

Stanford Criminal  
Justice Center

Contemporary Sentencing Reform in California:  
A Report to the Little Hoover Commission<sup>1</sup>

“The history of [our State’s] struggle with jail and prison overcrowding problems and its reluctance to change unless forced to comply with court orders, demonstrate the fact that our State’s criminal justice system is one that has evolved based on short-term political expediency rather than one based on strategic planning with an awareness of long-term consequences.”

*- History of the Alabama Sentencing Commission and Timeline of Events Leading to Its Creation, Alabama Sentencing Commission. July 7, 2006.<sup>2</sup>*

I. Introduction

A primary question for the Commission, and for the legislature, is whether to create a sentencing commission to review California’s sentencing system. The answer, in short, is yes. It is sound policy to create an independent agency, drawing on professional policy expertise as well as the perspectives of representatives from various parts of state government, whose mandate is to collect and analyze sentencing and corrections data, to develop statewide sentencing and corrections policies, and to distribute sentencing discretion appropriately and evenly throughout the criminal justice system. All of the relevant parties have their own, often conflicting, ideas on how best to resolve California’s sentencing and corrections crisis. The only sensible solution is to delegate the responsibility of conducting an objective analysis of these issues to an independent expert agency capable of addressing them.

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<sup>1</sup> This report is intended to serve as written testimony for use by the Commission in preparation for the August 24, 2006, Public Hearing on California’s Sentencing Policies. Kara Dansky, Executive Director of the Stanford Criminal Justice Center, prepared this report and will provide oral testimony at the Public Hearing.

<sup>2</sup> <http://sentencingcommission.alacourt.gov/history.html>.

## II. Overview: State Sentencing Models, Guidelines, and Commissions

### *Sentencing Commissions – The Common Model*

The experience of many states has shown that sentencing commissions are emerging as the most successful modern governmental institution to prevent or cure the kind of correctional crisis that California now faces. A majority of states adopting the commission model did so as a direct response to the problems associated with purely discretionary and indeterminate sentencing and parole systems. The process surrounding the creation of these states' commissions has followed a distinct pattern, as described below.

- Almost uniformly, these states had discretionary, unguided, indeterminate sentencing structures in place prior to creation of the commission.
  - Judges had virtually unlimited discretion to impose sentence, with little or guidance as to what factors to weigh or how to weigh them, between broad statutory parameters;
  - Administrative bodies, typically known as parole boards, had virtually unlimited discretion to release inmates on parole.
- This situation often resulted in rapidly expanding incarceration rates (and, consequently, prison overcrowding), escalating prison costs, deteriorating prison conditions, and vast sentencing disparities. Frequently, as was the case with North Carolina and Alabama, states were threatened with federal injunctions and consent decrees.<sup>3</sup>
- There was general agreement on the need for reform, and little political opposition to the creation of an expert administrative agency whose primary purpose was to resolve the sentencing and prison crises by developing sentencing guidelines to reign in judicial discretion.
- One major exception to the general rule regarding the existence of widespread political agreement involved states in which the judiciary opposed the creation of an expert sentencing agency on the ground that unimpeded judicial discretion was an essential component of sentencing.<sup>4</sup> Another exception involved states in which the legislature was already sharply divided.<sup>5</sup>

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<sup>3</sup> Alabama is a recent example of this situation. Prior to the creation of a Sentencing Commission in 2000, Alabama prisons were operating at twice capacity and defendants convicted of similar crimes were frequently given wildly disparate sentences. See *History of the Alabama Sentencing Commission and Timeline of Events Leading to Its Creation*. Alabama Sentencing Commission. July 7, 2006. <http://sentencingcommission.alacourt.gov/history.html>. North Carolina was addressing a similar problem in the early 1970s. See Randall W. Duncan, John C. Speir, Tammy S. Meredith, *The Effects of Adopting North Carolina's Sentencing Guidelines in Georgia*. Georgia Public Policy Foundation. February 2, 1999.

<sup>4</sup> Examples include Alabama and South Carolina. See, e.g., *History of the Alabama Sentencing Commission*, *supra* Note 3.

