

Sentencing Guidelines Commissions:
How Does A Commission Function And
Would Such A Commission Work In California?

Conference Summary
March 21, 1983
State Capitol
Prepared For
Senator Robert Presley

By
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Criminal Justice Analyst

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SENTENCING GUIDELINES COMMISSIONS: HOW THEY FUNCTION:
WOULD SUCH A COMMISSION WORK IN CALIFORNIA

Summary of Seminar Held on March 21, 1983
Governor's Council Room, State Capitol, Sacramento, California

Sponsored by
Senator Robert Presley,
the National Council on Crime and Delinquency and
the National Institute of Corrections

I. INTRODUCTION

SENATOR ROBERT PRESLEY, AUTHOR OF SENATE BILL 56

The major goals of SB 56, a two-year bill to establish a sentencing commission in California, are to fine-tune the incarceration system by:

- providing uniformity in sentencing practices;
- placing greater emphasis on serious and career offenders, and less emphasis on less serious offenders; and
- to the extent possible, establish sentencing guidelines consistent with prison capacity.

The bill indirectly addresses overcrowding by linking sentencing reforms to prison capacity. It offers a feasible structure for determinate sentencing. SB 56 also represents a form of selective incapacitation (i.e., incarceration of the most serious, violent offenders).

At least three other states have established sentencing commissions (Minnesota, Washington and Pennsylvania), and Florida currently is considering this option.

This seminar is intended to provide a forum for discussion with leading authorities from two of these states, Minnesota and Washington, and from several prominent research organizations. The National Council on Crime and Delinquency (NCCD) helped obtain funding to cover the financial costs of the speakers.

BARRY KRISBERG, NATIONAL COUNCIL ON CRIME AND DELINQUENCY

Last year, NCCD sponsored a summit seminar on prison overcrowding. At that time, there was general consensus regarding two possible solutions to prison overcrowding: an emergency powers act (a short-term solution), and a sentencing commission (a long-term solution). Senator Presley pursued these options with Senate Bills 50 and 56 respectively.

ROBIN DEZEMBER, UNDERSECRETARY OF YOUTH AND ADULT CORRECTIONAL AGENCY. "California Prison System's Crisis: Capacity and Overcrowding as they Relate to Sentencing."

Prison Population: Trends and Projections

As of March 18, 1983, California prisons were at 135% of capacity. Admission rates are expected to taper off during 1983 and 1984, but longer sentences will cause the population to continue rising. The current population projections, however, do not incorporate the new work incentive program which reduces a sentence by one day for each day of work performed by the inmate.

California prisons housed less than 20,000 inmates in July 1977 when the determinate sentencing laws became operative, compared with over 34,000 on March 11, 1983. This 71% increase in population is expected to be duplicated in the next 5 years.

Causes of Prison Overcrowding in California

According to analyses by the Board of Prison Terms, the soaring prison population is related to both the discretion of sentencing judges and the lack of discretion thereof, due to mandatory sentencing laws imposed by the Legislature.

The two factors determining prison population are the intake rates and the average length of stay (ALOS). Prison intake has increased since 1975, with the most marked rise occurring since 1977 (e.g., 1979 = 9,000; 1980 = 10,600; 1981 = 13,000; 1982 = 15,000). The increased number of admissions has been a primary cause of overcrowding.

At the same time, the ALOS has remained relatively stable. Prior to determinate sentencing, the ALOS was 28 to 30 months. This dropped to approximately 22 to 24 months when determinate sentencing was implemented in 1977. Last year, the ALOS rose to 30 months as a result of sentencing laws passed by the Legislature. For example, the average sentence for first degree burglary rose from 43 to 52 months due to SB 709.

While in the past the major drive behind overcrowding was increased admissions, the long, mandated sentences which typify recent legislative action will be a key factor in future population pressures.

An increased number of life sentences also has contributed to population pressures. The annual number of admissions carrying a life sentence rose dramatically, from approximately 100 in 1976 to over 600 in 1982. Prisons now house more than 3,000 life-term inmates. The California initiative which mandated a life sentence for second degree murder contributed to the increase.

Based on these trends and projections, California's aggressive prison construction program will not completely solve the overcrowding faced by Department of Corrections (CDC).

JOHN VAN DE KAMP, CALIFORNIA ATTORNEY GENERAL. "Legal Problems Facing California's Prisons: Possibilities of Court-Ordered Releases."

Background

Courts have declared prison conditions unconstitutional in 24 states, based on 8th and 14th Amendment protections. In some instances, the decision applied to individual prisons, while in others the entire prison system was declared unconstitutional. The courts have called in special masters to remedy the problems in many states.

The U.S. Supreme Court has handed down few decisions regarding prison conditions. In one benchmark case (Rhodes vs. Chapman), double celling was found to be constitutional in a particular Ohio prison. The majority opinion stated that double celling in and of itself, without other serious deficiencies, is not unconstitutional.

Although California's prison conditions have not been found to be unconstitutional, there is a very real threat of court intervention. The Attorney General's office is currently involved in over 200 prison civil rights cases. The cases address various areas of prison policy, including minimum space requirements, use of double celling and sanitation practices.

Types and Outcomes of Prison Litigation

It is difficult to predict the outcome of prison litigation regarding cruel and unusual punishment, since there are few benchmarks to apply. Outcomes often depend upon the particular judge and court (e.g., does the judge ascribe to a rehabilitative or a justice model of incarceration?) This may be a major influence in a court decision.

An article in the USC Law Review ("Preachers, Persons and Prisons," Spring 1982) describes two types of prison litigation. The first is litigation based on objective standards such as minimum space requirements, sanitation practices, use of force and work assignments. Attorney General Van de Kamp equates (with tongue-in-cheek) these standards to California's cruelty to animal statutes (i.e., the "zoo standard" of litigation).

The second type of prison litigation addresses overcrowding in terms of the totality of the prison situation (i.e., do overcrowded conditions prevent inmate degeneration and/or provide an

opportunity for rehabilitation?) Here, the emphasis is on factors such as the psychological atmosphere of the prison, the nature and availability of jobs, educational opportunities and the amount of forced idleness.

Conclusions

California should not allow prison conditions to deteriorate to such an extent that court intervention is warranted. The Legislature should tie sentencing policies to prison capacity and provide adequate construction resources, rather than pursuing a highly inappropriate law and order stance. Furthermore, the Legislature must bear in mind two inescapable facts:

- The overwhelming majority of inmates ultimately are released from prison. This year, between 10,000 and 15,000 inmates will return to the community.
- Conditions in our prisons are a visible reflection of overall societal attitudes.

BRIAN TAUGHER, SENTENCING SPECIALIST. "California's Sentencing Structure: Origin and Problems. How Would It Fit with a Sentencing Commission?"

Indeterminate Sentencing

Although California adopted a determinate sentencing policy in 1976, indeterminate sentencing is still the norm in many states. Indeterminacy has endured for several reasons:

- It is associated with the rehabilitative ideal of criminal reform, placing greater emphasis on the offender than on the offense.
- It avoids placing accountability for sentencing on any given individual (e.g., judges can disclaim responsibility since the sentence they impose may not be served in its entirety; parole boards that actually make release decisions are relatively anonymous, not visible to the public).

Prior to determinate sentencing in California, the release decision was basically an administrative decision made by the Parole Board. The Board had extensive discretion in making this decision, since most sentences were broadly defined, ranging from a few months to life. Under this system, the Legislature was able to change sentences at whim, since these changes had little impact on the actual amount of time served by an inmate.

Determinate Sentencing

Several factors led to the adoption of determinate sentencing by California in 1977. First, a growing number of research studies disclaimed the rehabilitative effectiveness of prison. Second, there was concern that indeterminate sentencing contributed to prison violence because of potentially long sentences. Finally, the rising crime rate demanded some form of legislative action.

Determinate sentencing is based on the premise that punishment should be certain and should be proportionate to the crime rather than the criminal. Under this system, serious offenders receive the longest sentences. Good time credit is assessed on a standardized basis.

Problems Associated with Determinate Sentencing

There is still strong support for the sentence proportionality associated with determinate sentencing. However, there are at least five problems with the existing sentencing system:

- The Legislature establishes sentences on a piecemeal, ad hoc basis, typically in response to public outcry over a particular incident. There is no systematic method for comparing the seriousness of different offenses or establishing relative sentence lengths.
- The definitions of crimes and enhancement categories are too broad, forcing judges to apply similar sentences to dissimilar incidents.
- There is no proportional relationship between sentence length and enhancement time (e.g., a one-year enhancement based on aggravating circumstances would be applied equally whether the sentence is one year or ten years).
- Determinate sentencing does not provide judges with guidelines regarding who should go to prison and who should go to jail (i.e., the "in/out decision"). Similar offenders may receive different sentences.
- Sentencing legislation does not consider prison capacity.

Advantages of a Sentencing Commission

A sentencing commission could address these problems by establishing objective methods of determining offense seriousness; recommending refinements in definitions of offense and enhancement categories; setting objective standards for in/out decisions; and making the Legislature aware of the costs of sentencing policies and the potential trade-off between long periods of incarceration for serious crimes and shorter or alternative sentences for less serious crimes.

California is well on its way to a major capital outlay program in corrections, which will have a significant impact on the state's fiscal situation. It is only logical that the direction of this program be guided by a commission such as that established by SB 56.

AUDIENCE QUESTIONS TO SPEAKERS

Question: What can the state do to satisfy potential demands of the courts?

(Van de Kamp) Begin to reduce use of double celling. Address problems that are particularly acute in protective custody areas. Maintain a high standard of common amenities (e.g., food, shelter, clothing, sanitation).

Question: What is the definition of capacity?

(Dezember) Figures quoted earlier reflect the original design capacity of the facilities, as well as the overcrowding policy.

Question: What are the demographic projections?

(Taughner) Nationally, the 15- to 25-year-old male population, referred to as the "incarceration prone" age group, is shrinking. However, Department of Finance projects that the high rate of immigration to California will cause the 15- to 25-year-old group to remain at high levels.

II. PANEL DISCUSSION

A. Minnesota Representatives

KAY KNAPP, DIRECTOR OF MINNESOTA GUIDELINES COMMISSION

Background

In 1978, the Minnesota Legislature created a Sentencing Guidelines Commission. The commission was mandated to promulgate sentencing guidelines for the district courts, specifying when prison is appropriate and how long sentences should be. These decisions were to be based on reasonable offense and offender characteristics, and were to take current practices and prison capacity into substantial consideration.

The background of Minnesota's sentencing commission was similar to that of California's determinate sentencing law. There was concern about sentencing disparities, the leniency of certain sentences and the questionable rehabilitative effectiveness of prisons.

After several unsuccessful attempts to pass determinate sentencing laws in Minnesota, the Legislature transferred responsibility for sentencing policy to the Sentencing Guidelines Commission. Although the Legislature did abolish the parole board, it left many of the important policy decisions to the commission.

Goals and Philosophy of the Sentencing Commission

The commission established several important goals:

- to improve uniformity and proportionality in sentencing;
- to enhance "truth in sentencing" (i.e., offender should actually serve the sentence given by the judge);
- to improve accountability in sentencing; and
- to specify punishment as the primary goal of incarceration.

The commission also emphasized that sentencing policy must be coordinated with correctional resources. Since the Legislature establishes the number of beds available through its budget process, the commission felt that its sentencing policies should maintain population within this capacity. Although the state was not unanimously in favor of allowing prison capacity to influence sentencing policies, the commission devoted extensive time to educating the media, public and criminal justice personnel. This helped to gain support for the concept.

Results of the Sentencing Commission

After the first year of operation, the sentencing guidelines appeared to be operating quite effectively. Compared with previous years, the prison population consisted of a larger portion of serious offenders and a smaller portion of lesser offenders, and sentencing practices were more uniform. Furthermore, the prison population remained below capacity.

The results from the second year were less encouraging. The state found it more difficult to stay within the prison capacity. This apparently resulted from a change in sentencing law (mandating longer prison terms for offenses involving a firearm) and changes in prosecutorial charging of property offenders. Prior to the sentencing guidelines, prosecutors typically dropped some of the property charges against an offender if the single charge carried the same sentence as multiple charges. Prosecutors now tend to prosecute offenders on all charges in order to increase the number of criminal history points, and thus increase the likelihood of a prison sentence for future offenses.

In spite of the less encouraging second-year evaluation results, Minnesota can avoid overcrowding if the commission is able to modify sentencing policies by reemphasizing imprisonment for offenses against persons and nonimprisonment for property

offenders. This highlights a key advantage of the sentencing commission: it serves as a centralized means of foreseeing population problems and has the authority to modify sentencing practices before major problems occur.

There is a key difference between Minnesota's sentencing commission and California's proposed commission. The SB 56 proposal places greater emphasis on current sentencing practices as the basis of the guidelines. The representatives from both Minnesota and Washington criticized this method of designing guidelines, since current sentencing practices are at the heart of California's overcrowding problem.

DOUGLAS AMDAHL, CHIEF JUSTICE OF THE MINNESOTA SUPREME COURT.
MEMBER OF THE MINNESOTA SENTENCING GUIDELINES COMMISSION.

Development Process

Public hearings were an important feature of Minnesota's process of developing guidelines. During the preliminary stages, commission members travelled throughout the state soliciting suggestions and educating the public, media and justice system personnel. Based on these suggestions, initial guidelines were drafted. Commission members again held public hearings to obtain recommendations for modifying the initial draft. As a result of this process, nearly every group in the state felt they "owned" the final product developed by the commission.

Results

There were, however, unanticipated consequences of the sentencing guidelines:

- Prior to the guidelines, appellate review of sentences only occurred if the sentence was thought to be "illegal". Because sentencing was indeterminate, virtually no sentences were appealed. As part of the guidelines, the standard for review was modified to include sentences that were considered "inappropriate". This greatly expanded the occurrences of appellate review.
- The commission was required to make many policy decisions. One of the most important involved departures from the guidelines. Although judges have the authority to depart from the guidelines, it was difficult to determine how much variance would be allowed, and what should be done if judges exceeded the allowable variance.
- Judges were against the loss of discretion imposed by the guidelines. To mitigate negative feelings, the Supreme Court determined that it would not "reverse" decisions, but

would instead "affirm as modified". Although a seemingly minor point, this highlights the importance of being sensitive to the needs of all parties affected by the guidelines.

- In certain situations, convicted offenders would rather be committed to prison than to jail. If given a one-year sentence, an offender can expect to spend only eight months in prison with four months off for good behavior. If the same offender receives a one-year jail sentence, he or she will spend a full year in jail and additional time on probation. Since probationary incarceration is not credited toward a prison sentence, an offense committed while on probation may result in a revocation and sentence to prison.
- The guidelines were premised on the assumption that property offenders generally would not receive a prison sentence. Because of the changes in prosecutorial charging practices mentioned earlier, an unanticipated number of property offenders are going to prison.
- The guidelines resulted in a substantial reduction in presumptive prison sentences for property offenders. Property offenders who were sentenced to prison prior to the guidelines often requested resentencing, placing a severe burden on the re-hearing judges.

Minnesota had hoped to reduce sentencing disparities between counties and between judges, as well as between sentences given to different racial groups. Although this has been partially accomplished, some geographical differences persist.

There was an eight- to nine-month delay before Minnesota experienced the full impact of its sentencing guidelines, since judges did not immediately give the longer sentences mandated for serious offenders. During these early months, Minnesota's prison population dropped so dramatically that inmates from Wisconsin were accepted on a cost-per-day basis.

AUDIENCE QUESTIONS OF MINNESOTA SPEAKERS

Question: What is the imprisonment rate for convicted felony offenders?

Approximately 19% prior to the sentencing guidelines, 15% during the first year of operation, and 18% currently. The latter figure reflects the increased commitments among property offenders.

By way of comparison, the California Judicial Council reports that approximately 35% of all felony convictions in California result in a prison commitment. Although more recent figures are

unavailable, this figure undoubtedly has risen since the passage of the mandatory sentencing law related to burglary.

Question: What is the average length of stay in prison?

Although the ALOS was unstable in the past, it did increase throughout the 1970's. When the guidelines were implemented, the ALOS was approximately two years. Since that time, it has risen due to the larger portion of serious offenders among the prison population. The new mandatory weapon laws also contribute to a longer ALOS.

Question: What financial help was given to the counties?

No financial assistance was given to counties for probation or jail services. (Probation in many of the smaller counties is administered by the state.) There has been little impact on jail populations.

Question: What should California's sentencing guidelines be based on, if not existing practices?

The commission should rank the relative seriousness of discrete offense categories, and base sentence lengths on those rankings.

Question: Are there problems inherent in a large prison population, as in California?

No. Structurally, the sentencing guidelines are the same regardless of the size of the prison population.

Question: What is the membership of the commission and how effective is the interplay between judicial and nonjudicial members?

The membership consists of: 2 district court judges, president of the district attorneys' association, 1 public defender, 2 public members, and the commissioner of the corrections department. There is very good coordination between judicial and nonjudicial members.

Rapport with the media is also very good. The commission actively coordinates with presidents of the local editorial boards.

Question: Have crime rates changed?

Crime rates have dropped since the guidelines were implemented. This probably is not associated with the guidelines, since a similar trend is occurring throughout the nation.

B. Washington Representatives

DICK HEMSTAD, SENATOR, WASHINGTON STATE. PRINCIPAL ADVOCATE IN THE WASHINGTON STATE SENATE FOR WASHINGTON GUIDELINES COMMISSION LEGISLATION, AND CURRENT MEMBER OF THE COMMISSION.

Background

The Washington Legislature approved a sentencing guidelines commission in 1981. During the current legislative session, it is anticipated that the Legislature will approve the guidelines developed by the commission. The primary concern among commission members is that some legislators may attempt to include "rifleshot" amendments for specific crimes. The commission will defend against this by pointing out the ripple effect through the entire guidelines that could result from changes of any consequence. Once the guidelines are approved, the commission will begin the process of training justice system personnel.

The impetus for the sentencing commission was similar to that in Minnesota. During the mid-1970's, there was growing skepticism regarding the indeterminate sentencing system. Experts and laymen increasingly questioned the ability to measure the effectiveness of the rehabilitation goal of indeterminate sentencing, the unfairness of treating similar offenses differently, and the usefulness of parole. Several unsuccessful efforts to introduce determinate sentencing legislation also helped provide the impetus for the sentencing commission.

