, judge, or law enforcement officer.
- (4) One person who is serving as an adult parole or probation officer, or who has served in that capacity.
- (5) One retired member of the California Supreme Court or a California Court of Appeal.
- (6) One public member.

(c) The Speaker of the Assembly shall appoint three members as follows:

- (1) One public member who is not and has not ever been an attorney, judge, or law enforcement officer.
- (2) One prosecuting attorney.
- (3) One public member who is currently active in criminology research or academia in California.

(d) The Senate Committee on Rules shall appoint three members as follows:

- (1) One public member who is not and has not ever been an attorney, judge, or law enforcement officer.
- (2) One public defender.
- (3) One faculty member of a law school within this state.

(e) All members of the commission, except ex officio members, shall serve terms of four years and until their successors are appointed and confirmed. However, of the initial members, those

designated in paragraphs (1) and (2) of subdivision (b), paragraph (1) of subdivision (c), and paragraph (1) of subdivision (d) shall be appointed for terms of four years; those designated in paragraphs (3) and (4) of subdivision (b), paragraph (2) of subdivision (c), and paragraph (2) of subdivision (d) shall be appointed for terms of three years; and those designated in paragraphs (4) and (5) of subdivision (b), paragraph (3) of subdivision (c), and paragraph (3) of subdivision (d) shall be appointed for terms of two years.

(f) The members of the commission shall be reimbursed for travel and other expenses actually and necessarily incurred by them in the performance of their duties under this article.

(g) There shall also be a Judicial Advisory Committee, composed of four superior court judges and two appellate court judges to be appointed by the Judicial Council. The advisory committee shall assist the commission in such ways as the commission determines.

1171.1. The commission shall appoint an executive director and a chief of research both of whom shall be exempt from civil service classification. The commission shall employ a full-time staff, who shall be civil service employees. The staff shall be of sufficient size and with sufficient resources to accomplish the duties of the commission.

1171.2. (a) The commission shall devise sentencing guidelines.

(b) The commission shall review the history of determinate and indeterminate sentencing in this state, including constitutional questions that have been considered by the courts, and shall consider an expansion of the use of indeterminate sentencing for violent offenders. The commission shall also review and consider a full indeterminate sentencing scheme, as well as more limited modifications of the existing sentencing, including, but not limited to, matrix guidelines and the sentencing triads proposed in Senate Bill 25 in the 1991-92 Legislative Session, or any combination thereof.

(c) The commission shall use existing minimum terms as a guideline for setting new minimums.

(d) The commission shall devise a system of granting and rescinding sentence credits based upon individual inmate treatment plans.

(e) The commission shall regularly monitor and conduct studies on the prison system's present and future capacity, and make these reports available to the Legislature, the Governor, and the public. The commission shall take prison system capacity into account as one of the factors in devising its sentencing guidelines, and shall accompany any reports or recommendations to the Legislature on sentencing guidelines with figures on the impact they will have on prison population and prison capacity.

(f) The commission shall analyze legislation that would modify sentencing and provide data and recommendations to the Legislature.

1171.3. By January 1, 1997, the commission shall submit to the Legislature a report containing the sentencing guidelines developed pursuant to subdivision (a) of Section 1171.2. In preparing the report, the commission may hold hearings and shall consider the comments of legislators and members of the public.

Every two years the commission may recommend to the Legislature revisions or modifications to the sentencing guidelines. If implementation would result in exceeding the capacity of the correctional facilities, then the commission shall accompany its recommendations with additional revisions and modifications that are consistent with the capacity of the correctional facilities.

1171.4. The sentencing guidelines of the commission shall not apply retrospectively.

1171.5. Each county is authorized to form a sentencing commission for the purpose of establishing sentencing guidelines for county jail sentences for misdemeanors.

APPENDIX C
SB 166 Bill Text

BILL NUMBER: SB 166 AMENDED
BILL TEXT

AMENDED IN SENATE MAY 31, 1995
AMENDED IN SENATE MARCH 30, 1995

INTRODUCED BY Senator Polanco

JANUARY 30, 1995

An act to add Article 2 (commencing with Section 1171) to Chapter 4.5 of Title 7 of Part 2 of the Penal Code, relating to sentencing.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares as follows:

(a) The function of sentencing in this state is to punish each criminal offender appropriately and ensure the safety of the public.