<sup>5</sup> This occurred, for example, in Alaska. Telephone conversation with Teri Carns, former Senior Staff Associate, Alaska Sentencing Commission.

Some states that followed this fairly typical pattern included Minnesota, Pennsylvania, North Carolina, Virginia, Washington, Wisconsin, Alabama, and Maryland. Having convened sentencing commissions with little to no political controversy, these states went on to adopt sentencing policies and structures that varied considerably.<sup>6</sup>

### *Sentencing Commissions – Some Notable Exceptions*

The pattern described above, however, is by no means universal. As the following summary shows, a number of states whose recent histories differ from the common model, and whose legal structures represent yet other possible blends of fixed and discretionary sentencing laws, underscore the variety of routes and political gauntlets that have led states to consider the commission concept. One thing these states share with the common model states, however, is a crisis in prison overcrowding and in correctional spending.

New Mexico.<sup>7</sup> New Mexico's experience with sentencing reform is particularly illuminating for California's purposes because New Mexico had in place a highly determinate system before creating its sentencing commission. Until the early 1980s, New Mexico's sentencing system was indeterminate and unguided; judges had a great deal of discretion and inmates were eligible for early release on parole. In the early 1980s, New Mexico implemented a determinate sentencing scheme, with sentences prescribed by statute, significantly reduced judicial discretion, and no discretionary parole. New Mexico's parole board continued to exist, but solely in order to design parole conditions; it had (and has) no discretion to release inmates prior to expiration of their sentences. Its history is thus remarkably similar to California's.

The New Mexico Sentencing Commission was created in 2003 as a permanent body, and as an expansion of the already-existing Criminal and Juvenile Justice Coordinating Council. Noticing the successes other states were seeing with sentencing commissions, the New Mexico legislature elected to enact one of its own, tasking the new commission with collecting and analyzing sentencing data and formulating sentencing policy. The creation of the commission has been generally viewed as practical and good public policy – it was not seen as politically motivated, nor has it been particularly politically controversial.

Since its creation, the New Mexico Sentencing Commission has: examined the state's parole policies to consider altering them to reduce and control the prison population and made recommendations to the legislature accordingly; proposed that any legislation that either increases or creates new criminal penalties be accompanied by a price tag (similar to the system

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<sup>6</sup> Some ways in which commissions and structures vary include: where in the government the commission is situated (i.e., is it in the judicial branch like Virginia's, the legislative branch like Oklahoma's or the executive branch like Maryland's, or is it an entirely independent agency, like Arkansas's); whether the guidelines the commission has generated are voluntary, like Virginia's and Maryland's, or presumptive, like North Carolina's and Washington's, or somewhere in between, like Pennsylvania's; who sits on the commission (examples are included in the attachment to this report); the tasks assigned the commission at its formation; the extent to which the commission's recommendations are able to bind the legislature; and the extent to which the state's sentencing system is linked to correctional resources. These issues have been discussed at length elsewhere. *See, e.g.,* Richard Frase, *Is Guided Discretion Sufficient? Overview of State Sentencing Guidelines*, St. Louis U. L. J. 425 (Spring 2000).

<sup>7</sup> *See* <http://www.cjcc.org/>.

currently in place in Virginia); begun a workload measurement study on public defenders, district attorneys, and the judiciary; and helped defer some state resources to county correctional agencies to house state inmates. The commission continually evaluates the state's sentencing statutes and makes recommendations to the legislature accordingly.<sup>8</sup> The commission's stature as an expert sentencing body within the legislature continues to grow.

Utah.<sup>9</sup> Utah also differs from the common model, in that it had in place a system of mandatory minimum punishments prior to the creation of its Sentencing Commission, in 1996. Specifically, Utah found that only 21% of sex offenders charged with mandatory minimum offenses ultimately received mandatory minimum sentences because the others were all able to bargain their cases downward. Utah's study concluded that its mandatory minimum system allowed for too much manipulation, and was thus ineffective at protecting the public from violent offenders.