The state faces a growing prison population, currently at 130% of capacity, and is under court order to reduce overcrowding. The prison population is 6,500 and will grow to 9,300 in ten years if current rates continue. This growing prison population raises serious fiscal questions.

Opponents and Proponents of the Sentencing Guidelines

Various aspects of the sentencing guidelines proposed by the commission appealed to different groups. Those who were "tough on crime" emphasized the equity and certainty of punishment. Public defenders saw sentencing guidelines as more equitable than the existing system, and prosecutors were attracted to the punishment model inherent in the guidelines.

For the most part, groups that were potentially opposed to the guidelines were not effective lobbyists (judges, corrections department, probation and parole). The judges were highly skeptical about their perceived loss of power, even though they now have greater authority to control sentence length since the parole board was abolished.

The principal spokesman for the sentencing commission legislation was the prosecutor from the state's largest county. This adds credibility to the commission. It is important that law enforcement, prosecutors, the judiciary and defenders all have an active role in the commission.

Membership of the Commission

The membership of the Washington Commission consists of: 4 judges, 2 prosecutors, 2 public defenders, 3 representatives from state agencies, 1 law enforcement person, 3 citizens, and 4 nonvoting legislators. The legislative members provide close contact with other legislators and help to authenticate the work of the commission.

Members were appointed by the governor, based on recommendations from professional associations throughout the state. It was important to include potential opponents among the membership; many of these opponents ultimately changed their attitudes about the commission.

Tasks Addressed by the Commission

The Washington Commission, as required and structured by the enabling legislation, addressed numerous concerns, both directly and indirectly related to sentencing guidelines. These included:

- appeals from sentencing decisions by both prosecutors and defendants;
- prosecutorial standards and plea bargaining;
- the direct involvement of victims in the sentencing process;
- a policy of confinement for violent offenders and community-based alternatives to confinement for nonviolent offenders;
- an escape valve, giving the commission emergency release powers if prison overcapacity problems arise; and
- a coherent, integrated system for sentencing policies.

The work product of the commission (i.e., sentencing guidelines) requires legislative approval. Not only does this provide reassurance to the legislators, but it also places a certain degree of responsibility on the Legislature. This is different than Minnesota, where the guidelines are implemented unless the Legislature takes action.

Recommendations for California

In order to gain support for a sentencing commission in California, supporters should make a major effort to educate newspaper and radio editorial boards, legislative leaders, members of the governor's office and judges. It is important

to pursue an active educating agenda, emphasizing that the guidelines will be "tough and fair". Supporters also must emphasize that prison beds are a scarce resource and that the capital and operational costs of prisons are high.

DONNA SCHRAM. CHAIR OF THE WASHINGTON SENTENCING GUIDELINES COMMISSION.

(As chair of the commission, Ms. Schram is responsible for the administrative function of overseeing its daily activities.)

There are only a few differences between the Washington Sentencing Guidelines Commission and the SB 56 proposal. Several of California's appointments would be made by the Legislature, while all of Washington's appointments are made by the governor. Also, the Washington Commission includes four nonvoting legislators. Their involvement vastly facilitates the legislative adoption process.

Initial Problems

Washington faced several administrative problems that California also may face. First, the commission is a small, independent state agency staffed by volunteer members. Administrative functions such as typing and staffing required extensive effort, especially during the early stages of the commission.

Second, the law required that the commission develop bylaws immediately and that proxy votes not be allowed. Although both of these requirements are essential, they necessitated intensive time involvement of all commissioners. Original estimates of the amount of time required of the commissioners were far too low.

Guidelines Development Process

Ms. Schram emphasized the importance of holding extensive public hearings and working with diverse organizations (prisoner groups, pharmacists, religious groups, American Civil Liberties Union, prosecutors, MADD and other victim groups, county commissioners, treatment community, county and state correctional facilities). In Washington, two of the public hearings were held in prisons, providing a balance to the "victims" stance. The public hearing process also allowed the commission time to educate media representatives and gain their support.

Issues Addressed by the Commission

As in Minnesota, Washington's Commission addressed a variety of issues, including: offense seriousness scaling, point system for past criminal offenses, prosecutorial standards, policies on consecutive and concurrent sentences, policies on variation from

guideline standards, review of existing criminal codes (particularly sections related to sexual psychopaths, drug and alcohol programs), coerced treatment versus punishment, and prison capacity.

The commission found it difficult to project the impact of proposed guidelines, not knowing precisely how the guidelines would be implemented. One of its primary concerns was the impact on jail population. For this reason, the commission set aside 20% of the jail capacity for housing convicted felons. Apparently, there is still opposition among local government officials who fear jail populations will expand. The Washington representatives did not expect probation caseloads to increase as a result of the sentencing guidelines.

According to the Washington enabling legislation, the commission was required to develop standards that maintained the prison population within capacity. If the first draft of the standards did not accomplish this, a second draft was required. Although the commission developed their initial guidelines on an ideal basis without considering prison capacity, it is projected that these ideal sentencing practices will maintain prison population below capacity. The commission, therefore, did not have to make a trade-off between ideal and practical sentencing policies.

Under current law, the Parole Board has the authority to make inmate release decisions. This authority is being cautiously transferred to the commission. The commission also will abolish parole as it currently operates. It will be replaced by a system of voluntary community supervision, without the traditional surveillance functions.

ROGER STEINER. DIRECTOR OF ARTHUR D. LITTLE'S MAY 1980 STUDY FOR JOINT RULES ON STATE'S SENTENCING STRUCTURE AND FEASIBILITY OF A CALIFORNIA GUIDELINES COMMISSION.

Background

Arthur D. Little, Inc., was contracted by the Joint Rules Committee of the Legislature to study California's initial experience with the determinate sentencing law and to assess the feasibility of a sentencing commission. The findings of the study are included in a report entitled, "Determinate and Indeterminate Sentence Law Comparisons Study: Feasibility of Adapting Law to a Sentencing Commission-Guidelines Approach." Mr. Steiner's presentation addressed the major findings of this study.

In September 1974, the Senate began assessing the merits of indeterminate sentencing policy. It was not until September 1976 that determinate sentencing legislation was passed. It is apparent, then, that a certain amount of lead time is required

before a new sentencing policy can be implemented. This necessity for lead time also applies to the sentencing commission and guidelines concepts.

National Sentencing Study

Arthur D. Little's national study on sentencing found that practices vary substantially throughout the country and that there is a tendency toward imposing longer sentences for certain offenses. The study identified four basic models of sentencing:

- deterrence;
- just desserts/retribution;
- incapacitation/public protection; and
- rehabilitation.

The sentencing policies of a state depend upon which model or models are emphasized. While the retribution model is gaining popularity, the other models still influence policy. In many instances, sentencing is not clearly derived from one model, but rather from a mix of the different models.

It was found that the terms "commission" and "guidelines" often were used interchangeably, although the definition of each is quite different. A sentencing commission is the body responsible for developing sentencing reform, while sentencing guidelines are the vehicle for implementing reform.

Sentencing Commission-Guidelines Approach

As part of the national study, Arthur D. Little examined the results of sentencing commissions and guidelines. Four states were identified in which significant development had taken place regarding these issues. The four states were Minnesota, Pennsylvania, Massachusetts and New Jersey. Case studies were prepared to analyze the experience of these states.

Based on a literature review, the Arthur D. Little study concluded that there is considerable support for the concept of a commission which would address the question of sentencing guidelines. Such a commission would be an appropriate vehicle for developing guidelines, since it is able to monitor sentencing practices and develop feedback mechanisms; it is a nonpolitical body; and it is able to take an overall approach to the criminal justice system.

A sentencing commission would help California address several problems associated with the current determinate sentencing structure.

- Prison overcrowding. It is important that the state have a mechanism to constantly monitor prison capacity and fiscal resources. A commission could examine this issue in a systematic fashion and on a continual basis.
- Ad hoc legislative input. The formulation of sentencing legislation has become an ad hoc process characterized by incremental adjustments and modifications. This may result in inconsistent and cumbersome decisions which are not part of an overall sentencing policy.
- Inadequate attention to cost implications. There has not been adequate attention to the fiscal implications of sentencing policies. Sentencing legislation has been developed and passed in California without legislators always having the benefit of full cost information.
- Lack of monitoring. There is a need to monitor the impact of sentencing policies on criminal justice agencies and on the community. California needs an ongoing monitoring activity for the express purpose of studying the results of sentencing law.

Recommendations

A sentencing commission is recommended as a means of addressing these issues and developing a clear policy on sentencing. The Arthur D. Little study further recommends that the commission be nonpartisan and independent of political pressures; that the commission seriously consider developing sentencing guidelines; and that the efforts of other states be considered when developing guidelines.

It is important that the legislation specify the roles of the judiciary in implementing the guidelines and the Legislature in reviewing the commission's recommendations. The enabling legislation for a sentencing commission must also include a description of the composition, powers and duties of the commission; the role of the commission as a clearinghouse for information about sentencing practices; the importance of public hearings; and the time frame for accomplishing each of the commission's tasks.

III. AFTERNOON WORKSHOPS

Groups I and III

"Senate Bill 56: How a Commission Would Function in California; Comparisons to Other States" and "How a Commission Operates; Drawing up Guidelines, Implementing Them in Other States." The panelists were Brian Taugher, Roger Steiner, Senator Hemstad, Donna Schram and Kay Knapp. Barry Krisberg was the moderator.

Question: What effect do the sentencing guidelines have on probation caseloads?

(Minnesota) Most of the larger counties administer their own probation services, while smaller counties often rely on the state for these services. It is not certain what impact, if any, the sentencing guidelines have on probation.

Question: What are the "high volume" crimes that have altered prison population?

(Minnesota) The guidelines specify that certain property offenders, who previously would have gone to prison, be given nonprison sentences. The high volume crimes that fall into this category are burglary and theft. Although burglaries involving an occupied dwelling or weapons do receive prison sentences, a large number of offenders are diverted from prison. These burglary and theft cases contribute the most to the reduced prison population.

(Washington) When the Washington Commission established guidelines for the "in/out" decision (i.e., who should go to prison), a distinction was made between violent and nonviolent offenses rather than between person and property offenses. Based on these guidelines, approximately 15% of all convicted felons are classified as violent and receive a presumptive prison sentence of at least one year. Under the existing indeterminate sentencing structure, 25% of all convicted offenders receive a prison sentence.

For violent offenders, the guidelines sentence (48 months) is longer than the average sentence under the existing indeterminate structure (40 months). For nonviolent offenders, the reverse is true: the average sentence is less than 18 months under guidelines sentencing compared with 28 months under indeterminate sentencing. Thus, it is the high volume, nonviolent offenses that will be most influential in reducing prison populations.

Question: Do the sentencing guidelines incorporate the concept of selective incapacitation?

(Minnesota) Selective incapacitation, which bases sentencing decisions on predictions of an offender's future behavior, is not consistent with Minnesota's emphasis on offenses rather than offenders. The commission explicitly rejected selective incapacitation as an unproven, unethical method of making sentencing decisions. Furthermore, the Minnesota Supreme Court struck down the concept of extending punishment on the basis of prediction or rehabilitation.

(Washington) The Washington Commission did not make any attempt to include predictions of future behavior in the sentencing

guidelines. In a free society, it would be unfair to predict an individual's future behavior using a mathematical model. This assumes that the individual does not control his or her own behavior.

Under the Washington guidelines, scores are calculated for the offender's current offense and for his or her past criminal behavior. Criminal history scores are calculated differently for violent offenders than for nonviolent offenders. If the current offense is violent and past offenses also are violent, the criminal history points are doubled. However, if the current offense is nonviolent and past offenses are violent, the criminal history points are not doubled. Thus, the repeat violent offender receives the longest sentence.

Question: Is determinate sentencing failing in California?

(Audience responses)

- (1) Some of the goals of determinate sentencing have been achieved, while others have not. Certainty of sentencing has been accomplished, while equity of sentencing has not. Relative sentence lengths often are irrational: some sentences are too long or too short compared to others.
- (2) For the prison system, determinate sentencing is a failure because it does not treat people as individuals.
- (3) One problem with determinate sentencing is the inequitable charging practices of prosecutors. Prosecutors have too much discretion. (In Washington, the commission established standards for plea bargaining and prosecutorial charging. This is critical to assuring that the guidelines are implemented as intended.)

(Brian Taugher) There are tremendous variations in charging practices of prosecutors throughout California. For example, if an offense is committed with a firearm, the prosecutor may or may not charge the use of a firearm. The proportion of cases in which the firearm count is charged ranges from a low of 73% to a high of nearly 99%. This inequity in charging practices translates into inequities in sentencing

Question: Is early release an appropriate mechanism for maintaining the prison population within capacity?

(Minnesota) Early release is not appropriate. It shifts the focus from the more important "in" decision (i.e., who should be sentenced to prison) to the "out" decision (i.e., who should be released at an early date). Early release mechanisms also are inequitable, since similar offenders might receive different sentences.

Question: Have parole revocation rates changed since the guidelines were implemented?

(Minnesota) Revocation rates have dropped. However, this is a result of a change in the attitude of the parole administrator rather than a change in behavior of parolees. The parole function no longer includes monitoring the social behavior of parolees (e.g., consorting with certain peers). Thus, parole is only revoked based on criminal behaviors.

(Washington) In the past, Washington had a system of mandatory parole involving both surveillance and community transition functions. The State Legislature abolished this system and replaced it with community transition services which are offered to the inmate on a voluntary basis.

Question: How long did it take to establish offense seriousness rankings?

(Washington) This was a long, arduous process which took approximately one year. The commission simultaneously developed offense seriousness rankings and relative sentence lengths, making the process quite difficult.

(Minnesota) The commission handled the seriousness ranking and sentence structure separately: first, the relative seriousness of all offense categories was established; then the sentence lengths were determined.

Question. To what extent have judges departed from the sentencing guidelines?

(Minnesota) The Minnesota guidelines are required to carry "substantially compelling" weight in judges' decisions; that is, they are not advisory guidelines. In terms of the decision to send an offender to prison (the "in/out" decision), judges departed from the stated guidelines in 6.2% of all cases during the first year, and 7.2% of all cases during the second year. Decisions regarding the prison sentence length varied more frequently. During the second year, sentence lengths departed from the guidelines in approximately 20% of all cases, a slight decrease from the previous year. Generally, the judge imposes a shorter sentence than specified in the guidelines.

It is important to establish strict departure standards, so that the intent of the guidelines is not "co-opted" by the courts. Strict standards will enhance sentencing uniformity and will improve the commission's ability to predict sentencing practices.

Question: What are the costs of running a commission?

(Washington) Since the guidelines are not yet operational, costs do not include any monitoring activities that may be required. Annual expenditures are \$300,000, which cover the cost of four full-time employees and travel and per diem costs of the commissioners (\$42 per day). A large portion of the staff time is on a volunteer basis.

(Minnesota) About half of the expenditures in Minnesota are devoted to the data processing system. Initially, the annual budget for the commission was \$200,000. The current budget is \$150,000 per year.

Question: What changes would you recommend for SB 56?

(Washington) First, it is important to strengthen the mandate of the commission, as specified on page 4, line 37, through page 5, line 5 of the bill. Second, the guidelines should not place great emphasis on existing law and current practices, since these are the very sources of current prison crowding. The legislation should require the commission to consider reform or repeal of existing laws. Third, it is not appropriate for the commission to consider the content of probation reports. Finally, SB 56 needs more detail regarding, for example, plea bargaining, appeals and possible repeal of mandatory sentences.

(Minnesota) First, the content of probation reports is important. Since court decisions are based in part on probation reports, they must contain good, standardized information. Second, SB 56 leaves too much authority with legislators by allowing them to make amendments. This would allow legislators to readjust the sentences for individual crime categories and undermine the overall structure and capacity orientation of the guidelines. The commission should have authority to make modifications, while the Legislature should only have responsibility to accept or reject the commission's recommendations in their entirety.

(Roger Steiner) SB 56 should define what is meant by "significant departure" from the guidelines. The bill should also consider the problems of specifying alternatives to prison, since these would be county-administered programs.

Group II*

"How Guidelines Affect the Judiciary, Prosecution and Defense Procedures." The panelists were Chief Justice Douglas Amdahl,

*This section of the report was prepared by Linda Beliveau, intern, Senator Presley's office.

Ralph Gampell (Judicial Council) and Judge Stanley Golde (Alameda County Superior Court). Douglas McKee was the moderator.

The responses of each panelist are summarized in the following narrative.

CHIEF JUSTICE AMDAHL

1. Minnesota judges are permitted to deviate from the sentencing guidelines if aggravating or mitigating circumstances are present. However, judges have only departed from the guidelines in 7% of the cases, usually by sentencing defendants to shorter terms.
2. The number of trials has decreased slightly since the sentencing guidelines commission was established.
3. The major objection Minnesota encountered in establishing a sentencing guidelines commission was voiced by trial court judges. These judges were concerned about what they perceived as a loss of discretion in sentencing defendants. The counter-argument was that these judges did not have any actual discretion previously, since the sentence lengths were established by the Legislature.
4. The defense bar initially opposed the commission. This opposition was overcome by specifying in the guidelines that the defendant's assertion of his constitutional rights would not be considered an aggravating factor.

RALPH GAMPELL

1. Other states differ from California since they had an indeterminate sentencing structure at the time that they instituted a sentencing commission. In California, a sentencing guidelines commission would take away sentencing authority from the Legislature rather than from a parole board.
2. SB 56 ties sentence length to prison population. Mr. Gampell indicated that this might be challenged on equal protection grounds.

JUDGE GOLDE

1. He opposed the sentencing guidelines commission as unnecessary for the following reasons:
 - a. The Judicial Council already promulgates rules for judges to use when sentencing defendants.

- b. The Legislature proscribes sentences for the various crimes.
 - c. Judges consider the prison vacancy rate when deciding whether or not to sentence a defendant to prison.
2. He had the following criticisms of SB 56:
- a. The bill is too vague since it takes away many responsibilities of the Judicial Council without specifying how they will be assumed by the sentencing commission.
 - b. With the demise of indeterminate sentencing, the sentencing guidelines are merely another legal mechanism to get inmates out of prison.
 - c. The only purpose of the legislation is to transfer the responsibility for prison overcrowding from the Legislature to the sentencing commission.
 - d. The commission would only serve to deflect public criticism of judges and the Legislature for being too soft on crime.