(b) The present sentencing system lacks a coordinated oversight mechanism to ensure that these goals are met and that balance and equity are maintained within the system as necessary changes are made.

(c) The result is a system that has been modified in a piecemeal fashion over time, leading to complexity and inequities.

(d) The Legislature, therefore, is creating the California Sentencing Commission with the responsibility of crafting a plan to restructure the present sentencing system, the authority to analyze future legislative sentencing proposals and report on their impact, and the ongoing duty to monitor the sentencing system for inequities and propose reforms.

(e) The commission shall be guided by the intent of the Legislature, which is to provide longer sentences for career criminals, habitual offenders, and those convicted of violent crimes, with lesser sentences or alternative sentencing mechanisms for first-time and nonviolent offenders.

SEC. 2. Article 2 (commencing with Section 1171) is added to Chapter 4.5 of Title 7 of Part 2 of the Penal Code, to read:

Article 2. California Sentencing Commission

1171. There is created in state government the California Sentencing Commission. The commission shall consist of nine voting members and four ex officio members. The Governor shall appoint one member to serve as chairperson.

(a) The four ex officio members are as follows:

(1) The Attorney General.

(2) The State Public Defender.

(3) The Director of Corrections.

(4) The Chairperson of the Board of Prison Terms.

(b) The nine voting members shall be appointed in the following manner:

(1) The Governor shall appoint five members, the Speaker of the Assembly shall appoint two members, and the Senate Committee on Rules shall appoint two members.

(2) The membership shall include as individuals one prosecuting attorney, one public defender, one chief of police or county sheriff, one person who is a parole administrator or chief probation officer or who has served in that capacity, three active judges, two of whom shall be trial court judges, one public member who is active in a prisoners' rights group in California, and one member of the public who is not and has never been an attorney, judge, or law enforcement official.

(3) All members of the commission, except ex officio members, shall serve terms of four years and until their successors are appointed and confirmed. However, initial members shall be appointed to staggered terms as follows:

(A) The terms of three of the gubernatorial appointees shall expire in one, two, and three years respectively. The terms of the other two gubernatorial appointees shall expire in four years.

(B) The terms of the two appointees of the Speaker of the Assembly shall expire in one and four years respectively.

(C) The terms of the two appointees of the Senate Committee on Rules shall expire in two and three years respectively.

(c) The members of the commission shall be reimbursed for travel and other expenses actually and necessarily incurred by them in the performance of their duties.

1171.1. The commission may appoint an executive director, who shall be exempt from state civil service. The commission may employ a full-time staff, who shall be civil service employees.

1171.2. (a) The California Sentencing Commission shall develop sentencing guidelines applicable to persons convicted of felonies punishable by imprisonment in state prisons. The commission shall design guidelines addressing commitment to state and local correctional facilities, the term or range of confinement, and the requirement, duration, conditions, and revocation consequences of parole and probation.

(b) In developing the guidelines, the commission shall take into account the statements of legislative intent contained in the act that enacted this article and the following findings and declarations of the Legislature:

(1) The primary function of sentencing is to punish each criminal offender appropriately and to ensure public safety. Other functions include addressing the needs of victims and their families, fostering responsibility in inmates, and maximizing the benefit derived from correctional resources.

(2) Factors relevant to appropriate sentencing include severity of the offense, criminal history of the offender, aggravating and mitigating circumstances of the offense, performance under probationary supervision, deference, rehabilitation, prevention of recidivism, effective capacity of state and local corrections facilities, and other sentencing sanctions available.

(3) Sentencing guidelines are intended to guide and coordinate, but not diminish, the importance of judicial discretion in sentencing.

(4) Efficient use of correctional resources requires use of the most effective criminal sanction possible to achieve the purposes of the sentence, which are punishment and the protection of public safety.

1171.3. The commission shall present its sentencing guidelines reform package to the Legislature in bill form by January 1, 1997. The Legislature shall conduct hearings and review the package within 90 days.