Utah's Sentencing Commission concluded that an indeterminate system was preferable to its mandatory minimum system and implemented a system of indeterminate guidelines in 1998. Judges now sentence offenders to a range, which is established by statute. The Board of Pardons and Parole has discretion to release inmates some time within the sentence range. Utah also has the distinction of having promulgated the first set of comprehensive guidelines for juvenile offenses in the nation – the 1997 Juvenile Sentencing Guidelines.

New Jersey.<sup>10</sup> Like the common model states, New Jersey begins with an indeterminate and discretionary system. Unlike the common model states, New Jersey's temporary sentencing commission has recommended that the system remain indeterminate. The New Jersey Commission to Review Criminal Sentencing was created in 2004 as a temporary body, and has recommended creation of a permanent sentencing commission.<sup>11</sup> In support of this recommendation, the Commission notes the following: the state sentencing commissions currently in existence appear to be successful in developing sound sentencing policy; in times of fiscal crisis, commissions have proven to be crucial in evaluating how to reconcile public safety with budgetary constraints; commissions have been able to develop uniform and rational sentencing policies, rather than sentencing policies that are driven by short-term politics; and a permanent commission is necessary to continually review sentencing policy and practice.<sup>12</sup> A bill making the Commission permanent has passed in the state Assembly; the state Senate will vote on it in the fall.

According to the Commission's Executive Director, there is little political opposition to making the Commission permanent, and widespread recognition of the need to base sentencing

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<sup>8</sup> See "Methods for Managing Prison Growth." *New Mexico Legislative Council Service, Information Bulletin Number 6*. August 25, 2003.

<sup>9</sup> See <http://www.sentencing.utah.gov/>.

<sup>10</sup> See <http://www.sentencing.nj.gov/index.html>.

<sup>11</sup> *Sentencing in the 21<sup>st</sup> Century and the Necessity of a Permanent Sentencing Commission in New Jersey*, The New Jersey Commission to Review Criminal Sentencing. June 2006.

<sup>12</sup> See *id.*

policy on empirical data and budgetary realities.<sup>13</sup> The Commission has not recommended adoption of a determinate sentencing structure. If it is made permanent, the Commission will continue to conduct research on sentencing law and policy within New Jersey, examine ways in which the state might modify the sentencing structure so that punishments are appropriately uniform and proportionate, and ensure that any sentencing policies enacted are responsive to its current fiscal crisis.

Missouri.<sup>14</sup> The Missouri Sentencing Advisory Commission was created in 1994, taking the place of the preexisting sentencing commission. The previous commission had been charged with examining the extent to which sentencing disparities (specifically in capital cases) were based on economic and social factors. The new commission continues to gather statistical data, examine cases, and conduct research on death penalty sentencing disparity, but has been given the additional task of developing a sentence structure.

The commission issued its *Advisory Sentencing Guidelines Users Manual* in 1998. Both the manual and the commission were essentially ignored. In 2003, new legislation charged the commission with studying alternative sentences, work release, home-based incarceration, prison work programs, and probation and parole options, and ordered it to report to the legislature on the feasibility of such options in Missouri.

What is notable about Missouri is that, like New Jersey, it began with a discretionary indeterminate system, which essentially remains in place today. The Commission's website proclaims that "Judicial discretion is the cornerstone of sentencing in Missouri."<sup>15</sup> Thus, the Commission appears to have no intention of recommending mandatory or presumptive penalties, or of abolishing indeterminate sentencing. The Commission did, however, issue a *Report on Recommended Sentencing* in 2004, which includes a system of recommended sentences based on current practices, and including risk assessment models. Thus, the Commission has recommended some version of a structured sentencing system, although it appears to remain highly discretionary and highly indeterminate. Missouri's focus appears to be less on modifying sentencing terms and lengths, and more on developing alternatives to incarceration as viable sentencing options.