DICK IGLEHART, DEPUTY DISTRICT ATTORNEY (ALAMEDA COUNTY)

1. The public would not favor a sentencing guidelines commission because no one could be held accountable for sentencing decisions. The Legislature would not relinquish its authority to increase sentences, and judges would oppose losing their discretion to sentence defendants to probation rather than prison. Instead of a sentencing commission, he recommends that an advisory committee be established which would make suggestions to the Legislature. Members would be free to accept or reject their suggestions but could rely on them as a rationale for legislative decisions.
2. Questions he had regarding SB 56:
- a. How does a sentencing commission incorporate legislatively mandated prison terms?
 - b. How could the commission prevent the Legislature from passing laws regarding the length of prison sentences?
 - c. Can the commission provide that certain crimes are not punishable by imprisonment?

BOB KRESS (CITIZENS FOR LAW & ORDER)

He has reservations about SB 56 because if the Legislature loses its authority to establish sentences, citizen groups will not be able to influence members to increase sentence length. He would favor adding a provision that the commission report to the Legislature more frequently for approval of its guidelines.

WILLIAM O'MALLEY, DISTRICT ATTORNEY OF CONTRA COSTA COUNTY

1. The defense bar would favor the commission since ostensibly it would deprive the Legislature of its power to increase sentence length.
2. It is unlikely that the Legislature would abstain from increasing sentences and abdicate this authority to the sentencing commission. However, some legislators might welcome this, insulating them from public pressure to continually increase sentence length.

JUDGE ULLMAN

He favors SB 56 for the following reasons:

1. It removes some of the disparity caused by plea bargaining. If the guidelines proscribe that a defendant's sentence be increased due to prior convictions, it would limit a prosecutor's willingness to plea bargain by not charging all of the prior offenses.
2. It transfers sentence length decisions from the Legislature where no member would ever risk voting against longer sentences.

DAVID DISCO, DEPUTY DISTRICT ATTORNEY (LOS ANGELES COUNTY) AND CALIFORNIA BAR ASSOCIATION REPRESENTATIVE

SB 56 deprives prosecutors of too much discretion in plea bargaining.

FINAL AGENDA

SEMINAR: "Sentencing Guidelines Commissions: How They Function:
Would Such a Commission Work in California?"

Monday, March 21, 1983
Governor's Council Room, First Floor, State Capitol

- 9:00 a.m. Opening Remarks: Senator Robert Presley,
author of SB 56
- 9:15 a.m. Welcome and Overview: Barry Krisberg, National
Council on Crime and Delinquency
- 9:30 a.m. to
10:15 a.m. Senator Presley to Preside
- "California Prison System's Crisis: Capacity,
Overcrowding as it Relates to Sentencing."
Robin Dezember, Undersecretary, Youth and
Adult Correctional Agency
- "Legal Problems Facing California's Prisons:
Possibilities of Court-Ordered Releases."
Attorney General John Van de Kamp
- "California's Sentencing Structure: Origin,
Problems; How Would it Fit with a Sentencing
Commission?"
Brian Taugher, Sentencing Specialist
- Questions of the Three Speakers
- 10:15 a.m. BREAK OF 15 MINUTES (coffee)
- 10:30 a.m. to
12:15 p.m. PANEL DISCUSSION: "Commission Operations,
Functions, Problems in Other States:
Applicability to California."
- Moderator: James Austin, NCCD
- Kay Knapp, Director, Minnesota Guidelines
Commission
- Chief Justice Douglas Amdahl, Minnesota Supreme
Court; member, Minnesota Sentencing Guidelines
Commission; former municipal and district
judge
- Donna Schram, Chair, Washington Guidelines
Commission

Honorable Dick Hemstad, Washington State Senator; author of Washington's guidelines commission legislation, now a commission member

Roger Steiner, director of Arthur D. Little's 1980 study for Joint Rules on state's sentencing structure and feasibility of a California guidelines commission

12:00 noon

LUNCH BREAK

1:30 p.m. to
2:30 p.m.

PRESS CONFERENCE (Governor's Council Room)

Press availability of five major panelists:
Justice Amdahl, Ms. Knapp, Ms. Schram,
Senator Hemstad, and Mr. Steiner

2:45 p.m. to
4:00 p.m.

THREE SMALL GROUP PANEL DISCUSSIONS

1. "Senate Bill 56: How A Commission Would Function in California; Comparisons to Other States." Brian Taugher, Roger Steiner, Senator Hemstad; Barry Krisberg, moderator (Governor's Council Room)
2. "How Guidelines Affect the Judiciary, Prosecution and Defense Procedures." Chief Justice Amdahl; Ralph Gampell, Director, Administrative Office of California Courts (Judicial Council); Judge Stanley Golde, Alameda County Superior Court; Douglas McKee, Los Angeles County Deputy District Attorney, moderator (Room 115)
3. "How a Commission Operates; Drawing up Guidelines; Implementing Them in other States." Ms. Schram, Ms. Knapp, James Austin, moderator (Room 3187)

4:00 p.m. to
4:30 p.m.

WRAP-UP (Governor's Council Room)

APPENDICES

MAR 22 1983

SACRAMENTO BEE

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AP photo

Sen. Robert Presley, left, concentrated during discussion of his prison-term panel proposal at a daylong hearing Monday. Also attending was state Attorney General John Van de Kamp, right.

Prison-Terms-Panel Proposal Aired

By Robert Forsyth
Bee Capitol Bureau

About 100 representatives of California's legal community attended a daylong hearing at the Capitol Monday to discuss a proposed state commission that would revise sentencing practices for convicted felons.

The commission would not reduce legislative-mandated sentences but would recommend guidelines that could include giving judges more leeway in providing alternative types of punishment, said Sen. Robert Presley.

Presley, D-Riverside, organized the seminar to develop support for proposed legislation that would set up a 15-member commission that would have a year to draw up guidelines for legislative approval.

He said the guidelines could reduce California's prison population, which is estimated to be 135

percent of capacity, by allowing trial judges to focus on the violent felons. "It would get the people who are committing the serious crimes who are creating the problems," Presley said.

Washington, Pennsylvania and Minnesota have established sentencing commissions. Representatives of Washington and Minnesota attended the meeting.

According to officials from Minnesota, where sentencing guidelines have been in effect since 1980, by last year there had been a 73 percent increase in imprisonment for offenders convicted of the more serious and violent offenses, and a 72 percent reduction in imprisonment for those convicted of crimes of low severity.

Spokesmen in Presley's office said guidelines in other states have normally been worked into a grid that rates each offender on the basis

of the severity of his or her crime and on his or her criminal history. Whether the offender is given a prison sentence or probation or alternate sentencing, depends upon where the point score falls on the grid.

Minnesota Chief Justice Douglas Amdahl said that state's guidelines sentencing commission began as a "truth in sentencing" exercise because of what was happening in the courts.

"A trial judge could be tough on crime in his sentencing," said Justice Amdahl, "and know damn well that the 20 years (for which the person was sentenced) could be 20 weeks (because of subsequent action by the parole board). The public was being deceived."

One byproduct of the Minnesota experience was being able to fit the state's prison population into its prison system capacity, Presley said.

APPENDIX B

SENTENCING GUIDELINE COMMISSION:

Would It Work In California?

(BACKGROUND INFORMATION)

A Seminar Jointly Sponsored

By:

Senator Robert Presley

National Council On Crime And Delinquency

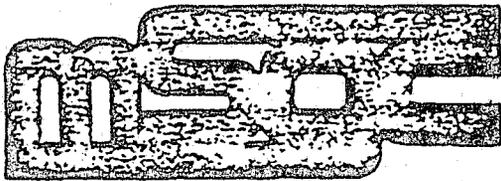
National Institute of Corrections

March 21, 1983
Sacramento, California

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- 1) Executive Summary - Preliminary Report on the Development and Impact of The Minnesota Sentencing Guidelines
-- Minnesota Sentencing Guidelines Commission
- 2) Training Materials - Minnesota Sentencing Guidelines and Commentary
- 3) Executive Summary - Determinate and Indeterminate Sentence Law Comparisons Study: Feasibility of Adapting Law to a Sentencing Commission-Guideline Approach
-- Arthur D. Little, Inc.
- 4) Explanation of Washington's Sentencing Commission
- 5) Population and Design Capacity of California Prisons
- 6) Press Release from Senator Robert Presley
- 7) Executive Summary - Controlling Prison Populations: An Assessment of Current Mechanisms
-- National Council on Crime and Delinquency
- 8) Final Report - California Summit Seminar on Prison Crowding
-- National Council on Crime and Delinquency
- 9) Attorney General William French Smith's Statement on Prison Alternatives

Minnesota Sentencing Guidelines Commission



PRELIMINARY REPORT ON THE
DEVELOPMENT AND IMPACT
OF THE
MINNESOTA SENTENCING GUIDELINES
July 1982

EXECUTIVE SUMMARY

The purpose of the Minnesota Sentencing Guidelines is to establish rational and consistent sentencing standards for the district court in sentencing convicted felons. It is intended that the articulation and implementation of sentencing standards will result in the reduction of sentencing disparity and a more rational use of existing correctional resources. The Sentencing Guidelines are presumptive with respect to who goes to prison and for the duration of imprisonment.

The Minnesota Sentencing Guidelines, developed by a legislatively established Commission, differ from prior sentencing guidelines efforts in four significant ways:

- ① First, a prescriptive approach was used in the development of the Sentencing Guidelines rather than the more common descriptive approach. The sentencing policy embodied in the Guidelines differs significantly from past sentencing practices — more person offenders and fewer property offenders are recommended for imprisonment under Sentencing Guidelines.
- ② Second, various sentencing goals were discussed and considered during the development of the Sentencing Guidelines, and retribution was adopted as the primary sentencing goal of the Guidelines.
- ③ Third, compared to prior sentencing guidelines projects, the Minnesota Sentencing Guidelines emphasize sentencing uniformity.
- ④ Fourth, an aggressively open political process was adopted in developing the Sentencing Guidelines.

The Minnesota Sentencing Guidelines became effective May 1, 1980. The Sentencing Guidelines were thoroughly implemented and their operation is thoroughly monitored. The preliminary report evaluating the impact of the Sentencing Guidelines is based on the first 5,500 cases sentenced presumptively in 1980-1981, and on baseline data of 4,369 cases sentenced in fiscal year 1978. The impact of the Sentencing Guidelines on sentencing practices include the following:

- ① Sentencing practices have substantially conformed to the articulated sentencing policy. There has been a 73% increase in imprisonment of offenders convicted of high severity crimes with low criminal histories. There has been a 72% reduction in imprisonment for offenders convicted of low severity crimes with moderate to high criminal histories.
- ② Disparity in sentencing has decreased under the Sentencing Guidelines. The reduction in disparity is indicated by increased sentence uniformity and proportionality. Sentences are more uniform in terms of who goes to prison and in how long imprisoned offenders serve. Sentences are more proportional in that offenders convicted of more serious offenses receive more severe sanctions than prior to the Sentencing Guidelines.

- ⊙ Minority offenders receive somewhat more severe sanctions than White offenders, controlling for severity level and criminal history score. An independent assessment of substantial and compelling circumstances suggest that offenses committed by minority offenders deserve aggravation somewhat more frequently than those committed by White offenders. However, the data are not adequate to precisely determine the extent of justifiable differences and the extent of racial bias.
- ⊙ Prison populations remained within state correctional capacity during 1980 and 1981. Commitments were close to the level projected.
- ⊙ A review of indeterminate cases by the Minnesota Corrections Board for consistency with the Sentencing Guidelines resulted in adjusting the release date of 95 inmates. Approximately 250 indeterminate cases have been resentenced by district courts under post conviction remedy.
- ⊙ The overall rate of trials has not increased since the Sentencing Guidelines were implemented. Processing time between conviction and sentencing changed very little following implementation of the Guidelines. Less than 1% of presumptive sentences have been appealed.
- ⊙ Case law on sentencing has reinforced the principles that alleged but unproven criminal behavior should not be used in sentencing offenders and that sentence durations should be proportional to the seriousness of the offense of conviction and offender's criminal history score.

Four additional issues that will be addressed in the evaluation report to be completed in 1983 include the issue of probation revocation for technical violations, loss of good time accrual, impact of the Guidelines on charging and plea negotiation practices, and use of jails and workhouses as a condition of stayed felony sentences.

MINNESOTA

Figure 1: Sentencing Guidelines Grid

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure.

SEVERITY LEVELS OF CONVICTION OFFENSE	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or more
<i>Unauthorized Use of Motor Vehicle</i> <i>Possession of Marijuana</i> I	12*	12*	12*	15	18	21	24 23-25
<i>Theft Related Crimes (\$150-\$2500)</i> <i>Sale of Marijuana</i> II	12*	12*	14	17	20	23	27 25-29
<i>Theft Crimes (\$150-\$2500)</i> III	12*	13	16	19	22 21-23	27 25-29	32 30-34
<i>Burglary - Felony Intent Receiving Stolen Goods (\$150-\$2500)</i> IV	12*	15	18	21	25 24-26	32 30-34	41 37-45
<i>Simple Robbery</i> V	18	23	27	30 29-31	38 36-40	46 43-49	54 50-58
<i>Assault, 2nd Degree</i> VI	21	26	30	34 33-35	44 42-46	54 50-58	65 60-70
<i>Aggravated Robbery</i> VII	24 23-25	32 30-34	41 38-44	49 45-53	65 60-70	81 75-87	97 90-104
<i>Assault, 1st Degree Criminal Sexual Conduct, 1st Degree</i> VIII	43 41-45	54 50-58	65 60-70	76 71-81	95 89-101	113 106-120	132 124-140
<i>Murder, 3rd Degree</i> IX	97 94-100	119 116-122	127 124-130	149 143-155	176 168-184	205 195-215	230 218-242
<i>Murder, 2nd Degree</i> X	116 111-121	140 133-147	162 153-171	203 192-214	243 231-255	284 270-298	324 309-339

Each offender's box on the grid scale is determined by his offense and his/her criminal history. Whether he goes to prison, and the term is determined by whether his point score is above the black line (prison) or below the black line (alternate punishment).

**MINNESOTA SENTENCING GUIDELINES
and COMMENTARY**

NOTE: This is an abridged version
of the original 28-page document,
to explain basically the sentenc-
ing guidelines proposed in Minne-
sota.

Reprinted from
TRAINING MATERIALS

MINNESOTA SENTENCING GUIDELINES AND COMMENTARY

L. Statement of Purpose and Principles

The purpose of the sentencing guidelines is to establish rational and consistent sentencing standards which reduce sentencing disparity and ensure that sanctions following conviction of a felony are proportional to the severity of the offense of conviction and the extent of the offender's criminal history. Equity in sentencing requires (a) that convicted felons similar with respect to relevant sentencing criteria ought to receive similar sanctions, and (b) that convicted felons substantially different from a typical case with respect to relevant criteria ought to receive different sanctions.

The sentencing guidelines embody the following principles:

1. Sentencing should be neutral with respect to the race, gender, social, or economic status of convicted felons.
2. While commitment to the Commissioner of Corrections is the most severe sanction that can follow conviction of a felony, it is not the only significant sanction available to the sentencing judge. Development of a rational and consistent sentencing policy requires that the severity of sanctions increase in direct proportion to increases in the severity of criminal offenses and the severity of criminal histories of convicted felons.
3. Because the capacities of state and local correctional facilities are finite, use of incarcerative sanctions should be limited to those convicted of more serious offenses or those who have longer criminal histories. To ensure such usage of finite resources, sanctions used in sentencing convicted felons should be the least restrictive necessary to achieve the purposes of the sentence.
4. While the sentencing guidelines are advisory to the sentencing judge, departures from the presumptive sentences established in the guidelines should be made only when substantial and compelling circumstances exist.

II. Determining Presumptive Sentences

The presumptive sentence for any offender convicted of a felony committed on or after May 1, 1980, is determined by locating the appropriate cell of the Sentencing Guidelines Grid. The grid represents the two dimensions most important in current sentencing and releasing decisions--offense severity and criminal history.

- A. Offense Severity: The offense severity level is determined by the offense of conviction. When an offender is convicted of two or more felonies, the severity level is determined by the most severe offense of conviction. Felony offenses are arrayed into ten levels of severity, ranging from low (Severity Level I) to high (Severity Level X). First degree murder is excluded from the sentencing guidelines, because by law the sentence is mandatory imprisonment for life. Offenses listed within each level of severity are deemed to be generally equivalent in severity. The most frequently occurring offenses within each severity level are listed on the vertical axis of the Sentencing Guidelines Grid. The severity level for infrequently occurring offenses can be determined by consulting Section V, entitled "Offense Severity Reference Table."
- B. Criminal History: A criminal history index constitutes the horizontal axis of the Sentencing Guidelines Grid. The criminal history index is comprised of the following items: (1) prior felony record; (2) custody status at the time of the offense; (3) prior misdemeanor and gross misdemeanor record; and (4) prior juvenile record for young adult felons.
- C. Presumptive Sentence: The offense of conviction determines the appropriate severity level on the vertical axis. The offender's criminal history score, computed according to section B above, determines the appropriate location on the horizontal axis. The presumptive fixed sentence for a felony conviction is found in the Sentencing Guidelines Grid cell at the intersection of the column defined by the criminal history score and the row defined by the offense severity level. The offenses within the Sentencing Guidelines Grid are presumptive with respect to the duration of the sentence and whether imposition or execution of the sentence should be stayed.

The line on the Sentencing Guidelines Grid demarcates those cases for whom the presumptive sentence is executed from those for whom the presumptive sentence is stayed. For cases contained in cells below and to the right of the line, the sentence should be executed. For cases contained in cells above and to the left of the line, the sentence should be stayed.

Every cell in the Sentencing Guidelines Grid provides a fixed duration of sentence. For cells below the solid line, the guidelines provide both a presumptive prison sentence and a range of time for that sentence. Any prison sentence duration pronounced by the sentencing judge which is outside the range of the presumptive duration is a departure from the guidelines, regardless of whether the sentence is executed or stayed, and requires written reasons from the judge pursuant to Minn. Stat. § 244.10, subd. 2, and section E of these guidelines.

Comment

II.C.01. The guidelines provide sentences which are presumptive with respect to (a) disposition--whether or not the sentence should be executed, and (b) duration--the length of the sentence. For cases below and to the right of the dispositional line, the guidelines create a presumption in favor of execution of the sentence. For cases in cells above and to the left of the dispositional line, the guidelines create a presumption against execution of the sentence.