1171.4. The commission shall analyze bills that are introduced that would modify, impact, or modify and impact sentencing. The commission shall report to the appropriate legislative committees in a timely manner about the potential effect of the proposed legislation in terms of sentencing equity, prison capacity, costs, and benefits. To accomplish this, the commission shall establish a data base to track crime statistics, sentencing outcomes, and other pertinent information, including experience in other states. The commission shall act as a centralized clearinghouse and information center for the collection, analysis, and dissemination of information on sentencing practices.

1171.5. The commission shall monitor the sentencing system to assess whether the goals described in Section 1171.2 are met and maintained. The review and analysis of the system shall take into account all of the following:

(a) The nature of the offense, including the degree of danger the offense presents to society.

(b) The penalty for the offense as compared to penalties for offenses that are in their nature more serious.

(c) The penalty for the offense as compared to the penalties for the same offense in other jurisdictions.

(d) The penalty for the offense as compared to recommendations for sentencing suggested by national commissions and other academic bodies.

1171.6. The commission shall make recommendations to the Legislature as needed at least once every two years beginning in 1998 regarding proposed changes in the criminal code, criminal procedures, and any aspects of sentencing that may impede the implementation and effectiveness of the guidelines.

1171.7. *The amount expended for purposes of this article shall not exceed one hundred thousand dollars (\$100,000).*

APPENDIX D
Bill Text AB 1036

An act to amend Section 1170 of, and to add Article 2 (commencing with Section 1171) to Chapter 4.5 of Title 7 of Part 2 of, the Penal Code, relating to sentencing.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature in establishing a sentencing commission to attain goals, including, but not limited to, the following:

(a) Providing longer sentences for career criminals, habitual offenders, and those convicted of violent crimes, with lesser sentences or alternative sentencing mechanisms for offenders with few or no previous offenses or for those convicted of nonviolent offenses.

(b) Attempting to establish some correlation between the number of persons sent to prison and the ability of the state to provide adequate, safe housing facilities.

(c) Providing the citizens of California, the judiciary, the criminal justice system, and the Legislature with a method to devise a mutually agreed upon sentencing structure.

(d) Establishing an indeterminate or modified indeterminate sentencing structure based on the seriousness of a crime, and taking into account the offender's record of past criminal convictions.

SEC. 2. Section 1170 of the Penal Code is amended to read:

1170. (a) (1) (A) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances.
~~The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.~~

(B) The Legislature finds and declares, that after more than a decade of experience with the determinate sentencing model, the determinate sentencing system that became effective in this state in 1977 needs reform which the Legislature has attempted to address each year. In doing so, however, sentencing practices have become exceedingly complex and inconsistent. These frequent amendments to the original provisions of the determinate sentencing system have resulted in confusion and difficulties for victims, witnesses, defendants, judges, and lawyers in the sentencing court and on appeal.

It is the intent of the Legislature that an integrated system be created for a sentencing model in this state that can avoid the need for frequent amendments to the sentencing provisions in the future.

The Legislature finds and declares that it is essential to a future court and prison system that the state's sentencing system remain stable and predictable without frequent periodic changes to the procedure and terms imposed.

(2) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison ~~of~~ for 16 months, two or three years; two, three, or four years; two, three, or five years; three, four, or five years; two, four, or six years; three, four, or six years; three, five, or seven years; three, six, or eight years; five, seven, or nine years; five, seven, or 11 years, or any other specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless ~~such~~ the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term which it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law which imposes the death penalty, which authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence, including any period of parole under Section 3000, shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the Director of Corrections. However, ~~any such~~ the sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the Director of Corrections.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports including reports received pursuant to Section 1203.03 and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under Section 667.5, 1170.1, 12022, 12022.4, 12022.5, 12022.6, or 12022.7 or under any other section of law. A term of imprisonment shall not be specified if imposition of sentence

is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period as provided in Section 3000.

(d) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the Director of Corrections, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the Director of Corrections or the Board of Prison Terms, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(e) Any sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and any other applicable provisions of law.

(f) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

SEC. 3. Article 2 (commencing with Section 1171) is added to Chapter 4.5 of Title 7 of Part 2 of the Penal Code, to read:

Article 2. California Sentencing Commission

1171. There is hereby established in state government the California Sentencing Commission. The commission shall consist of 16 members, one of whom the Governor shall appoint as chairperson.