Michigan. Over the course of two decades, Michigan's Supreme Court took an unusually active role in developing sentencing policy. In 1983, the Court decided in *People v. Coles*, 339 N.W.2d 440 (1983), that it had the power to review sentences under a "shocks the conscience" standard; in 1984, it promulgated sentencing guidelines, which it required the trial bench by administrative order to apply; in 1988 it promulgated a second version of the guidelines, providing for circumstances under which trial courts would be permitted to depart; in 1990 it held in *People v. Millbourn*, 461 N.W.2d 1 (1990), that sentencing discretion would henceforth be reviewed to determine whether a sentence was proportionate to the offense and the offender. Thus, while sentencing was basically discretionary and indeterminate, there was a highly

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<sup>13</sup> Conversation with Ben Barlyn, Deputy Attorney General, Executive Director New Jersey Commission to Review Criminal Sentencing.

<sup>14</sup> See <http://www.mosac.mo.gov>.

<sup>15</sup> "Purposes and Goals." Missouri Sentencing Advisory Commission, *supra* Note 15.

structured system of appellate review. The guidelines promulgated by the Supreme Court were based on actual sentencing practices of trial courts, and were not prescriptive.

The legislature established a Sentencing Commission in 1994, and tasked it with developing sentencing guidelines. The Commission recommended guidelines, which were enacted in 1998. Unlike the Court's preexisting guidelines, these guidelines reflected the policy priorities of the legislature. The Commission stopped meeting after promulgating the guidelines, and the terms of its members have expired. The guidelines are still in place, but the legislature has taken over all responsibility for evaluating, monitoring, and amending them. There is general agreement that the legislature is ill-suited to address the numerous ambiguities, errors, and inequities that have come to light since the guidelines were adopted, or to educate judges and practitioners in how to use them. The general consensus (at least outside the Michigan legislature) is that the Commission dissolved prematurely due to lack of political support.

### *The General Consensus*

Notwithstanding this variation, virtually every state that has created a sentencing commission agrees at least on a common set of core principles. These principles seem to hold true in almost every context, regardless of the nuances of a state's particular sentencing structure:

- An expert agency capable of setting sentencing policy, evaluating sentencing structures, and collecting sentencing and corrections data, is good policy. Some states, such as Maryland and North Carolina, began by establishing a temporary commission that then recommended a permanent commission, which the legislature subsequently enacted. All ultimately agreed that a *permanent* sentencing commission was desirable.
- Some form of sentencing guidelines structure, whether mandatory or voluntary, is preferable to *either* a completely discretion system *or* a system of statutorily-prescribed mandatory punishments.
- Finding ways to link sentencing policy with correctional resources (both short term crowding issues and long-term budgetary issues) is crucial. This is true without any regard to whether the state ultimately decides to adopt a sentencing structure that is wildly indeterminate or rigidly determinate, voluntary or mandatory. No matter what sentencing structure is in place, tying sentencing policy to correctional resources is simply a matter of sound public policy.<sup>16</sup>
- Maintaining discretionary parole violates Truth in Sentencing principles, which is politically untenable.<sup>17</sup>

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<sup>16</sup> It is worth noting here that conducting an impact analysis on a state's sentencing policies is more accurate under a guidelines system than under other kinds of sentencing structures because guidelines systems are more uniform and predictable. *See, e.g.,* Frase, *supra* Note 6, at 429.

<sup>17</sup> Alabama differs slightly in this regard. According to the Alabama Commission's Executive Director, "[t]ruth in sentencing is down the road three to four years. . . . The main thing behind our agenda is that we've got to have a strong alternative punishment, and that's community corrections." Carla Crowder, "With Bill's Passing, Sentencing Panel Eyes Future." *The Birmingham News*. April 3, 2006.

- Promoting alternatives to incarceration for non-violent offenders, even perhaps while increasing sentences for violent offenders, is a way to control incarceration rates without threatening public safety.

### *The Special Issue of Parole Revocation Guidelines*

As the Commission knows, California sends an exorbitant number of parolees to prison every year.<sup>18</sup> This is, in part, because the Board of Parole Hearings is given almost no guidance from either the administration or the legislature on what factors to consider in revoking parole; what kind of sanctions to impose having decided to revoke parole; whether, and under what circumstances, incarceration is appropriate; and, if incarceration is appropriate, an acceptable length of incarceration.

Unsurprisingly, other states have chosen to deal with this situation in a variety of ways.