II.C.02. In the cells below and to the right of the dispositional line, the guidelines provide a fixed presumptive sentence length, and a range of time around that length. Presumptive sentence lengths are shown in months, and it is the Commission's intent that months shall be computed by reference to calendar months. Any sentence length given that is within the range of sentence length shown in the appropriate cell of the Sentencing Guidelines Grid is not a departure from the guidelines, and any sentence length given which is outside that range is a departure from the guidelines. In the cells above and to the left of the dispositional line, the guidelines provide a single fixed presumptive sentence length.

II.C.03. When a stay of execution is given, the presumptive sentence length shown in the appropriate cell should be pronounced, but its execution stayed. If the sentence length pronounced, but stayed, differs from that shown in the appropriate cell, that is a departure from the guidelines.

III. Related Policies

A. Establishing Conditions of Stayed Sentences:

1. Method of Granting Stayed Sentences: When the appropriate cell of the Sentencing Guidelines Grid provides a stayed sentence, and when the judge chooses to grant that stay by means of a stay of execution, the duration of prison sentence shown in the appropriate cell is pronounced, but its execution is stayed. When the judge chooses to grant the stay by means of a stay of imposition, the duration of the prison sentence in the appropriate cell is not pronounced and the imposition of the sentence is stayed. The judge would then establish conditions which are deemed appropriate for the stayed sentence, including establishing a length of

IV. SENTENCING GUIDELINES GRID

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure.

SEVERITY LEVELS OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
Unauthorized Use of Motor Vehicle Possession of Marijuana	I	12*	12*	12*	15	18	21	24
Theft Related Crimes (\$150-\$2500) Sale of Marijuana	II	12*	12*	14	17	20	23	27 25-29
Theft Crimes (\$150-\$2500)	III	12*	13	16	19	22 21-23	27 25-29	32 30-34
Burglary - Felony Intent Receiving Stolen Goods (\$150-\$2500)	IV	12*	15	18	21	25 24-26	32 30-34	41 37-45
Simple Robbery	V	18	23	27	30 29-31	38 36-40	46 43-49	54 50-58
Assault, 2nd Degree	VI	21	26	30	34 33-35	44 42-46	54 50-58	65 60-70
Aggravated Robbery	VII	24 23-25	32 30-34	41 38-44	49 45-53	65 60-70	81 75-87	97 90-104
Assault, 1st Degree Criminal Sexual Conduct, 1st Degree	VIII	43 41-45	54 50-58	65 60-70	76 71-81	95 89-101	113 106-120	132 124-140
Murder, 3rd Degree	IX	97 94-100	119 116-122	127 124-130	149 143-155	176 168-184	205 195-215	230 218-242
Murder, 2nd Degree	X	116 111-121	140 133-147	162 153-171	203 192-214	243 231-255	284 270-298	324 309-330

1st Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence.

*one year and one day

probation, which may exceed the duration of the presumptive prison sentence.

The Commission recommends that stays of imposition be used as the means of granting a stayed sentence for felons convicted of lower severity offenses with low criminal history scores. The Commission further recommends that convicted felons be given one stay of imposition, although for very low severity offenses, a second stay of imposition may be appropriate.

- D. Departures from the Guidelines: The sentences provided in the Sentencing Guidelines Grid are presumed to be appropriate for every case. The judge shall utilize the presumptive sentence provided in the Sentencing Guidelines Grid unless the individual case involves substantial and compelling circumstances. When such circumstances are present, the judge may depart from the presumptive sentence and stay or impose any sentence authorized by law. When departing from the presumptive sentence, a judge must provide written reasons which specify the substantial and compelling nature of the circumstances, and which demonstrate why the sentence selected in the departure is more appropriate, reasonable, or equitable than the presumptive sentence.

In making decisions about departing from the guidelines, judges should take into substantial consideration the statement of purpose and principles in section I above.

Comment

II.D.01. The guideline sentences are presumed to be appropriate for every case. However, there will be a small number of cases where substantial and compelling aggravating or mitigating factors are present. When such factors are present, the judge may depart from the presumptive disposition or duration provided in the guidelines, and stay or impose a sentence that is deemed to be more appropriate, reasonable, or equitable than the presumptive sentence.

II.D.02. Decisions with respect to disposition and duration are logically separate. Departures with respect to disposition and duration also are logically separate decisions. A judge may depart from the presumptive disposition without departing from the presumptive duration, and vice-versa. A judge who departs from the presumptive disposition as well as the presumptive duration has made two separate departure decisions, each requiring written reasons.

II.D.03. The aggravating or mitigating factors and the written reasons supporting the departure must be substantial and compelling to overcome the presumption in favor of the guideline sentence. The purposes of the sentencing guidelines cannot be achieved unless the presumptive sentences are applied with a high degree of regularity. Sentencing disparity cannot be reduced if judges depart from the guidelines frequently. Certainty in sentencing cannot be attained if departure rates are high. Prison populations will exceed capacity if departures increase imprisonment rates significantly above past practice.

V. OFFENSE SEVERITY REFERENCE TABLE

First Degree Murder is excluded from the guidelines by law, and continues to have a mandatory life sentence.

X Murder 2 - 609.19

IX Murder 3 - 609.195

VIII Assault 1 - 609.221
Attempted Murder 1 - 609.185 with 609.17 or 609.175 cited
Criminal Sexual Conduct 1 - 609.342
Kidnapping (w/great bodily harm) - 609.25, subd. 2(2)
Manslaughter 1 - 609.20(1) & (2)

VII Aggravated Robbery - 609.245
Arson 1 - 609.561
Criminal Sexual Conduct 2 - 609.343(c), (d), (e), & (f)
Criminal Sexual Conduct 3 - 609.344(c) & (d)
Kidnapping (not in safe place) - 609.25, subd. 2(2)
Manslaughter 1 - 609.20(3)
Manslaughter 2 - 609.205(1)

VI Arson 2 - 609.562
Assault 2 - 609.222
Burglary - 609.58, subd. 2(1)(b) & (2)
Criminal Sexual Conduct 2 - 609.343(a) & (b)
Criminal Sexual Conduct 4 - 609.345(c) & (d)
Escape from Custody - 609.485, subd. 4(4)
Kidnapping - 609.25, subd. 2(1)
Receiving Stolen Goods (over \$2,500) - 609.525; 609.53
Sale of Hallucinogens or PCP - 152.15, subd. 1(2)
Sale of Heroin - 152.15, subd. 1(1)
Sale of Remaining Schedule I & II Narcotics - 152.15, subd. 1(1)

V Criminal Negligence Resulting in Death - 609.21
Criminal Sexual Conduct 3 - 609.344(b)
Manslaughter 2 - 609.205(2), (3), & (4)
Perjury - 609.48, subd. 4(1)
Possession of Incendiary Device - 299F.80; 299F.815; 299F.811
Simple Robbery - 609.24
Solicitation of Prostitution - 609.322, subd. 1
Tampering w/Witness - 609.498, subd. 1

IV Assault 3 - 609.223
Bribery - 609.42; 90.41
Bring Contraband into State Prison - 243.55
Bring Dangerous Weapon into County Jail - 641.165, subd. 2(b)
Burglary - 609.58, subd. 2(1)(a), (c), & (3)
Criminal Sexual Conduct 4 - 609.345(b)
Negligent Fires - 609.576(a)
Perjury - 290.53, subd. 4; 300.61; & 609.48, subd. 4(2)
Receiving Profit Derived from Prostitution - 609.323, subd. 1
Receiving Stolen Goods (\$150-\$2500) - 609.525; 609.53
Security Violations (over \$2500) - 80A.22, subd. 1; 80B.10, subd. 1;
80C.16, subd. 3(a) & (b)
Terroristic Threats - 609.713, subd. 1
Theft Crimes - Over \$2,500 (See Theft Offense List)
Theft from Person - 609.52
Use of Drugs to Injure or Facilitate Crime - 609.235

III

- Aggravated Forgery (over \$2,500) - 609.625
- Arson 3 - 609.563
- Coercion - 609.27, subd. 1(1)
- Coercion (Over \$2,500) - 609.27, subd. 1(2), (3), (4), & (5)
- Damage to Property - 609.595, subd. 1(1)
- Dangerous Trespass - 609.60; 609.85(1)
- Dangerous Weapons - 609.67, subd. 2; 624.713, subd. 1(b)
- Escape from Custody - 609.485, subd. 4(1)
- False Imprisonment - 609.255
- Negligent Discharge of Explosive - 299F.83
- Possession of Burglary Tools - 609.59
- Possession of Hallucinogens or PCP - 152.15, subd. 2(2)
- Possession of Heroin - 152.15, subd. 2(1)
- Possession of Remaining Schedule I & II Narcotics - 152.15, subd. 2(1)
- Prostitution (Patron) - 609.324, subd. 1
- Receiving Profit Derived from Prostitution - 609.323, subd. 2
- Sale of Cocaine - 152.15, subd. 1(2)
- Sale of Remaining Schedule I, II, & III Non-narcotics - 152.15, subd. 1(2)
- Security Violations (under \$2500) - 80A.22, subd. 1; 80B.10, subd. 1; 80C.16, subd. 3(a) & (b)
- Solicitation of Prostitution - 609.322, subd. 2
- Theft Crimes - \$150-\$2,500 (See *Theft Offense List*)
- Theft of Public Records - 609.52
- Theft Related Crimes - Over \$2,500 (See *Theft Related Offense List*)

II

- Aggravated Forgery (\$150-\$2,500) - 609.625
- Aggravated Forgery (misc) (non-check) - 609.625; 809.635; 609.64
- Coercion (\$300-\$2,500) - 609.27, subd. 1(2), (3), (4), & (5)
- Damage to Property - 609.595, subd.1(2) & (3)
- Negligent Fires (damage greater than \$10,000) - 609.576(b)(4)
- Riot - 609.71
- Sale of Marijuana/Hashish/Tetrahydrocannabinols - 152.15, subd. 1(2)
- Sale of a Schedule IV Substance - 152.15, subd. 1(3)
- Terroristic Threats - 609.713, subd. 2
- Theft-Looting - 609.52
- Theft Related Crimes - \$150-\$2,500 (See *Theft Related Offense List*)

I

- Aggravated Forgery (Less than \$150) - 609.625
- Aiding Offender to Avoid Arrest - 609.495
- Forgery - 609.63; and Forgery Related Crimes (See *Forgery Related Offense List*)
- Fraudulent Procurement of a Controlled Substance - 152.15, subd. 3
- Leaving State to Evade Establishment of Paternity - 609.31
- Nonsupport of Wife or Child - 609.375, subds. 2, 3, & 4
- Possession of Cocaine - 152.15, subd. 2(2)
- Possession of Marijuana/Hashish/Tetrahydrocannabinols - 152.15, subd. 2(2)
- Possession of Remaining Schedule I, II & III Non-narcotics - 152.15, subd. 2(2)
- Possession of a Schedule IV Substance - 152.15, subd. 2(3)
- Selling Liquor that Causes Injury - 340.70
- Solicitation of Prostitution - 609.322, subd. 3
- Unauthorized Use of Motor Vehicle - 609.55

**DETERMINATE AND INDETERMINATE SENTENCE LAW COMPARISONS STUDY:
FEASIBILITY OF ADAPTING LAW TO A
SENTENCING COMMISSION-GUIDELINE APPROACH**

Report to the
CALIFORNIA LEGISLATURE
JOINT COMMITTEE ON RULES

May 1980

To summarize structural changes enacted through SB 42 with regard to the determination of the actual sentence length, the courts retained all previous ISL procedural responsibilities, and were given the added responsibility of calculation of a sentence. It was to be presumed that the middle (base term) was appropriate for the convicted offense in the absence of mitigating or aggravating situations. The act itself specified "enhancements" which, if pled and proven, could serve as a justification for the imposition of additional time to be served. The sentencing rules to be promulgated by the Judicial Council would provide guidelines for calculation of the sentence to be passed.

4. Amending Legislation

Since the passage of SB 42 in 1977, some 5 legislative bills and one statewide ballot proposition have been passed modifying or altering the original determinate sentencing law. All of these increased offenders' liability, in terms either of lengthened sentences, lengthened parole, or mandatory provisions requiring incarceration (rather than probation).

B. STUDY SCOPE

In order to evaluate, compare, and contrast California's experience with DSL and ISL, Arthur D. Little has analyzed the degree to which each sentencing scheme has achieved the following goals:

- ⊙ Adequacy
- ⊙ Certainty
- ⊙ Equity
- ⊙ Protection
- ⊙ Deterrence
- ⊙ Rehabilitation

We have also assessed the impact of DSL on justice system processes and procedures, specifically: (1) the courts; (2) corrections; and (3) discretion afforded to decision makers in the system.

The analysis of sentencing practices in other states has included a review of the literature on sentencing; a general survey of sentencing models and mechanisms used throughout the United States; and an in-depth analysis of four states' experiences in establishing sentencing commissions and developing sentencing guidelines.

C. FINDINGS AND CONCLUSIONS ON ISL AND DSL IN CALIFORNIA

The research outlined above has resulted in the following findings and conclusions, reported in detail in the body of this report:

1. Attainment of Sentencing Goals

a. DSL more closely approximates national norms for "adequacy of punishment" than did ISL. This conclusion is based upon a comparison of median time served for different offenses under ISL and DSL, in

as specified in the statute, and created a Community Release Board with specified powers and duties relating to the granting of parole.

- o Where under ISL, the time to release (or the granting of parole) was indefinite during the period of commitment, SB 42 provided for specific provisions and procedures for the reduction of the length of sentence by up to one-third on the basis of "good time".
- o Under ISL, prisoners were eligible for parole after having served either the minimum level or one-third of the minimum of the indeterminate range proscribed by law; furthermore, a prisoner released to parole could be on parole until the expiration of the maximum term of imprisonment for the crime for which he or she was convicted. At the discretion of the pertinent authority, a parolee could be discharged from parole after serving two years satisfactorily under ISL. In contrast, DSL limited parole to one year after the expiration of the prison sentence. In the event of parole revocation by the Community Release Board, the determinate sentencing language of SB 42 limited the time for which the offender could be recommitted on a parole violation to six months or the end of the original one year parole term, whichever came sooner.
- o A major structural contrast with ISL instituted through the enactment of SB 42 was the inclusion in the legislation itself of provisions specifically aimed at promoting uniformity in sentencing. Specifically, Section 1170.3 charged the Judicial Council with the responsibility of adopting rules "providing criteria for the consideration of the trial judge at the time of sentencing regarding the court's decision to:
 - (a) Grant or deny probation,
 - (b) Impose the lower or upper prison term,
 - (c) Impose concurrent or consecutive sentences,
 - (d) Consider an additional sentence for prior prison terms, and/or
 - (e) Impose an additional sentence for being armed with a deadly weapon, using a firearm, an excessive taking or damage, or the infliction of great bodily injury.

EXECUTIVE SUMMARY

In 1979 the California Legislature created a Citizens Advisory Committee on Alternatives, "...to supervise three studies, conducted under contract with the Joint Rules Committee, and to report their recommendations to the Legislature." Two of the studies were to address: (1) state prison population projections, facilities, and classification, and (2) alternatives to incarceration in state institutions.

The third study is the topic of this report. Its purpose is to:

- o Provide information regarding the apparent merits of California's experience under Determinate Sentencing Law (DSL) as compared with the merits of the state's experience under its previous Indeterminate Sentencing Law (ISL).
- o Assess the feasibility of California adopting a sentencing commission based upon other states' experiences with sentencing commissions.

A. DETERMINATE SENTENCING IN CALIFORNIA

1. Enactment of Determinate Sentencing

Senate Bill 42 (SB 42) was passed by the California Legislature in 1976, creating Chapter 1139 of that year's statutes. The bill was signed into law by the Governor on September 20, 1976, to become effective July 1, 1977. This act is generally referred to as California's Determinate Sentencing Law. The act made extensive revisions to the state's Penal Code and considerable amendments to the penal sections of many other of the state's codes in relation to imprisonment and in relation to the administration of the new determinate system.

Enactment of DSL in 1976 represented a major shift in the state's philosophy concerning crime and punishment. It was the first of a large number of legislative acts that generally increased the seriousness of the consequences of criminal activity.

2. Objectives of California's Determinate Sentencing Law

Section 1170 of the Penal Code provides insights on the basic objective of SB 42 enacting DSL in California. Section 1170(a)(1) states that:

"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 sentence

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 trial court with specified discretion."

Subsequent portions of Section 1170 provide further clarification on provisions and procedures for the calculation and imposition of determinate sentences; however, no other "objective" -- in the strict sense of sentence results -- are defined.

As if to emphasize the basic objective, other portions of SB 42 lodged responsibility in a Community Release Board -- replacing the Adult Authority -- for reviewing each prison sentence for disparity within one year of the beginning of a convicted offenders term of commitment. Effective January 1980, this state agency became known as the Board of Prison Terms.

Under SB 42, the Judicial Council was given the responsibility for developing sentencing rules for the application of the provisions of SB 42, said rules to be utilized by the Community Release Board in reviewing "the information regarding the sentences in this state of other persons convicted of similar crimes so as to eliminate disparity of sentences and to promote uniformity of sentencing."

3. Structural Contrasts Between ISL and DSL in California

Determinate sentencing in California, as initiated by SB 42, had the following general characteristics contrasting with the previous indeterminate scheme.

- o Rather than the situation under ISL where the actual term of imprisonment was determined by a paroling authority, DSL created a system wherein judges select a specific term of imprisonment from three term lengths specified by the legislation, including a minimum, middle or "base" term, and maximum term. Under ISL, judges were specifically prohibited from fixing the term of a person's sentence to state prison; SB 42, in addition to specifying the three possible sentences provided specific procedures to be followed by the trial judge in sentencing, and required that a statement of reasons be made public for the resulting sentence choice.
- o Under ISL the granting and revocation of parole, and thus the fixing of sentences, were determined by the Adult Authority (for males) and the California Womens Board of Terms and Paroles. SB 42 abolished these agencies in light of the determinate sentence

comparison with sentences in 27 other states around the country and in the District of Columbia. This conclusion appears valid not only considering DSL sentences with good time credited, but also considering DSL sentences without any good time at all credited in comparison to ISL sentences.

b. It appears that California's DSL has increased the certainty of imprisonment given conviction. In most cases analyzed the percentage of prison dispositions reported in the DSL period was significantly higher than would have been projected based on ISL trends. The type of offender who in the past under ISL would have been given a probation and jail sentence is more frequently being sent to state prison under DSL.