(a) The following four members are ex officio members:

- (1) The Attorney General.
- (2) The Director of Corrections.
- (3) The Director of Finance.
- (4) The State Public Defender.

(b) The Governor shall appoint six members as follows:

- (1) One prosecuting attorney.
- (2) One chief of police or sheriff.
- (3) One public member who is not and has not ever been an attorney, judge, or law enforcement officer.
- (4) One person who is serving as an adult parole or probation officer, or who has served in that capacity.
- (5) One retired member of the California Supreme Court or a California Court of Appeal.
- (6) One public member.

(c) The Speaker of the Assembly shall appoint three members as follows:

- (1) One public member who is not and has not ever been an attorney, judge, or law enforcement officer.
- (2) One prosecuting attorney.
- (3) One public member who is currently active in criminology research or academia in California.

(d) The Senate Committee on Rules shall appoint three members as follows:

(1) One public member who is not and has not ever been an attorney, judge, or law enforcement officer.

(2) One public defender.

(3) One faculty member of a law school within this state.

(e) All members of the commission, except ex officio members, shall serve terms of four years and until their successors are appointed and confirmed. However, of the initial members, those designated in paragraphs (1) and (2) of subdivision (b), paragraph (1) of subdivision (c), and paragraph (1) of subdivision (d) shall be appointed for terms of four years; those designated in paragraphs (3) and (4) of subdivision (b), paragraph (2) of subdivision (c), and paragraph (2) of subdivision (d) shall be appointed for terms of three years; and those designated in paragraphs (4) and (5) of subdivision (b), paragraph (3) of subdivision (c), and paragraph (3) of subdivision (d) shall be appointed for terms of two years.

(f) The members of the commission shall be reimbursed for travel and other expenses actually and necessarily incurred by them in the performance of their duties under this article.

(g) There shall also be a Judicial Advisory Committee, composed of four superior court judges and two appellate court judges to be appointed by the Judicial Council. The advisory committee shall assist the commission in such ways as the commission determines.

1171.1. The commission shall appoint an executive director and a chief of research both of whom shall be exempt from civil service classification. The commission shall employ a full-time staff, who shall be civil service employees. The staff shall be of sufficient size and with sufficient resources to accomplish the duties of the commission.

1171.2. (a) The commission shall devise sentencing guidelines.

(b) The commission shall review the history of determinate and indeterminate sentencing in this state, including constitutional questions that have been considered by the courts, and shall consider an expansion of the use of indeterminate sentencing for violent offenders. The commission shall also review and consider a full indeterminate sentencing scheme, as well as more limited modifications of the existing sentencing, including, but not limited to, matrix guidelines and the sentencing triads proposed in Senate Bill 25 of the 1991-92 Regular Session of the Legislature, or any combination thereof.

(c) The commission shall use existing minimum terms as a guideline for setting new minimums.

(d) The commission shall devise a system of granting and rescinding sentence credits based upon individual inmate treatment plans.

(e) The commission shall regularly monitor and conduct studies on the prison system's present and future capacity, and make these reports available to the Legislature, the Governor, and the public. The commission shall take prison system capacity into account as one of the factors in devising its sentencing guidelines, and shall accompany any reports or recommendations to the Legislature on sentencing guidelines with figures on the impact they will have on prison population and prison capacity.

(f) The commission shall analyze legislation that would modify sentencing and provide data and recommendations to the Legislature.

1171.3. By January 1, 1998, the commission shall submit to the Legislature a report containing the sentencing guidelines developed pursuant to subdivision (a) of Section 1171.2. In preparing the

report, the commission may hold hearings and shall consider the comments of legislators and members of the public. Every two years the commission may recommend to the Legislature revisions or modifications to the sentencing guidelines. If implementation would result in exceeding the capacity of the correctional facilities, then the commission shall accompany its recommendations with additional revisions and modifications that are consistent with the capacity of the correctional facilities.

1171.4. The sentencing guidelines of the commission shall not apply retrospectively.

1171.5. Each county may form a sentencing commission for the purpose of establishing sentencing guidelines for county jail sentences for misdemeanors.