- Washington does not have a system of parole; however, the Offender Accountability Act, incorporated into the Sentencing Reform Act, requires that offenders convicted of certain offenses serve a term of “community custody” upon release.<sup>19</sup> An offender accused of violating the conditions of community custody must appear before the sentencing court (or another court if this is not feasible) to show cause why he or she shall not be punished for non-compliance. If the court finds, by a preponderance of the evidence, that there was a violation, the court then makes a determination as to whether or not the violation was willful. If the violation was willful, the court may impose up to 60 days in jail (not prison) for each violation; if the violation was not willful, the court may modify the terms of community custody as appropriate.<sup>20</sup> The Sentencing Commission monitors Washington’s community custody system.
- The Oregon Criminal Justice Commission (Oregon’s equivalent of a Sentencing Commission) has promulgated administrative rules governing post-release supervision.<sup>21</sup> The rules provide for a continuum of administrative sanctions for violations of the conditions of post-prison supervision, including adjustments to the level of supervision, modification of or addition to the conditions of community supervision, or other available *local* sanction.<sup>22</sup> For violations constituting new criminal activity, the rules authorize imposition of up to 180 days in jail (not prison) for each violation.<sup>23</sup>
- The Oklahoma Sentencing Commission is mandated to determine sentencing structures for parole decisions.<sup>24</sup>

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<sup>18</sup> On average, approximately 66% of parolees return to prison within three years of being released. See Joan Petersilia, *Understanding California Corrections: A Policy Research Program Report*, 71 (California Policy Research Center, May 2006).

<sup>19</sup> See RCW 9.94A.411.

<sup>20</sup> See RCW 9.94A.634.

<sup>21</sup> See OAR 213-011-0001.

<sup>22</sup> See OAR 213-011-0004(1) (emphasis added).

<sup>23</sup> See *id.* 213-011-0004(2)-(4).

<sup>24</sup> See O.S. § 27-1512(8).

- The Arkansas Supreme Court decided, in *Martin v. State*, 989 S.W.2d 908 (1999), that it interpreted the sentencing guidelines as applying in parole revocation proceedings. Subsequently, the Arkansas Commission issued a statement clarifying that it did *not* intend for the guidelines to apply to parole revocation proceedings. The Commission has not promulgated any guidelines to apply in revocation proceedings; accordingly, the parole board is without any guidance in making its revocation decisions.
- The Delaware Sentencing Commission drafted probation revocation guidelines, having noticed that probation revocations make up the largest annual admissions cohort and approximately one third of the state's total inmate population. This probation reform legislation became effective in May 2003.<sup>25</sup>

In sum, several states have tasked their sentencing commissions with the role of developing and monitoring the structures by which people are placed on, and removed from, post-release supervision. There is no reason that a sentencing commission in California could not accomplish the same objective.

### III. Assessment: How Existing Models Can Be Applied and Adapted to Improve Sentencing Policy in California?

In several respects, it makes little sense to compare California's experience to that of other states. As discussed above, most states had a system of discretionary, unguided, indeterminate sentencing in place when they created their sentencing commissions. California, of course, found a solution to the ills of discretionary and indeterminate sentencing in the 1976 Determinate Sentencing Act, and so is currently at the opposite end of the sentencing spectrum. In addition, judges have frequently comprised the primary political opposition to the creation of sentencing commissions; that is unlikely to be the case here. Some may argue, sensibly, that if sentencing commissions are typically created to remedy the problems associated with *discretionary, indeterminate* sentencing systems, what sense could it make to enact a sentencing commission to remedy the problems that have arisen as a result of California's *rigid, determinate* sentencing system?

The answer, as the exceptional cases described above demonstrate, is that sentencing commissions make sense as a matter of public policy no matter what type of sentencing structure a jurisdiction has chosen to implement. Commissions bring an element of objectivity to the development of sentencing policy because their members do not necessarily represent any particular constituency. Commissions tend to consist of experts in the field of sentencing law and policy; they stay abreast of current developments in sentencing jurisprudence and in the relevant social science literature. Unlike legislators, they have time and money to devote to the development of statewide policy priorities and to responsible resource management, employing a long-term perspective. They have staff to collect and analyze data. They are able to spend the time that is necessary to educate judges and practitioners on the sentencing policies and practices

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<sup>25</sup> See <http://www.state.de.us/cjc/sentac.shtml>.



they recommend. Perhaps most importantly, they provide political cover to policymakers, who may have a difficult time justifying to their constituents why they voted for a sentencing policy that appears to make them “soft on crime.” Sentencing Commissions can, and do, fulfill these purposes within the contexts of very varied sentencing structures.