As a consequence of the increasing certainty of prison commitments, there is apparently less certainty under DSL than under ISL of the likelihood of particular dispositions given conviction. A convicted offender apparently faces a more even chance of going to prison or of being granted probation under DSL than under ISL. However, it may be that, given knowledge of case particulars, there is a considerably higher degree of certainty under DSL than under ISL regarding whether or not an offender will be sentenced to prison or granted probation, given knowledge of the offender's prior criminal record and other pertinent factors.

There is general agreement that there is greater certainty of time to be served under DSL than existed under California's ISL.

c. Several DSL features enhance California's capability to attain sentencing equity. These include the public accounting of reasons for the particular sentence and length imposed; the requirement for a formal process of review for sentencing disparity; and the elimination of the possibility for a parole agency to deny parole for reasons not pertinent to an offender's current incarceration.

d. DSL appears, at least in the year 1978, to have provided less of an incapacitation effect than the state's ISL provided in 1975. In addition, DSL appears to structurally provide for less incapacitation, based on its comparatively shorter median length of sentences, given relatively comparable inmate population sizes. The recent slowing in the growth of offense rates in the state cannot be attributed to an increase in protection due to DSL.

e. While the early 1970s growth in California offense rates under ISL has slowed under DSL, this cannot be clearly attributed to deterrence provided by DSL. Three of the four measures of "sanctions" against crimes have decreased during the 1970s; DSL has played a role in increasing the risk of imprisonment, but has decreased, in general, the severity of punishment as measured by sentence lengths.

f. It is not possible to compare California's DSL experience with the state's experience under ISL in the field of rehabilitation. With data available to this study only through the year 1978, sufficient time has not passed for examination of rehabilitation results with any confidence.

2. Impacts on the Criminal Justice System

The impact of implementing DSL in California was researched in the areas of courts, corrections and decision-making discretion.

a. The following are findings pertaining to courts:

- o With the exception of mandatory sentencing amendments, DSL has expanded the role of the judiciary.
- o The determinate nature of California's DSL permits district attorneys to develop clear-cut departmental policies regarding charging and prosecutorial strategy.
- o California's determinate sentencing scheme clearly adds to the district attorney's ability to influence final sentences but other important factors can inhibit the exercise of this DSL sentencing influence.
- o DSL has caused an increase in the number of original guilty pleas.
- o DSL may significantly impact the timeliness of the adjudication process and local corrections, because local pre-sentence jail time is now credited towards prison time to be served.

b. The following was found from research in the areas of probation and corrections institutions.

- o Concern for the pre-sentence investigation procedure has been emphasized under DSL
- o The specification of sentences by the DSL has reduced the PSI's former influence in sentence determination.
- o Considerable variation appears among county probation departments in California regarding their participation in the Superior Court sentencing process.
- o Probation officers interviewed who were involved with adult probationers maintain that since the enactment of DSL they have not observed any significant differences in the types of offenders receiving probation sentences; however, from a statewide perspective, it would appear that the nature of the caseload is shifting due to the implementation of DSL.

- ⊙ While it cannot be concluded with certainty that implementing DSL has increased the total number of prison commitments, DSL does seem to have influenced the composition of the prison population.
- ⊙ Participation in rehabilitation programs is continuing, but it is possible that the size of the California Rehabilitation Center's treatment population will be less under DSL than it would have been under ISL.
- ⊙ The DSL emphasis on punishment has lowered the perceived priority of rehabilitation within state corrections.
- ⊙ Prison system managers appear to have lost considerable flexibility in terms of dealing with the size of the overall state prison population.
- ⊙ The span of influence of the paroling agency has been considerably decreased due to DSL.

c. The following was found from research regarding decision-making discretion.

Several important research findings pertained to DSL's impact on discretion in the justice system.

- ⊙ While DSL expanded the overall judicial role in sentencing, judicial decision-making discretion under DSL has been limited as compared with ISL in some cases.
- ⊙ DSL has shifted a great deal of discretion with regard to determining the final results of any particular criminal case to the prosecutor's office.
- ⊙ While DSL has enabled the defense to more clearly convey the sentencing implications of pleas to various charges, this may be an incentive for accepting a negotiated plea only for the lesser sanctioned offenses.
- ⊙ From a justice system perspective, it appears that an important impact of DSL has been to encourage settlements at the pre-trial stage of the trial system process.
- ⊙ DSL has increased local influence on the criminal justice system.

D. NATIONAL SENTENCING STUDY

1. Sentencing Research and Trends

Several trends in sentencing are evident throughout the nation. The following major findings are pertinent in considering sentencing approaches for California.

a. In recent years, sentencing has been one of the major focal points of activity in the criminal justice system. It is an area which changes constantly -- legislatures are passing laws, courts are making decisions, and administrative agencies are revising policies and procedures.

b. The sentencing structures of the states vary considerably from one another. The criminal codes classify crimes and punishments differently, sanctions vary, and the various decision makers of the system have different roles in the sentencing process. In some states the judge has the greatest amount of discretion; in others it is the parole board. Some legislatures have taken quite active roles in reforming the sentencing structures; in others the reforms have come from the judiciary, and in still others the parole board has taken action.

c. Nationally, the trend is towards more determinacy in the sentencing structure. There is a trend towards mandatory sentencing provisions for violent crimes, repeat offenders, and crimes against specific victim groups, such as the elderly or children. This trend is reflected in limitations of discretion as found in (a) legislative sentencing, (b) sentencing guidelines, and (c) parole guidelines.

d. The sentencing guideline model can take several forms. Depending on the source of the guidelines, these can include independent legislatively established sentencing commissions, or a judicial unit either at a particular level of the court system, or in the office of the Administrator of the court.

2. Conclusions Pertinent to a Sentencing Commission in California

In considering the advisability and feasibility of establishing a sentencing commission for California, Arthur D. Little, Inc., examined three critical areas: (1) literature in the field; (2) other jurisdictions' experience with sentencing commissions and guidelines; and (3) California's present experience with DSL.

1. Most recent literature generally supports the concept of a sentencing commission. The major advantages of a well established sentencing commission cited include:

- o The complexity of the criminal justice system can be considered.
- o A systematic approach to the criminal justice process and its many components can be utilized.

- ⊙ The commission is less vulnerable to direct political pressures.
- ⊙ The commission will have the time, the expertise, and manpower to develop sentencing reform.
- ⊙ The commission will be able to monitor and develop a feedback process that can be utilized to change sentencing reforms without the necessity for continual legislative action.
- ⊙ The commission will be able to balance flexibility and uniformity in a better fashion than is presently available in most determinate models.

2. Although there is a growing movement towards the guideline concept through the formation of sentencing commissions, there is no data presently available that evaluates the concept on a statewide basis. Therefore, we cannot predict, based on other states' experiences, what the impact of a sentencing commission or guidelines will be in California on the goals of certainty, uniformity, and proper case-by-case discretion. California should closely monitor the progress of the studies referred to in Chapter III, but more importantly, the development and performance of Minnesota and Pennsylvania, which have guideline mandates.

3. In addition to assisting in the achievement of the goals of certainty, uniformity, and proper discretion through sentencing reform, a sentencing commission may eliminate or reduce problems which beset the general criminal justice system. Arthur D. Little, Inc., believes that California is presently experiencing difficulties related to sentencing that may be alleviated by a sentencing commission. These difficulties include:

- ⊙ Overcrowding in state corrections institutions
- ⊙ Ad hoc legislative changes in sentencing
- ⊙ Inadequate attention to the financial implications of sentencing legislation
- ⊙ The lack of a focal point for system-wide planning and monitoring of results achieved

E. SUMMARY OF RECOMMENDATIONS

1. Arthur D. Little, Inc., recommends that California establish a sentencing commission to alleviate the present management problems associated with the current legislative process of developing and passing sentencing laws.

a. Prior to the establishment of a sentencing commission, the California Legislature should prioritize goals for sentencing. California's current DSL represents a mixed model. The Judicial Council rules suggest that there are a variety of goals and philosophical bases present. The Legislature should clarify its position by placing clear priorities on the intended goals of sentencing.

b. In the analysis of sentencing reforms, the sentencing commission should seriously consider development of sentencing guidelines. The commission should consider the development of guidelines in light of the activities and evaluations underway in other states.

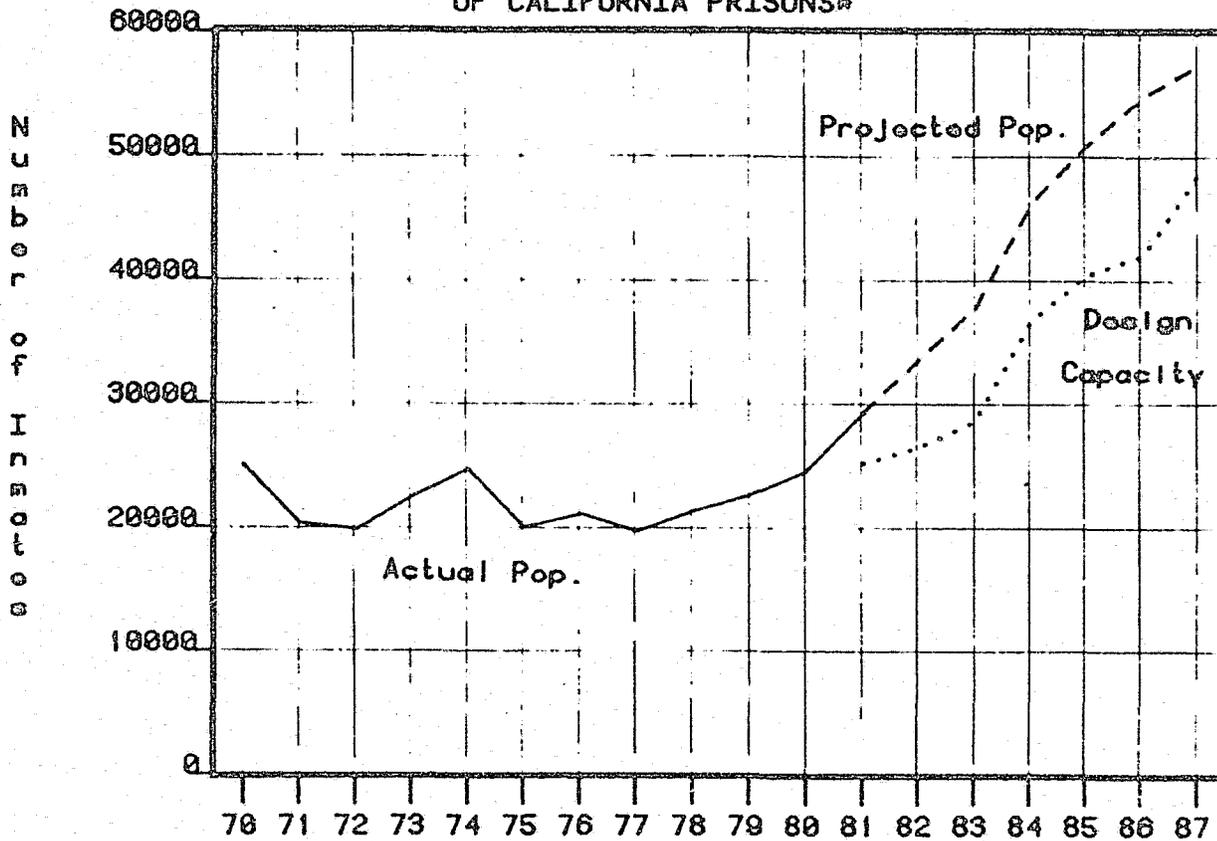
c. The sentencing commission should be initiated and established by the Legislature as an independent body in the Executive Branch. The importance of a legislatively established commission lies in the need for the commission to have sentencing policy authority that is supported and legally mandated to ensure compliance.

d. If the Legislature decides to enact enabling legislation to establish a sentencing commission, we recommend that the legislation address the following points.

- o Composition and organization of the commission
- o Powers and duties
- o Public hearings
- o Legislative review
- o Time frame for completion of sentencing reforms
- o Intended scope of guidelines
- o Appeals
- o Sunset provision

In summary, enabling legislation for a sentencing Commission should specify goals to be achieved and the basic organizational and procedural responsibilities to be assumed by the Legislature, Commission, and Judiciary in regard to affecting sentencing reform.

POPULATION AND DESIGN CAPACITY
OF CALIFORNIA PRISONS*



*Actual population as of December 31

Projected population and design capacity as of June 30

Arthur D. Little, Inc. 4 EMBARCADERO CENTER • SAN FRANCISCO, CA 94111 • (415) 981-2500 • TELEX 340-320

January 17, 1983

RECEIVED
JAN 18 1983

Senator Robert Presley
California Legislature
State Capitol
Room 4048
Sacramento, CA 95814

Subject: Senate Bill 56 - California Sentencing Commission

Dear Senator Presley:

It is with great interest that Arthur D. Little has followed the introduction of your Senate Bill 56, which would establish a California Sentencing Commission composed of 15 members. This letter is to call to your attention a May 1980 report prepared by Arthur D. Little for the California Legislature Joint Committee on Rules. This report was titled, "Determinate and Indeterminate Sentence Law Comparison Study: Feasibility of Adapting Law to a Sentencing Commission - Guideline Approach."

The purpose of the research was to analyze California's experience with Determinate Sentencing Law in contrast with the previous indeterminate sentencing approach, and to develop recommendations regarding the applicability of a sentencing commission and sentencing guidelines in California. In addition, the report included the results of a national sentencing study which analyzed sentencing research and trends in other states.

The report contains a large amount of analysis which is applicable to your SB 56, and these conclusions from two of the sections of the report are quoted as follows:

Conclusions Pertinent to a Sentencing Commission in California

In considering the advisability and feasibility of establishing a sentencing commission for California, Arthur D. Little, Inc. examined three critical areas: 1) literature in the field; 2) other jurisdictions experience with sentencing commissions and guidelines; and 3) California's present experience with DSL.

Arthur D. Little, Inc.

1) Most recent literature generally supports the concept of a sentencing commission. The major advantages of a well established sentencing commission cited include:

- The complexity of the criminal justice system can be considered
- A systematic approach to the criminal justice process and its many components can be utilized
- The commission is less vulnerable to direct political pressures
- The commission will have the time, the expertise, and manpower to develop sentencing reform
- The commission will be able to monitor and develop a feedback process that can be utilized to change sentencing reforms without the necessity for continual legislative action
- The commission will be able to balance flexibility and uniformity in a better fashion than is presently available in most determinate models

2) Although there is a growing movement toward the guideline concept through the formation of sentencing commissions, there is no data presently available that evaluates the concept on a statewide basis. Therefore, we cannot predict, based on other state's experiences, what the impact of a sentencing commission or guidelines will be in California on the goals of certainty, uniformity, and proper case by case discretion. California should closely monitor the progress of the studies referred to in the report, but more importantly, the development and performance of Minnesota and Pennsylvania, which have guideline mandates.

3) In addition to assisting in the achievement of the goals of certainty, uniformity, and proper discretion through sentencing reform, a sentencing commission may eliminate or reduce problems which beset the general criminal justice system. Arthur D. Little, Inc. believes that California is presently experiencing difficulties relating to sentencing that may be alleviated by a sentencing commission. These difficulties include:

- Overcrowding in the State corrections institutions
- Ad hoc legislative changes in sentencing
- Inadequate attention to the financial implications of sentencing legislation
- The lack of a focal point for systemwide planning and monitoring of results achieved

Arthur D. Little, Inc.

Summary of Recommendations

1) Arthur D. Little, Inc. recommends that California establish a sentencing commission to alleviate the present management problems associated with the current legislative process of developing and passing sentencing laws.

- a. Prior to the establishment of a sentencing commission, the California legislature should prioritize goals for sentencing. California's current DSL represents a mixed model. The Judicial council rules suggest that there are a variety of goals and philosophical bases at present. The legislature should clarify its position by placing clear priorities on the intended goals of sentencing.
- b. In the analysis of sentencing reforms, the sentencing commission should seriously consider development of sentencing guidelines. The commission should consider the development of guidelines in light of the activities and evaluations underway in other states.
- c. The sentencing commission should be initiated and established by the legislature as an independent body of the Executive Branch. The importance of a legislatively established commission lies in the need for the commission to have sentencing policy authority that is supported and legally mandated to ensure compliance.
- d. If the legislature decides to enact enabling legislation to establish a sentencing commission, we recommend that the legislation address the following points.
 - ⊙ Composition and organization of the commission
 - ⊙ Powers and duties
 - ⊙ Public hearings
 - ⊙ Legislative review
 - ⊙ Time frame for completion of sentencing reforms
 - ⊙ Intended scope of guidelines
 - ⊙ Appeals
 - ⊙ Sunset provision

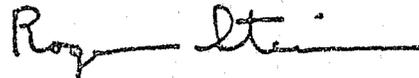
In summary, enabling legislation for a sentencing commission should specify goals to be achieved and the basic organizational and procedural responsibilities to be assumed by the Legislature, Commission, and Judiciary in regard to affecting sentencing reform.

Arthur D. Little, Inc.

With this letter, enclosed to your staff is a complete copy of this report. When the research was completed, there were a number of individuals in Sacramento who were familiar with the study findings. These included Ms. Miki Vohryzek, who still is with the Assembly Office of Research, and Mr. Brian Taugher, who is now with the Office of the Attorney General.

Once again, your recent introduction of legislation establishing a California Sentencing Commission is a matter of great professional interest. We look forward to staying in communication with your office regarding this area of importance to the justice system here in our state.

Sincerely,



Roger C. Steiner

RCS:ks

cc: Bob Holmes, Senator Presley's office
Miki Vohryzek, Assembly Office of Research
Brian Taugher, Office of the Attorney General

Enclosure

**Robert
Presley**

NEWS

Room 4048, State Capitol, Sacramento, California

CONTACT: Bob Holmes (916) 322-8536

PRESLEY INTRODUCES SENTENCING COMMISSION BILL--2ND IN PRISON TERM REFORM

California would become the fourth state to institute a pioneering revision of its prison sentence structure, aimed at better matching of prison population to capacity and at imprisoning violent, repeat offenders for longer terms, under a bill introduced today (Tues.) by Senator Robert Presley (D - Riverside). It is Senate Bill 56.