APPENDIX E
SB 670 Bill Text

BILL NUMBER: SB 670 AMENDED
BILL TEXT

AMENDED IN SENATE APRIL 24, 1997

INTRODUCED BY Senator Vasconcellos

FEBRUARY 25, 1997

An act to amend Section 1170 of, and to add *and repeal* Article 2 (commencing with Section 1171) ~~to~~ of Chapter 4.5 of Title 7 of Part 2 of, the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 670, as amended, Vasconcellos. Sentencing: California Sentencing Commission.

(1) Existing law declares, among other things, that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

This bill would repeal this provision, and instead would declare the intent of the Legislature to create an integrated system for a sentencing model in this state that can avoid the need for frequent amendments in the future.

(2) Existing law requires the Judicial Council to prescribe rules for sentencing for trial courts in sentencing persons convicted of crimes.

This bill would , *until July 1, 2000, (a) establish the California Sentencing Commission, with specified membership and terms* , to devise sentencing guidelines ~~—~~ ~~The bill would also~~ ; (b) create a Judicial Advisory Committee composed of judges to assist the commission ; and (c) authorize each county to form a sentencing commission for the purpose of establishing sentencing guidelines for county jail sentences for misdemeanors . The commission would be required to submit to the Legislature on or before January 1, 2000, a final report containing the sentencing guidelines. The commission would be required, among other things, to ~~monitor and conduct studies concerning~~ study the state prison system's present and future capacity.

~~— This bill would also authorize each county to form a sentencing commission for the purpose of establishing sentencing guidelines for county jail sentences for misdemeanors.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1170 of the Penal Code is amended to read:

1170. (a) (1) (A) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances.

(B) The Legislature finds and declares, that after more than a decade of experience with the determinate sentencing model, the determinate sentencing system that became effective in this state in 1977 needs reform which the Legislature has attempted to address each year. In doing so, however, sentencing practices have become exceedingly complex and inconsistent. These frequent amendments to the original provisions of the determinate sentencing system have resulted in confusion and difficulties for victims, witnesses, defendants, judges, and lawyers in the sentencing court and on appeal.

It is the intent of the Legislature that an integrated system be created for a sentencing model in this state that can avoid the need for frequent amendments to the sentencing provisions in the future. The Legislature finds and declares that it is essential to a future court and prison system that the state's sentencing system remain stable and predictable without frequent periodic changes to the procedure and terms imposed.

(2) Subparagraph (A) of paragraph (1) shall not be construed to preclude programs, including educational programs, that are designed to rehabilitate nonviolent, first-time felony offenders. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent, first-time felony offenders consistent with the purpose of imprisonment.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison for 16 months, two or three years; two, three, or four years; two, three, or five years; three, four, or five years; two, four, or six years; three, four, or six years; three, five, or seven years; three, six, or eight years; five, seven, or nine years; five, seven, or 11 years, or any other specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term which it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law which imposes the death penalty, which authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence, including any period of parole under Section 3000, shall be deemed to have been served and the

defendant shall not be actually delivered to the custody of the Director of Corrections. However, that sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the Director of Corrections.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports including reports received pursuant to Section 1203.03 and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under Section 667.5, 1170.1, 12022, 12022.4, 12022.5, 12022.6, or 12022.7 or under any other section of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period as provided in Section 3000.

(d) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the Director of Corrections, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the Director of Corrections or the Board of Prison Terms, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(e) Any sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and any other applicable provisions of law.

(f) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

SEC. 2. Article 2 (commencing with Section 1171) is added to Chapter 4.5 of Title 7 of Part 2 of the Penal Code, to read:

Article 2. California Sentencing Commission

1171. There is hereby established in state government the

California Sentencing Commission. The commission shall consist of 16 members, one of whom the Governor shall appoint as chairperson.

(a) The following four members are ex officio members:

- (1) The Attorney General.
- (2) The Director of Corrections.
- (3) The Director of Finance.
- (4) The State Public Defender.

(b) The Governor shall appoint six members as follows:

- (1) One prosecuting attorney.
- (2) One chief of police or sheriff.
- (3) One public member who is not and has not ever been an attorney, judge, or law enforcement officer.

(4) One person who is serving as an adult parole or probation officer, or who has served in that capacity.

(5) One retired member of the California Supreme Court or a California Court of Appeal.

(6) One public member.

(c) The Speaker of the Assembly shall appoint three members as follows:

(1) One public member who is not and has not ever been an attorney, judge, or law enforcement officer.

(2) One prosecuting attorney.

(3) One public member who is currently active in criminology research or academia in California.

(d) The Senate Committee on Rules shall appoint three members as follows:

(1) One public member who is not and has not ever been an attorney, judge, or law enforcement officer.

(2) One public defender.

(3) One faculty member of a law school within this state.

~~—(e) All members of the commission, except ex officio members, shall serve terms of four years and until their successors are appointed and confirmed. However, of the initial members, those designated in paragraphs (1) and (2) of subdivision (b), paragraph (1) of subdivision (c), and paragraph (1) of subdivision (d) shall be appointed for terms of four years; those designated in paragraphs (3) and (4) of subdivision (b), paragraph (2) of subdivision (c), and paragraph (2) of subdivision (d) shall be appointed for terms of three years; and those designated in paragraphs (4) and (5) of subdivision (b), paragraph (3) of subdivision (c), and paragraph (3) of subdivision (d) shall be appointed for terms of two years.~~

~~—(f)~~

(e) The members of the commission shall be reimbursed for travel and other expenses actually and necessarily incurred by them in the performance of their duties under this article.

~~—(g)~~

(f) There shall also be a Judicial Advisory Committee, composed of four superior court judges and two appellate court judges to be appointed by the Judicial Council. The advisory committee shall assist the commission in those ways as the commission determines.

1171.1. The commission shall appoint an executive director and a chief of research both of whom shall be exempt from civil service classification. The commission shall employ a full-time staff, who shall be civil service employees. The staff shall be of sufficient size and with sufficient resources to accomplish the duties of the

commission.

1171.2. (a) The commission shall devise sentencing guidelines.

(b) The commission shall review the history of determinate and indeterminate sentencing in this state, including constitutional questions that have been considered by the courts ~~—, and shall consider an expansion of the use of indeterminate sentencing for violent offenders—~~. The commission shall ~~also~~ review and consider a full indeterminate sentencing scheme, as well as more limited modifications of the existing sentencing, including, but not limited to, matrix guidelines and the sentencing triads proposed in Senate Bill 25 in the 1991-92 Legislative Session, or any combination thereof.

(c) The commission shall use existing minimum terms as a guideline for setting new minimums.

(d) The commission shall devise a system of granting and rescinding sentence credits based upon individual inmate treatment plans.

(e) The commission shall ~~regularly monitor and conduct studies on—~~ study the prison system's present and future capacity, and make ~~these—~~ its reports available to the Legislature, the Governor, and the public. The commission shall take prison system capacity into account as one of the factors in devising its sentencing guidelines, and shall accompany any reports or recommendations to the Legislature on sentencing guidelines with figures on the impact they will have on prison population and prison capacity.

(f) The commission shall analyze legislation that would modify sentencing and provide data and recommendations to the Legislature.

1171.3. By January 1, 2000, the commission shall submit to the Legislature a *final* report containing the sentencing guidelines developed pursuant to subdivision (a) of Section 1171.2. In preparing the report, the commission may hold hearings and shall consider the comments of legislators and members of the public.

~~—Every two years the commission may recommend to the Legislature revisions or modifications to the sentencing guidelines. If implementation would result in exceeding the capacity of the correctional facilities, then the commission shall accompany its recommendations with additional revisions and modifications that are consistent with the capacity of the correctional facilities.~~

~~—1171.4. The sentencing guidelines of the commission shall not apply retrospectively.~~

~~—1171.5.~~

1171.4. Each county may form a sentencing commission for the purpose of establishing sentencing guidelines for county jail sentences for misdemeanors.

1171.5. *This article shall remain in effect only until July 1, 2000, and as of that date is repealed.*

APPENDIX F
The SB 56 Governor's Veto Message
From the Journal of the Senate 1983-84 Vol. 8 p. 14332

APPENDIX G
The SB 25 Governor's Veto Message
From the Journal of the Senate 1991-92 Vol. 4 p. 8310

APPENDIX H
The AB 2944 Governor's Veto Message
From the Journal of the Assembly 1994-1995 p. 9431