It is the second of two measures introduced by Presley, aimed at helping the state get a better handle on its burgeoning prison population. The two are expected to be among the most controversial and significant measures on prison problems that will be introduced during the session. At present, the law enforcement community is not itself 100 % behind the pioneering proposals.

Today's bill would set up a 15-member Sentencing Commission to revise sentence structure for felonies. Sentences would not be reduced from those passed by the Legislature. But the sentencing guidelines worked out by such commissions in other states have normally raised the maximum sentences for serious felonies, and have given judges more leeway in providing other types of punishment for first offenders who are convicted of non-violent felonies, such as probation, county jail time.

Washington, Pennsylvania and Minnesota have already established sentencing commissions. Utah has had voluntary sentencing guidelines since 1976; Florida is now considering such a system, according to James Austin, of the National Council on Crime and Delinquency, a nationwide research organization with offices in San Francisco.

Minnesota, whose sentencing guidelines have been in effect since 1980, concluded in its first two-year report that there had been a 73 % increase in imprisonment for offenders convicted of the more serious and violent offenses, and a 72 % reduction in imprisonment for those convicted of crimes of low severity. In addition, Minnesota is now able to fit its prison population into its prison system capacity,

Presley said. "That is something which I would hope such a sentencing commission could help accomplish for California, along with my Emergency Powers bill introduced last week." The latter bill, Senate Bill 50, would permit the Director of the State Department of Corrections to advance the release dates for non-violent inmates for 30 days or more, if necessary to bring the prison population down to 120 % of its capacity (it is now at roughly 130 - 135 % of capacity, according to CDC figures). (States having such laws include Okla., Wash., Mich., Conn.)

The 15 member commission proposed in Presley's bill would include:

Eight members named by the Governor (two prosecuting attorneys, two attorneys with expertise in defense, one Supreme Court member, a Superior Court judge, one sheriff or chief of police, and a public member.

Two members named by the Speaker of the Assembly, a Superior judge and a public member

Two members named by the President Pro Tem of the Senate, a Superior Court judge and a public member

Ex-officio members: Chairman of the Board of Prison Terms, the Director of Finance and the Director of the Dept. of Corrections

The commission would have a year to draw up its guidelines, which would require legislative approval. Judges would not be bound by the guidelines but would have to provide written reasons for deviating.

Guidelines in other states have normally been worked into a grid (see attached) which rate each offender on the basis of the severity of his/her crime, and on his criminal history. Whether he is given a prison sentence, or probation or alternate sentencing, depends upon where his point score falls on the grid. Other states have considered building into the grid, other factors such as the individual's juvenile record, record of drug and alcohol abuse, etc., but this is not included in SB 56.

Examples of the revised sentence ranges proposed in the bill:

For a felony for which the range of sentences open to the judge is now 2-3-4 years, it would be 2-6 under the bill.

Two-3-5 years, would be revised to 2-to-8 years, etc.

For additional information:

Jim Austin, National Council on Crime and Delinquency, 415-956-5651

Brian Taugher, Deputy Sec'y, Youth and Corrections Agency.

(916) 323-6004

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CONTROLLING PRISON POPULATIONS: AN ASSESSMENT OF CURRENT MECHANISMS

Robert Mathias
Diane Steelman

May 1982



-B33-

NATIONAL COUNCIL ON CRIME AND DELINQUENCY
2125 Center Avenue, Fort Lee, New Jersey 07024

Two new prisons temporarily have relieved overcrowding in Maryland, and double-celling has been reinstated as another form of relief. However, the respite may be short-lived. Even Public Safety Secretary Thomas Schmidt acknowledges that these measures will not be enough to keep pace with the surging population occasioned by the more restrictive policies. (The state's prison population now borders on 10,000 which is 1,000 over previous projections.)

The Maryland experience bears pointed lessons for policymakers about the necessity for carefully planned development, enactment, implementation and operation of Early Release Programs. Building coalitions with individuals and groups who may be publicly supportive of program efforts, educational efforts aimed at decisionmakers and media, and careful attention to program design and operation, are all essential if innovative alternatives are to be successfully implemented.

FRONT DOOR OPTIONS

Front door options are those which reduce prison populations by reducing the number of offenders admitted into prison. Because of the larger number of actors involved (police, prosecutors, judges), it is more difficult to control prison population via the front door. This does not, however, mean it is impossible.

In this section we examine two basic approaches which are being tried to control prison admissions: Sentencing Guidelines and Post-Sentence Diversion.

SENTENCING GUIDELINES - MINNESOTA

The general purpose of sentencing guidelines is to suggest to the judiciary a range of appropriate sentences from which to choose. Most efforts at developing guidelines have been descriptive, providing a summary of experience in a particular court system, to indicate the "usual" penalty which has been awarded in similar cases. The Sentencing Guidelines adopted by Minnesota in 1980 differ from the usual pattern in that they are prescriptive, defining who should be imprisoned, and for how long.

It is particularly important to note that the Minnesota Guidelines were developed with specific reference to the state's current institutional capacity. That is, they work within the structure that the number of offenders sentenced to prison should not exceed the number of spaces available. Therefore, Sentencing Guidelines should help to prevent prison overcrowding.

Since the amount of available prison space is clearly limited, Guidelines were shaped to restrict the use of incarceration to those convicted of more serious offenses, or those having the longest criminal histories.

Development:* For most of the 1970's, Minnesota's Department of Corrections was headed by Commissioners whose major goals included reducing the size of the prison population. A variety of reforms were introduced, including a policy of community-based corrections, which eventually became the pioneer Community Corrections Act (1973).

During the early 1970's, the state's criminal justice system operated under an indeterminate sentencing law, which had been adopted in 1963. Under that statute, judges were responsible for the dispositional decision, that is, whether to incarcerate a particular offender, as well as determining the length of the maximum sentence. The release decision was in the hands of the parole authority, the Minnesota Corrections Board (MCB). The complaints against indeterminate sentencing in Minnesota were similar to those heard elsewhere at the time around the country: disparity in sentences, uncertainty about the length of time to be served; prison unrest, etc. By 1975, considerable pressure had developed for sentencing reform, as well as the abolition of the parole board, and the first determinate sentencing bill was introduced into the legislature. However, there was considerable opposition to legislatively fixed sentences by a number of strategically placed individuals, who were concerned about the potential for escalating levels of sentence severity which exists when sentence lengths are open to easy modification by the legislature.

*Most of the material on the development and enactment of the Minnesota Sentencing Guidelines is based on an unpublished draft paper, "The Politics of Sentencing Reform: A Comparative Case Study of the Development of Sentencing Guidelines in Pennsylvania and Minnesota," presented by Susan E. Martin, Study Director, Committee on Research on Law Enforcement and the Administration of Justice, National Research Council, at a workshop of the Panel on Sentencing Research at Wood's Hole, Massachusetts, on July 28, 1981. Ms. Martin has graciously consented to the inclusion of this material.

The struggle over sentencing reform continued for several years (and over several legislative proposals), until, in 1978, a compromise was reached between the disputing factions: the fiscal conservatives and the correctional liberals. A Sentencing Guidelines Commission was created, which would determine both sentence dispositions and durations of confinement. The Commission was directed to submit Sentencing Guidelines to the legislature by January 1, 1980. The Guidelines would automatically become effective on May 1, 1980, unless the legislature took negative action on them.

The Commission's mandate was to determine the circumstances under which imprisonment would be proper, and to establish presumptive fixed sentences for such offenders, based on reasonable offense and offender characteristics. The Commission was directed to provide Guidelines to reduce sentencing disparity, and to do it within a manner consistent with available correctional resources.

In order to determine presumptive sentences, the Commission was to "take into substantial consideration current sentencing and releasing practices and correctional resources, including but not limited to the capacities of local and state correctional facilities." This key phrase of the legislation was drafted by the Department of Corrections, since the Commissioner's greatest concern was that sentence lengths not be set which would increase the size of the prison population. There is widespread feeling that the eventual success of the Minnesota Commission in producing feasible Guidelines was their decision to interpret the mandate to "consider correctional resources" as an absolute limit on future prison populations, which made their task one of allocating scarce resources, and selling the Guidelines they produced as the only responsible and practical option under the circumstances.

Enactment: Three research studies were undertaken by the Guidelines Commission: 1. A dispositional study examining judicial sentencing practices; 2. A durational study which explored the releasing practices of the Minnesota Corrections Board; and, 3. A population projection model to show the impact of various sets of Guidelines on correctional facilities.

Policy options that would lead to prison overcrowding were rejected, and options which were acceptable both in terms of past practice and the values of the Commission members* and various interest groups were developed.

A Sentencing Grid was designed, combining offense severity and criminal history scores. The sentence which appears in each cell is presumptive, and contains a range of time, plus/minus 5-8 percent around the fixed presumptive sentence. The sentencing judge may deviate from a sentence within that presumptive range only when the circumstances are so aggravating or mitigating that they are "substantial and compelling," and, in such a case, the judge must provide written reasons for the sentence deviation.

The Commission adopted what they called the "modified just deserts" approach to set sentence durations. That approach suggested that sentence lengths should increase more rapidly with offense seriousness than with criminal history. This had the political advantage of ensuring the imprisonment of those offenders who cause the most public concern -- those convicted of serious offenses against the person.

Before the adoption of the Guidelines, a majority of those with very limited criminal histories received stayed sentences, no matter how serious the current offense, whereas most low severity offenders with extensive prior records were incarcerated. The Guidelines changed the emphasis from prior record to offense severity. This means that the dispositional line on the grid is drawn at lower criminal history levels for more severe offenses, and at a high criminal history level for less severe offenses. Under this approach, even first time offenders are to be imprisoned if they commit very serious crimes. At the same time, individuals convicted of less serious offenses, including those with extensive prior records, are less likely to be sentenced to the Department of Corrections. In addition to this fundamental change, the Commission gave slightly longer sentences than previously for violent crimes, and shorter ones for property offenses.

The dispositional line adopted by the Commission was designed to result in more offenders against the person and less property offenders being committed to the state prison system. The Commission predicted that, subsequent to adoption of the Guidelines, the proportion of person offenders in state institutions would increase from approximately 58 percent to 74 percent over a five-year period, while the proportion of property offenders would decrease from 39 percent to 23 percent.

In the course of their work, Commission members were always aware that they would need to gain the support of the various interest groups which would be affected by the Guidelines they would be affected by the Guidelines they would develop. So a policy of openness was consciously adopted, to permit the development of as broad a consensus as possible. Interested groups were encouraged to participate in the process of developing the Guidelines. All meetings of the Commission were open, additional regional public meetings were held, and Commission members and staff made numerous presentations around the state. At the same time, relations with the press were carefully cultivated, including meetings with editorial boards and contact with reporters, in order to secure accurate and favorable coverage of the final proposal.

*Commission members included: The Chief Justice, two District Court judges, the Commissioner of Corrections, Chair of the Corrections Board (Parole Board), and gubernatorial appointees of a Prosecutor, Public Defender, and two citizen representatives.

By the time the final Guidelines were developed and submitted to the legislature, it was impossible for any interest group to legitimately claim it had not had an opportunity to provide input. Given the option, most interested parties, even those opposed to the Guidelines concept, chose to become involved in the process, if for no other reason than it was perceived as a better choice than to stand outside and see something unacceptable developed.

In the end, because of the openness and inclusiveness of the process, and the fact that the Commission was willing to make concessions to a number of interest groups, even those who were not completely enthusiastic regarding the finished Guidelines agreed not to oppose them. As a result, when the proposed Guidelines were presented to the legislature, no negative action was taken, and they therefore became effective automatically in May 1980.

Assessment: One of the aims of the Commission was to design Guidelines which would result in maintaining the state prison population beneath 95 percent of capacity. Thus far, that aim has been achieved. The Commission has the authority to "adjust" the Guidelines at any time, that is, amend them and self-approve them, if they determine the Guidelines as presently constituted are not meeting their purpose. Since May 1980, the Commission has made several adjustments, once to incorporate changes in mandatory sentencing laws adopted by the legislature in August 1981. Staff anticipate those changes will not have a negative impact on the effectiveness of the Guidelines.

According to the Commission's staff director, between May 1980 and October 1981, admissions to the state prison system were down 20 percent. Admissions for violent felonies were up considerably, especially for those with low criminal histories, while admissions for property offenses were down considerably -- precisely what the Guidelines intended. However, the decrease in admissions was initially offset by the fact that the Minnesota Corrections Board (which retained jurisdiction over cases committed before the implementation of the Guidelines) cut back considerably on the number of parole releases granted, and increased the number of parole revocations. As the number of cases under parole's control decrease, the Minnesota Correction Board's impact on the total population is expected to decrease. In addition, the legislature has removed all funding for the Minnesota Correction Board, effective July 1, 1982.

There is considerable agreement that the Minnesota Sentencing Guidelines are a promising approach to reducing (or at least not increasing) prison populations. Some of the obvious reasons behind their success are the commitment of Commission members and staff to the proposition that Sentencing Guidelines should not result in more offenders being sent to prison than could be accommodated by the present cell spaces, and the homework done by the Commission in involving and educating all relevant interest groups and the media in the Guidelines development process.

But there are other factors which some observers contend may have contributed greatly to the relative smoothness and positive atmosphere* surrounding the entire project. Minnesota has been, and remains, a low incarceration state,** and has a history of emphasizing community corrections and alternatives to incarceration. The state also has a political culture which has been characterized as "moralistic," with a concentration of issue-oriented debates in which organized interest groups play a large role, while the legislature remains somewhat passive. (N.B.: Once the legislature decided to name a Sentencing Guidelines Commission, it was in character not to name any legislative members to the Commission.) In addition, there is an extra-ordinary internal cohesiveness within the state, based to a large degree on ethnic homogeneity, and the relatively small numbers of racial minority groups among the citizenry.

This particular combination of factors may in fact be unique to Minnesota as a political entity, and at the least does not exist in most other states. On the other hand, there is no evidence to indicate that a political climate identical to, or reminiscent of, Minnesota's is the sine qua non of a successful Sentencing Guidelines effort. The argument that Minnesota is so "special" that other states could not achieve similar successes through a similar mechanism is not entirely convincing. On the contrary, what the Minnesota experience most clearly suggests is that the commitment to rationalize sentencing and control the size of the imprisoned population at the same time is the linchpin on which the development of successful Sentencing Guidelines hinge. That commitment is what must exist -- or be developed -- in other jurisdictions which wish to replicate Minnesota's positive experience with the Guidelines mechanism.

*It should be noted that several Commission members and staffers emphasize that the process was hardly a flawless one, and they have been subjected to the same kinds of pressure and continue to receive the same kinds of criticism that individuals in similar positions receive in other jurisdictions.

**As of September 30, 1981, Minnesota ranked 49th of the 50 states in the number of sentenced prisoners per 100,000 population.

SENTENCING GUIDELINES COMMISSION

-B37-

In 1981 the Washington legislature enacted a bill which substantially alters the state's adult sentencing system. The Sentencing Reform Act (House Bill 440) establishes a "presumptive" sentencing system to take effect in 1984. Under this new system, the legislature will adopt standard sentence ranges for felonies based on the severity of the crime and the offender's criminal history. These sentencing guidelines will determine the appropriate punishment — jail, prison, work release, community supervision, restitution, etc. — as well as the length of confinement and/or amount of the fine. Deferred or suspended sentences will be abolished, as well as extensive parole supervision.

Trial court judges will use these guidelines in sentencing decisions concerning adult felons. Offenders imprisoned under the guidelines will serve the sentence imposed by the judge, reduced by "good time." Where special circumstances exist, judges will be able to sentence above or below the guidelines. A written explanation for such exceptions will be required and the defendant and the prosecutor will have the right to appeal exceptional sentences. Prosecutorial discretion will also be affected by the law. Standards for charging and plea bargaining practices will be developed and future plea agreements will be reviewed and evaluated by the trial judge. The judge will have the authority to reject plea agreements if they violate the prosecutor standards or "the interest of justice."

The sentencing guidelines are scheduled to go into effect in July of 1984. After this date, the Board of Prison Terms and Paroles will no longer have authority over new commitments to the Department of Corrections. The Parole Board will retain authority over offenders sentenced under the previous system until 1986, when the Board will be abolished. A new body, the Board of Clemency and Pardons will begin functioning in 1988, with the authority to revise all requirements for pardons and commutations of sentences and recommendations for action to the Governor.

EXPLANATION OF WASHINGTON'S SENTENCING COMMISSION

Sentencing Guidelines Commission

The Sentencing Reform Act creates an independent state agency to develop the recommended guidelines and standards. This state agency, the Sentencing Guidelines Commission, consists of 15 voting members appointed by the Governor. These members include four Superior Court judges, two defense attorneys, two prosecutors, three citizens, the directors of three state agencies, and the chief of a local law enforcement agency. In addition, four legislators, appointed by the leadership of the House and the Senate, serve as non-voting members. The Commission will submit its report and recommendations to the legislature in January, 1983. The legislature has until the implementation date in 1984 to act on the Commission's recommendations.

As part of its report to the legislature, the Commission must estimate the impact of its guideline sentences on existing and planned capacity for the state's correctional system. If capacity would be exceeded under its "ideal" set of guidelines, the Commission must devise an alternate set which would not result in overcrowding. This will give the legislature the choice of either funding additional correctional facilities or adopting the lower sentence guidelines.

Purpose and Philosophy

Like most other states, Washington has until now used a modified indeterminate sentencing scheme whereby the judge may sentence a felony offender to a given time in a state institution. However, the actual length of time served by the offender is determined not by the judge, but by the Board of Prison Terms and Paroles. Discretion for sentence length is vested in this Board on the presumption that an inmate's rehabilitation can be evaluated and that such assessments are appropriate to consider in setting a release date. Thus, the actual time served by an offender may depend less on the crime that was committed and more on other factors, such as attitude, willingness to participate in prison programs, etc.

This reliance on a "medical model" for sentencing, where the length of incarceration is based on individual "needs" and rehabilitation, is being seriously questioned across the country. Critics contend that it is unfair because it permits offenders who commit similar crimes to get widely different sentences. The system has also been labeled as dishonest

because the length of sentence imposed by the judge is not the time actually served by the offender. The new Washington law is part of a national trend away from indeterminate sentencing, toward punishment that is just, equal, and certain.

The primary purpose of the Sentencing Reform Act is to structure, but not eliminate, the discretion of participants in the criminal justice system. The presumptive sentences will apply to felony offenders in all parts of the state, without regard to race, sex, economic status, education or family history. Sentencing decisions will thus be more predictable and result in less disparity among like offenders. At the same time, the public will be protected and opportunities will be provided for the offender to rehabilitate him or herself.

The Sentencing Reform Act provides specific policy direction to the Commission's work. The Commission is instructed to adopt guidelines which emphasize confinement for the violent offender and alternatives to confinement for the non-violent, first-time offender. Minimum sentence lengths are established for the crimes of murder, assault, and rape, as well as a determination of the appropriate type of confinement for these crimes. Provisions for restitution and "good time" are also included.

The law also gives the Governor emergency power in the event of overcrowding in the state's correctional institutions. The Governor can call the Sentencing Guidelines Commission into an emergency meeting to evaluate their guidelines and consider any revisions necessary to handle the emergency. The Governor can also call the Clemency and Pardons Board into session to recommend whether the Governor should exercise commutation or pardon power. Prior to 1988, the Governor has the authority to call the Parole Board into an emergency meeting to evaluate its guidelines and release decisions.

Public Involvement

The Commission's monthly meetings are open to the public. Agendas are distributed ahead of each meeting and interested persons and organizations can be placed on a mailing list. The Commission will also hold four public hearings before its report to the legislature in January, 1983.

For Further Information: Contact the Commission office at (206) 753-3081, 3400 Capitol Boulevard, QE-13, Olympia, 98501.

STATE OF WASHINGTON

TABLE I

Sentencing Grid

1/3/83

SERIOUSNESS
SCORE

OFFENDER SCORE

	0	1	2	3	4	5	6	7	8	9 or more
XIV	Life Sentence without Parole/Death Penalty									
XIII	23y 4m 240 - 320	24y 4m 250 - 333	25y 4m 261 - 347	26y 4m 271 - 361	27y 4m 281 - 374	28y 4m 291 - 388	30y 4m 312 - 416	32y 10m 338 - 450	36y 370 - 493	40y 411 - 548
XII	12y 123 - 164	13y 134 - 178	14y 144 - 192	15y 154 - 205	16y 165 - 219	17y 175 - 233	19y 195 - 260	21y 216 - 288	25y 257 - 342	29y 298 - 397
XI	6y 62 - 82	6y 9m 69 - 92	7y 6m 77 - 102	8y 3m 85 - 113	9y 93 - 123	9y 9m 100 - 133	12y 6m 129 - 171	13y 6m 139 - 185	15y 6m 159 - 212	17y 6m 180 - 240
X	5y 51 - 68	5y 6m 57 - 75	6y 62 - 82	6y 6m 67 - 89	7y 72 - 96	7y 6m 77 - 102	9y 6m 98 - 130	10y 6m 108 - 144	12y 6m 129 - 171	14y 6m 149 - 198
IX	3y 31 - 41	3y 6m 36 - 48	4y 41 - 54	4y 6m 46 - 61	5y 51 - 68	5y 6m 57 - 75	7y 6m 77 - 102	8y 6m 87 - 116	10y 6m 108 - 144	12y 6m 129 - 171
VIII	2y 21 - 27	2y 6m 26 - 34	3y 31 - 41	3y 6m 36 - 48	4y 41 - 54	4y 6m 46 - 61	6y 6m 67 - 89	7y 6m 77 - 102	8y 6m 87 - 116	10y 6m 108 - 144
VII	18m 15 - 20	2y 21 - 27	2y 6m 26 - 34	3y 31 - 41	3y 6m 36 - 48	4y 41 - 54	5y 6m 57 - 75	6y 6m 67 - 89	7y 6m 77 - 102	8y 6m 87 - 116
VI	13m 12+ - 14	18m 15 - 20	2y 21 - 27	2y 6m 26 - 34	3y 31 - 41	3y 6m 36 - 48	4y 6m 46 - 61	5y 6m 57 - 75	6y 6m 67 - 89	7y 6m 77 - 102
V	9m 6 - 12	13m 12+ - 14	15m 13 - 17	18m 15 - 20	2y 2m 22 - 29	3y 2m 33 - 43	4y 41 - 54	5y 51 - 68	6y 62 - 82	7y 72 - 96
IV	6m 3 - 9	9m 6 - 12	13m 12+ - 14	15m 13 - 17	18m 15 - 20	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57	5y 2m 53 - 70	6y 2m 63 - 84
III	2m 1 - 3	5m 3 - 8	8m 4 - 12	11m 9 - 12	14m 12+ - 16	20m 17 - 22	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57	5y 51 - 68
II	0 - 90 Days	4m 2 - 6	6m 3 - 9	8m 4 - 12	13m 12+ - 14	16m 14 - 18	20m 17 - 22	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57
I	0 - 60 Days	0 - 90 Days	3m 2 - 5	4m 2 - 6	5m 3 - 8	8m 4 - 12	13m 12+ - 14	16m 14 - 18	20m 17 - 22	2y 2m 22 - 29

NOTE: Numbers represent presumptive sentence ranges in months. Midpoints are in bold type (y = years, m = months). 12+ equals one year and one day. For a few crimes, the presumptive sentences in the high offender score columns exceed the statutory maximums. In these cases, the statutory maximum applies.

Additional time added to the presumptive sentence if the offender was armed with a deadly weapon:

- 24 months (Rape 1, Robbery 1, Kidnapping 1)
- 18 months (Burglary 1)
- 12 months (Assault 2, Escape 1, Kidnapping 2, Commercial Burglary 2)

12/SG5

Sentencing Guidelines Commission

APPENDIX C

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XIV	Aggravated Murder 1	
XIII	Murder 1 (v)	v = violent offense (as defined by RCW 9.94A)
XII	Murder 2 (v)	
XI	Assault 1 (v)	
X	Kidnapping 1 (v) Rape 1 (v)	
IX	Robbery 1 (v) Manslaughter 1 (v) Statutory Rape 1 (v)	
VIII	Arson 1 (v) Rape 2 (v) Promoting Prostitution 1	
VII	Burglary 1 (v) Negligent Homicide Introducing Contraband 1	
VI	Bribery Manslaughter 2 (v) Intimidating a Juror/Witness	
V	Statutory Rape 2 Kidnapping 2 (v) Extortion 1 (v) Indecent Liberties (v)	
IV	Robbery 2 (v) Assault 2 (v) Escape 1 Arson 2 (v) Bribing a Witness/Bribe Received by Witness Malicious Harassment Willful Failure to Return from Furlough Incest 1	

- III Rape 3
 - Statutory Rape 3
 - Incest 2
 - Extortion 2
 - Unlawful Imprisonment
 - Assault 3
 - Promoting Prostitution 2
 - Introducing Contraband 2
 - Communicating with a Minor for Immoral Purposes
 - Escape 2
 - Perjury 2
 - Intimidating a Public Servant
 - Tampering with a Witness

- II Malicious Mischief 1
 - Possession of Stolen Property 1
 - Theft 1
 - Welfare Fraud
 - Burglary 2

- I Theft 2
 - Possession of Stolen Property 2
 - Forgery
 - Auto Theft (Taking and Riding)
 - Vehicle Prowl 1
 - Eluding a Police Vehicle
 - Malicious Mischief 2
 - Reckless Burning
 - Unlawful Issuance of Bank Checks

NOTE: Drug crimes are not ranked at this time because they are still under consideration by the Commission.

Sentencing Guidelines
Commission 1/83

TABLE 3

Sentencing Guidelines Commission
January, 1983OFFENDER SCORE MATRIXPrior Adult Convictions^a

	Serious Violent	Burglary 1	Other Violent	Negligent Homicide	Escape	Burglary 2	Felony Hit-and-Run	Non-Felonies	Other Non-Violent
Serious Violent	3	2	2	1	1	1	1	0	1
Burglary 1	2	2	2	1	1	2	1	0	1
Other Violent	2	2	2	1	1	1	1	0	1
Negligent Homicide	0	0	0	1	0	0	1	1	0
Escape	0	0	0	0	1	0	0	0	0
Burglary 2	1	2	1	1	1	2	1	0	1
Other Non-Violent	1	1	1	1	1	1	1	0	1

Prior Juvenile Convictions^{a*}

	Serious Violent	Burglary 1	Other Violent	Negligent Homicide	Escape	Burglary 2	Felony Hit-and-Run	Non-Felonies	Other Non-Violent
Serious Violent	3	2	2	½	½	½	½	0	½
Burglary 1	2	2	2	½	½	1	½	0	½
Other Violent	2	2	2	½	½	½	½	0	½
Negligent Homicide	0	0	0	½	0	0	½	½	0
Escape	0	0	0	0	½	0	0	0	0
Burglary 2	1	2	1	½	½	1	½	0	½
Felony Hit-and-Run	1	1	1	½	½	½	½	0	½

Definitions: Serious Violent: Murder 1, Murder 2, Assault 1, Kidnapping 1, Rape 1
Escape: Escape 1, Escape 2, Willful Failure to Return From Work Release or Furlough
Non-Felony: DWI, Reckless Driving, Hit and Run

*Prior B level felonies are not counted if 10 years (crime free) have elapsed in the community before the current offense was committed.
Prior C level felonies are not counted after 5 years (crime free).

**Prior juvenile adjudications are counted only if the current offense was committed on or before the offender's 23rd birthday and the juvenile offense was committed on or after the defendant's 15th birthday.

Note: In the case of multiple prior offenses, all adult offenses served concurrently count as one offense, and all juvenile adjudications imposed on the same date count as one offense for the purposes of computing the offender score.

APPENDIX D

BILL NUMBER: SB 50

AMENDED IN SENATE APRIL 7, 1983

AMENDED IN SENATE MARCH 17, 1983

AMENDED IN SFNATE MARCH 10, 1983

AMENDED IN SENATE FEBRUARY 24, 1983

AMENDED IN SENATE FEBRUARY 11, 1983

AMENDED IN SENATE JANUARY 31, 1983

Introduced by Senator Presley

DECEMBER 10, 1982

An act to add and repeal Section 5071 of the Penal Code, relating to prisoners.

AUTHOR: Senator Presley

LAST AMENDED DATE: APRIL 7, 1983

LEGISLATIVE COUNSEL'S DIGEST

SB 50, as amended, Presley. Prisons.

Existing law does not authorize the release of persons imprisoned in state prisons on the basis that insufficient space is available in the prisons.

This bill would provide for the advancement of the release dates of eligible prisoners, as defined, to reduce the state prison population.

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 5071 is added to the Penal Code, to read:

5071. (a) This section may be cited as the Emergency Powers Act of 1983.

(b) It is the intent of the Legislature that the capacity of the state's prison system be expanded sufficiently to house dangerous or repeat felony offenders committed to state prison by the courts. Until such time as adequate space is available to safely house all such commitments, it is the intent of the Legislature that existing capacity be utilized first for those who have committed extraordinary crimes of violence against the person. Therefore, this act is intended as an emergency stopgap measure to help solve a crisis situation, and not as a long-term solution to the overcrowding problem. The Legislature further intends that ultimately the state hopes to be able to reduce the prison population to 95-100 percent of design capacity, and that the Department of Corrections shall report to the Legislature each year on progress being made toward that goal. It is the further intent of the Legislature, in providing for a 60-day period for legislative approval of the director's plan for early release of inmates, to provide an opportunity for examination of the plan and for whatever legislative action is deemed appropriate.

(c) (1) It shall be the responsibility of the Director of Corrections to determine the state prison system's design capacity, and the prison population within five days after the effective date of this section.

The determination of design capacity shall include all facilities owned, rented, leased or loaned for inmate housing by the Department of Corrections, including tents, dormitories, contract cells with local government for state prisoners, halfway or community housing, metal compound structures, modular units or other facilities used for regular overnight housing of inmates.

(2) The director shall report to the Governor, the Speaker of the Assembly, the President pro Tempore of the Senate, and the Chairman of the Joint Legislative Committee on Prisons quarterly on design capacity and current prison population and such other times as he deems appropriate.

The director's computation of design capacity for each state prison facility shall be detailed in a report which shall be made public 10 days prior to its use as the basis for advancing the release dates of eligible inmates. It shall include the bases for determination of the design capacity.

(d) The director shall report to the Legislature, within 20 days after the effective date of this section, upon a plan for the early release of eligible inmates which if he concludes it is necessary to reduce the state's prison population, along with the reasons and supporting documentation. This plan shall be implemented 60 days after the report is made, unless the Legislature rejects or modifies the plan by statute. The director shall have the authority to make such recommendations whenever he feels the situation requires it.

(e) In no event shall an individual prisoner's release date be advanced under this section by a total of more than 60 days.

(f) Inmates released under the program shall go immediately into parole as would be the case for an inmate not covered by the program.

(g) No inmate shall have his or her release date advanced more than once during a five-year period. A parolee who has had his or her release date advanced and who was returned to prison for parole violation or commission of a felony during the advance-release period, shall have the length of his or her advance-release period added to his or her term of imprisonment.

(h) Eligible prisoners are those received in prison as of the date of the director's action who have not been returned to prison for a parole violation, and who are not serving a term of imprisonment and who, during the seven years prior to present imprisonment, have not been convicted and served a term in jail or prison which, in whole or in part, has been imposed for a crime listed in subdivision (c) of Section 667.5 or Section 667.6 or the felonious sale of any controlled substance in violation of Division 10 (commencing with Section 11000) of the Health and Safety Code, the violation of Section 11351, 11352, 11352.5, 11379.5 or 11380.5 of the Health and Safety Code by selling, furnishing, administering or providing heroin, cocaine, or PCP to a minor, the attempt to commit any felony, including murder, punishable by death or imprisonment in the state prison for life, the violation of Section 211, Section 220, subdivision (b) or (c) of Section 245, Section 264.1, 289, 4500, 4501, or 4503, or the explosion of a destructive device or explosive in violation of Section 12303.3, 12308, or 12309.

(i) The director shall keep the Governor, the Speaker of the Assembly, the President pro Tempore of the Senate, and the Chairman of the Joint Prison Committee informed of each action he or she plans and implements, the design and population breakdowns on which his or her decisions are made, and on the results. This information shall also be made public by the director.

(j) The director may suspend the program authorized by this section temporarily in case of emergency or disaster situations.

(k) This section shall remain in effect only for three years after its effective date and as of such date is repealed, unless a later enacted statute, which is chaptered before that date, deletes or extends such date.

APPENDIX E

SB 50 (Presley)
As amended February 24
Penal Code
MRR

Senate Committee
on Judiciary

EMERGENCY RELEASE OF PRISON INMATES

HISTORY

Source: Author

Prior Legislation: SB 855 (1981) - held in this
Committee

Support: California Correctional Peace Officers
Association; Criminal Law Section,
State Bar; Commission on Corrections,
State Bar; CPPCA

Opposition: State Public Defender; Friends
Committee on Legislation

KEY ISSUE

SHOULD THE DIRECTOR OF CORRECTIONS BE REQUIRED TO
FORMULATE A PLAN, EFFECTIVE UPON APPROVAL BY
LEGISLATIVE RESOLUTION, TO RELEASE CERTAIN INMATES
EARLIER THAN THEIR DISCHARGE DATES IN ORDER TO
REDUCE PRISON OVERCROWDING?

PURPOSE

The Determinate Sentence Law (DSL) specifies terms
of imprisonment in most felony cases.

This bill would create the Emergency Powers Act,
requiring the Director of Corrections to present
to the Legislature within 20 days of the bill's
effective date a plan to alleviate prison
overcrowding by the early release of eligible
inmates. This plan would become operative if
approved by a resolution of the Legislature.

(More)

The purpose of this bill is to ease the overcrowded conditions that presently exist in the state prison system.

COMMENT

1. Current overcrowding

According to the Department of Corrections, as of January 21, the state prison population was at 131% of capacity, and it is growing steadily.

Proponents believe that this situation could result in riots and other incidents of violence such as those that occurred in New York and New Mexico.

In addition, they assert that several states, most recently Texas, have been forced by court order to release thousands of prisoners at one time and that in these cases no measurable rise in the crime rate has taken place.

2. Plans for early release

(a) Formulation by Director of Corrections

This bill would require the Director of Corrections to formulate a plan for the early release of eligible inmates that would in her or his judgment reduce the prison population to an acceptable level.

Within 20 days of SB 50's effective date, and subsequently at her or his discretion, the director would be required to present this plan, along with supporting reasons and documentation, to the Legislature.

(More)

(b) No standards

This bill would give no guidance to the director as to

- (1) the amount of overcrowding that should trigger early releases,
- (2) the permissible population level that would not require early releases,
- (3) the frequency of early releases, or
- (4) the method by which those prisoners to be released early would be selected (other than by prohibiting the release of certain prisoners [see Comment 5]).

SHOULD NOT THE BILL SET STANDARDS FOR THE DIRECTOR?

WOULD NOT THE LACK OF STANDARDS BE AN INVITATION TO THE DIRECTOR TO DO NOTHING?

3. Approval of plan by legislative resolution

Under this bill the Director's early release plan would become effective if approved by a resolution of the Legislature, adopted by a majority vote of each House. This action and the plan's implementation would have to occur within 60 days of the Director's presentation.

Since the Legislature could not amend the plan by its resolution, any amendment would require a new plan and a new resolution.

(More)

Constitutional question

Article IV, section 8, of the California Constitution states that "[t]he Legislature may make no law except by statute and may enact no statute except by bill." Because this bill would attempt to enact the details of the early release plan by means of a resolution, one may question whether the terms of this bill constitute legally effective legislation.

It is arguable that the early release of inmates could be accomplished only if the Legislature enacted a statute either specifying who should be released and under which conditions or permitting the Director the discretion to make these determinations.

SHOULD NOT THIS BILL EITHER CONTAIN AN EARLY RELEASE PLAN OR PLACE THE RESPONSIBILITY FOR EARLY RELEASES ON THE DIRECTOR?

4. Limits on early release

Under this bill a prisoner could not have her release date advanced more than 60 days, and no inmate could have her date advanced more than once during a five-year period.

5. Ineligible prisoners

In addition to those offenders returned for parole violations, prisoners convicted of the following offenses would be ineligible for emergency release under this bill:

(More)

Murder or voluntary manslaughter;
Mayhem;
Rape;
Forcible sodomy;
Forcible oral copulation;
Lewd acts on a child;
Any felony punishable by life imprisonment, that results in GBI, or in which the defendant uses a firearm;
Specified sex offenses with a prior conviction for rape, sodomy, or oral copulation;
Felonious sale of any specified controlled substance;
Selling, furnishing, administering, or providing heroin, cocaine, or PCP to a minor;
Attempt to commit any felony punishable by death or life imprisonment;
Assault with intent to commit mayhem, rape, sodomy, or oral copulation;
Assault with a deadly instrument or by means likely to produce GBI on a peace officer;
Acting in concert with another to commit rape or foreign object rape;
Foreign object rape;
Assault by a prisoner with a deadly weapon;
Holding hostage by a prisoner;
Exploding a specified destructive device;
Exploding a destructive device with intent to commit murder or with bodily injury.

In addition no inmate would be eligible for early release who, during the seven years prior to the commencement of the present term, had been convicted for any of the above offenses.

(More)

6. Determination of capacity

The rated design capacity is the number of inmates for which a facility is constructed. Pursuant to this bill, the Director would be responsible for determining both the system's design capacity and its actual population.

In making this determination, she or he would include all facilities owned, rented, leased, or loaned to CDC for inmate housing, including tents, dormitories, contract cells, community housing, and modular units. This determination would have to be made within five days of the bill's effective date.

7. Release on parole

The prisoners released pursuant to SB 50 would go onto parole just as if they had served their full terms. A parolee who had her release date advanced and who had been returned to prison for a parole violation or commission of a felony during the advance-release period would have the length of this period added to her term of imprisonment.

8. Emergency legislation only

This bill states the Legislature's intent that the prison system be expanded sufficiently to house dangerous or repeat offenders. To this end SB 50 would serve as an emergency measure only and not as a solution to overcrowding.

The bill would enact legislative intent language to the effect that the prison

(More)

population should ultimately stabilize at 95 to 100% of design capacity and that CDC must report to the Legislature annually on progress being made toward that goal.

In addition this bill contains a three-year sunset clause.

9. Early release under Governor Reagan

A procedure similar to the one authorized in SB 50 was used when prisons became overcrowded ten years ago during the Reagan Administration. In order to relieve the condition, the Adult Authority (now the Board of Prison Terms) increased the number of parolees by 1,000 in 1969, by another 1,000 in 1970, and by 1,500 in 1971. The Authority was able to expedite releases without statutory authorization because prisoners were not at that time sentenced to legislatively fixed terms.

However, under the DSL corrections officials have no authority to release prisoners before they have completed their determinate sentences, less any goodtime or worktime credits, regardless of the circumstances.

APPENDIX F

BILL NUMBER: SB 56

AMENDED IN SENATE APRIL 11, 1983

Introduced by Senator Presley

DECEMBER 14, 1982

An act to add Article 2 (commencing with Section 1171) to Chapter 4.5 of Title 7 of Part 2 of, and to repeal Sections 1170.3, 1170.4, and 1170.6 of, the Penal Code, relating to criminal sentencing.

AUTHOR: Senator Presley

LAST AMENDED DATE: APRIL 11, 1983

LEGISLATIVE COUNSEL'S DIGEST

SB 56, as amended, Presley. Criminal sentencing.

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 requires aggravating circumstances and lowest term requires mitigating circumstances.

This bill would establish the California Sentencing Commission, with specified membership and terms, to devise sentencing guidelines including a series of recommended standard sentence ranges for felonies for use in trial court sentencing. The guidelines would be contained in a report made to the Legislature for its acceptance. Factors in establishing the ranges would include specified criteria including the violence of the offense and prison capacity. The commission would be required to conduct studies concerning the state prison system's present and future capacity. The commission could, upon petition, review the sentences in individual cases and make recommendations to the trial court, or the appellate court if a sentence has been appealed.

Under existing law, the Judicial Council is also required to collect, analyze, distribute, and publish information on sentencing practices and to study and review statutory sentences and operation of existing law and to report to the Governor and the Legislature on these matters and as to proposed legislation affecting felony sentences.

This bill would transfer these functions to the California Sentencing Commission when the sentencing guidelines become effective .

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 1170.3 of the Penal Code is repealed.
SEC. 2. Section 1170.4 of the Penal Code is repealed.
SEC. 3. Section 1170.6 of the Penal Code is repealed.
SEC. 4. 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. The Legislature finds and declares that the purpose of imprisonment for crime is punishment, that the commission of crimes of violence against the

person of another particularly deserve incarceration, and that trial court judges in sentencing convicted felons need more flexibility under clear guidelines to impose appropriate punishment for those crimes.

The intent of the Legislature in establishing a sentencing commission includes, but is not necessarily limited to, the following goals:

(a) Helping to reduce disparity in sentencing for the same crime in differing jurisdictions within California.

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

(c) 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.

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

(e) Establishing a graduated sentencing structure based on the seriousness of a crime, and taking into account the offender's record of past criminal convictions.

1171.1. There is hereby established in state government the California Sentencing Commission. The commission consists of ~~15 members~~ 18 members, one of whom the Governor shall appoint as chairperson.

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

- (1) The Chairman of the Board of Prison Terms.
- (2) The Director of Corrections.
- (3) The Director of Finance.

(b) The Governor shall appoint ~~eight~~ nine members as follows:

(1) Two prosecuting attorneys.

(2) Two attorneys with particular expertise in defense work, at least one of whom shall be a public defender.

(3) One member of the Supreme Court.

(4) One judge of the superior court.

(5) One chief of police or sheriff.

(6) One public member who is not and has never been an attorney, judge, or law enforcement officer.

(7) One person who is serving as an adult parole or probation officer.

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

(1) One superior court judge.

(2) One public member who is not and has never been an attorney, judge, or law enforcement officer.

(3) One Member of the Assembly. The member shall meet with and participate in the work of the commission to the extent that such participation is not incompatible with his or her position as a Member of the Legislature.

(d) The President pro Tempore of the Senate shall appoint two members as follows:

(1) One superior court judge.

(2) One public member who is not and has never been an attorney, judge, or law enforcement officer.

(3) One Member of the Senate. The member shall meet with and participate in the work of the commission to the extent that such participation is not incompatible with his or her position as a Member of the Legislature.

(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, three appointed by the Governor shall be appointed for terms of one year, one for two years, three for three years, and one for four years. Of the initial members appointed by the Speaker, one member shall be appointed for a term of two years and one for four years. Of the initial members appointed by the President pro Tempore, one member shall be appointed for a term of two years and one for four 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.

1171.2. The commission shall appoint an executive director and a chief of research who 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.

1171.3. The commission shall devise sentencing guidelines for the use of trial courts in sentencing persons convicted of felonies. Trial court judges in imposing sentences shall give significant consideration to the guidelines shall impose sentences within the guidelines as developed by the commission. If a trial court judge deviates from the guidelines, the judge shall state on the record his or her reasons for the deviation. The guidelines shall include , but not necessarily be limited to, the following components:

(a) A series of recommended standard sentence ranges for all felony offenses based on existing law and current sentencing practices in order to approximate sentences imposed for the same offenses prior to enactment of this article. The range of punishment shall be designed to include factors such as particularly heinous violations of law and the offender's criminal history. The ranges shall correspond to existing terms of imprisonment as follows: where the term is 16 months, two or three years, the range shall be one to four years; two, three, or four years, a range of two to six years; two, three, or five years, a range of two to eight years; two, four, or six years, a range of two to eight years; three, four, or five years, a range of three to nine years; three, five, or seven years, a range of three to 10 years; three, six, or eight years, a range of three to 12 years; five, seven, or nine years, a range of five to 13 years; five, seven, or 11 years, a range of five to 15 years; and corresponding ranges for other specification of three terms.

(b) New ranges of recommended sentences to correspond to enhanced terms imposed pursuant to Sections 667, 667.5, 667.51, 667.6, 667.7, 12022, 12022.3, 12022.5, 12022.6, 12022.7, 12022.8, or any other provision of law and recommendations as to whether these impositions are mandatory, presumptive, or discretionary.

(c) Recommended prosecuting standards in respect to charging of offenses.

(d) Recommended standards to govern whether sentences are to be served consecutively or concurrently except where expressly provided by law.

(e) Each of the commission's recommended standard sentence ranges shall include guidelines for imposition of imprisonment or probation.

(f) In adopting recommended standard sentences the commission shall give consideration to sentencing rules of the Judicial Council and shall emphasize imprisonment for the violent offender and alternatives to state prison imprisonment for the nonviolent offender.

1171.4. The commission shall conduct a study to determine the capacity of state correctional facilities and programs which are or will be available. While the commission need not consider the capacity in arriving at its recommendations, the commission shall project whether the implementation of its recommendations would result in exceeding the capacity of the state

correctional facilities. If the commission finds that this result would probably occur, then the commission shall prepare an additional list of recommended standard sentences which shall be consistent with that capacity.

1171.4. 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 in devising its sentencing guidelines as one of the factors, 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.

1171.5. By January 1, 1985, the commission shall submit to the Legislature a report containing the sentencing guidelines developed pursuant to Section 1171.3 and 1171.4. In preparing the report the commission may hold hearings and shall consider the comments of legislators and members of the public. The Legislature shall accept or reject the report by July 1, 1985 by concurrent resolution.

If the report is accepted, the Legislature shall enact appropriate measures to implement the report and the commission shall publish the report and make it available by September 1, 1985, to all courts of record, prosecuting agencies, public defenders, and, upon request, members of the State Bar.

If the report is rejected the commission shall revise the report or prepare a new report for submission by January 1, 1986, to be accepted or rejected by the Legislature by July 1, 1987.

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 an additional list of standard sentence ranges which are consistent with the capacity of the correctional facilities.

The commission in preparing recommendations shall give consideration to suggestions of the Legislature made by concurrent resolution or otherwise. The commission shall advise the Legislature of the consequences of sentencing changes proposed by the Legislature with respect to their impact on the capacity of the state correctional facilities.

1171.6. The sentencing guidelines of the commission, including recommended standard sentence ranges, shall not apply retrospectively.

1171.7. The commission shall seek to promote uniformity in sentencing under Sections 1171.3 and 1171.4, by:

(a) The adoption of rules providing criteria for the consideration of the trial judge at the time of sentencing regarding the court's decision to:

- (1) Grant or deny probation.
- (2) Impose the lower or upper prison term.
- (3) Impose concurrent or consecutive sentences.
- (4) Consider an additional sentence for prior prison terms.
- (5) Impose an additional sentence for being armed with a deadly weapon, using a firearm, an excessive taking or damage, or the infliction of great bodily injury.

(b) The adoption of rules standardizing the minimum content and the sequential presentation of material in probation officer reports submitted to the court.

1171.8. The commission shall collect, analyze, and quarterly distribute and publish relevant information to trial judges and other interested persons relating to sentencing practices in this state and other jurisdictions. Such information shall be taken into consideration by the commission in the

adoption of rules pursuant to Section 1171.7.

1171.9. The commission shall continually study and review the statutory sentences and the operation of existing criminal penalties and shall report to the Governor and to the appropriate policy committees of the Legislature its analysis regarding this subject matter and as to all proposed legislation affecting felony sentences. The review and analysis shall take into consideration all of the following:

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

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

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

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

1171.10. The commission, upon petition of a defendant, prosecutor, or trial court, may review individual cases in which it is alleged that the trial court has deviated from the sentencing commission's guidelines. The commission after reviewing the case may make recommendations concerning the sentence to the trial court, or to the appellate court if a sentence has been appealed.

SEC. 5. Sections 1 to 3, inclusive, of this act shall become operative only when the sentencing guidelines take effect as provided in Section 1171.5 of the Penal Code.

APPENDIX G

SB 56 (Presley)
As April 11
Penal Code
JGD

Senate Committee
on Judiciary

SENTENCING COMMISSION

HISTORY

Source: Author

Prior Legislation: None

Support: State Public Defender; California Public
Defenders Association

Opposition: No Known

KEY ISSUE

SHOULD A SENTENCING COMMISSION BE ESTABLISHED IN
CALIFORNIA?

PURPOSE

Existing law provides for a determinate sentencing system for felony offenders, comprised of base terms and enhancements.

This bill would establish a commission for the purpose of developing uniform charging standards and sentencing guidelines to be applied to each offense. When adopted by the Legislature, the guidelines would replace the Determinate Sentencing Law.

The purpose of the bill is to simplify felony sentencing, make uniform the treatment of offenders charged with the same crime in different counties, and, generally, to provide the Legislature with a periodic unified review of the entire sentencing process.

(More)

COMMENT

1. Sentencing guidelines

The central feature of the bill would be the development by the commission of sentencing guidelines for each felony offense.

(a) Sentence imposed by judge

The guidelines would be just that - guides for the judge to follow in imposing sentence. Under the guideline system, a judge would choose a specific length of time in state prison to impose from within the guideline spread.

For example, if the guideline for burglary were from two to six years, the judge could impose a determinate term within those limits.

Guidelines in other states have typically taken into account past criminal conduct of the defendant as well as the current commitment offense. This bill contains language that would appear to direct the commission to take past actions into account in a similar way.

If so, the offender's past conduct, assigned a certain number of "points" and plotted on a grid, would narrow a range in a particular case to a one or two year spread within which the judge may sentence.

(More)

Deviation from the guidelines would be allowed, but the commission would be charged with developing guidelines to depart from the guidelines, and the reason for deviating would be required to be placed on the record.

(b) Guidelines to reflect existing law

This bill would require the guidelines developed by the commission to conform to specified sentence spreads placed in the bill, one for each DSL base term range.

<u>Existing base term</u>	<u>Proposed guideline</u>
16 mos., 2 or 3 years	1 to 4 years
2, 3 or 4 years	2 to 6
2, 3 or 5	2 to 8
2, 4 or 6	2 to 8
3, 4 or 5	3 to 9
3, 5 or 7	3 to 10
3, 6 or 8	3 to 12
5, 7 or 9	5 to 13
5, 7 or 11	5 to 15

All that would be left for the commission to do in developing guidelines would be to adopt some way of ranking the offender's past conduct and to develop guidelines for existing enhancements - prior convictions, use of weapons, etc.

SHOULD THE COMMISSION BE LOCKED IN ON SENTENCE RANKING?

(More)

IF THE LEGISLATURE CAN DETERMINE
GUIDELINE SPREADS WITHOUT A COMMISSION,
DOES IT NEED A COMMISSION?

(c) Probation and prison alternatives

The bill would require the commission to include guidelines "for imposition of imprisonment or probation" as well as "to emphasize imprisonment for the violent offender and alternatives to state prison for the non-violent offender."

(d) Enactment by the Legislature

The guidelines or any other recommendation by the commission would not become law without being adopted by the Legislature. The bill would require the commission to report its recommendations by January 1985, and the Legislature would then have until July 1 to accept or reject them. If accepted the commission would thereafter report back to the Legislature on any suggested revisions every two years.

2. Charging guidelines

The bill requires the commission to develop "recommended prosecuting standards in respect to charging offenses." The bill does not specify whether or not, or to what extent, the recommendations would have to be followed by the individual district attorneys.

(More)

3. Commission membership

The commission would be composed of 18 members, including the chairman of the Board of Prison Terms, the director of the Department of Corrections, one justice of the Supreme Court, two legislators, and various representatives from entities having extensive contact with the criminal justice system.

The Governor, the Speaker and the President Pro Tempore would each have appointments.

(a) Staff and cost

The commission would be empowered to hire a permanent staff headed by two civil service exempt employees.

The operating commissioners in Washington and Minnesota have budgets of less than \$500,000.

(b) Judges disqualified to serve

Judges may not practice law or hold "public employment or public office."
[Calif. Con. Art. VI Sec. 17]

The Judicial Council is concerned that judges on the commission would be in violation of this provision. In addition, the Council notes that Supreme Court justices are likely to be too busy to participate fully.

SHOULD NOT JUDGES BE REMOVED FROM MEMBERSHIP?

(More)

4. Other duties

The commission would also be charged with the general duties to promote uniformity in sentencing, collect and distribute relevant information to trial judges and others relating to sentencing practices in this state and other jurisdictions, and to study and review the statutory sentences and report their findings to the Governor and the appropriate policy committees of the Legislature.

5. Commissions in other states

Three states currently have operating commissions - Washington, Minnesota, and Pennsylvania.

All three states moved from an indeterminate system, such as California had until 1978, directly to a sentencing commission.

The primary motivation for the change to a commission was the consensus among opinion leaders and legislators in all three states that the indeterminate system, based on a concept of offender rehabilitation, was not working. The great disparity of sentences often meted out for the same crime was widely denounced as one of the worst abuses of that system. Sentencing guidelines were recommended as a remedy that would result in uniform sentences of a predetermined length, giving the offender and the public some certainty regarding the extent of the punishment imposed.

(More)

6. Need for commission in California

In contrast with the states that have adopted the commission approach, California already has a determinate sentencing law. Proponents contend, however, that problems with the DSL nonetheless justify rejecting existing law and adopting the commission approach.

(a) Prison overcrowding

The bill would direct the commission to "consider" the impact of the guidelines on prison populations. According to proponents, guidelines could be developed that would emphasize alternatives to state prison for the nonviolent offender, and could be adjusted to reflect the available space in the prison system.

(b) Sentencing complexity

Nearly all parties involved with the criminal justice system agree that the DSL is too complicated. They point to the fact that approximately 25% of all felony appeals involve sentencing errors. Proponents contend that a guideline system is simple to use and would result in fewer errors.

Reversals for sentencing error under existing law, however, do not result in retrial, since the Board of Prison Terms recalculates the sentence according to the opinion of the appellate court. The abstract of judgment is changed in the

(More)

trial court to reflect the sentence modification, but the defendant does not appear; it is a clerical chore requiring no court time. The amount of public funds expended as a result of correcting sentencing errors would therefore appear to be quite small.

Moreover, appeals under this bill would still result in some reversals, particularly where judges sentenced outside the guidelines.

(c) Charging disparity

Proponents contend that uneven charging policies which vary from county to county are a remaining source of sentencing disparity and unfairness. For example, when a gun is used in a felony, the frequency with which that fact is charged in a complaint varies from a high of 98% in one county to a low of 72% in another county, with 92% being the norm. The frequency of charging a non-violent prior varies from a high of 81% in Contra Costa County to a low of 19.6% in San Bernardino County.

Proponents conclude that charging standards, developed by the commission, would make more uniform the treatment of similar crimes in different jurisdictions and would therefore result in more rational and fair administration of the criminal law.

(More)

7. Rough drafting

The bill as presently drafted suffers from a number of clerical errors and imprecision in the use of language.