Moreover, if California’s current sentencing structure is unlike that of most states that have created commissions, its structure is not unlike, in many relevant ways, the structure that existed until recently in the federal system. California’s system, like the pre-*Booker*<sup>26</sup> federal system, is rigid (in that it provides very little flexibility to sentencing judges to account for circumstances particular to the individual defendant or individual case), severe (in that base terms and enhancements are unduly long), and complex (in that it is difficult for practitioners and judges to understand and apply, in that it is not consolidated in a single provision of the Penal Code, and in that there are an excessive number of sentencing enhancements in place).

The Constitution Project has issued a set of sentencing principles based on the findings of its Sentencing Initiative’s Blue Ribbon Committee. In its report, the Project notes that in the last few decades of sentencing reform, states have tended to have an advantage over the federal system “because virtually every state criminal code is far simpler than the sprawling and disorganized federal criminal code and virtually every state ranks the seriousness of the offenses in its code by placing every offense into one of a small number of grades or classes.”<sup>27</sup> Accordingly, its Principle #4 is that “[t]he prospects for success of any sentencing system are markedly enhanced by the existence of a coherent criminal code structure.”<sup>28</sup> California, with its “sprawling and disorganized” sentencing structure, is much more like the old federal system in this regard than it is like any of the other state systems. It might have a lot to learn from the federal experience, and could benefit by adopting some of the recommendations that the experts are making to improve that system, including the one referenced here for a simplified code structure.

Of course, any discussion of sentencing reform must address the impact of *Blakely v. Washington*.<sup>29</sup> As the Commission knows, the Supreme Court ruled in *Blakely* that Washington State’s sentencing structure violated the Sixth Amendment because Washington permitted judges to impose sentences above the statutorily-prescribed standard sentencing range, based on findings that had not been submitted to a jury or proven beyond a reasonable doubt.<sup>30</sup> The U.S. Supreme Court has now taken up the question of whether California’s system suffers from the same constitutional impairment because it permits judges to impose aggravated base terms on the basis of criteria that have similarly not been submitted to a jury or proven beyond a reasonable doubt.<sup>31</sup>

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<sup>26</sup> *U.S. v. Booker*, 543 U.S. 220 (2005).

<sup>27</sup> *Principles for the Design and Reform of Sentencing Systems: A Background Report*, The Constitution Project, 19 (2006).

<sup>28</sup> *Id.*

<sup>29</sup> 542 U.S. 296 (2004).

<sup>30</sup> 542 U.S. at 313-14.

<sup>31</sup> *Cunningham v. California*, 126 S.Ct. 1329 (2006).

Of course, much in the future of California sentencing reform turns on the answer to this question. However, the creation of a sentencing commission need not await that answer. If the Court overturns the California sentencing system to the extent that it permit judges to impose aggravated base terms without jury findings, California's system of enhancements (which *are* either proven to a jury or admitted by the defendant) will remain intact and the legislature will simply have to replace its base term structure with a structure that complies with *Blakely's* constitutional mandate. A Sentencing Commission could be of tremendous assistance should the legislature find itself in the position of having to do this. If the Court upholds California's current sentencing system, a Sentencing Commission would still be helpful in fulfilling all of its other purposes, including recommending creative ways to use sentencing policy to reduce the costs of excessive incarceration. Enacting a Sentencing Commission is a good idea for California, regardless of the Court's ruling in *Cunningham*.

California could, and should, take at least the following steps in moving forward with sentencing reform:

- Create a Sentencing Policy Commission to act as a bridge between the legislature (which frequently finds itself in the position of having to support “tough on crime” legislation in order to please its constituents) and the administration, which has to find a way to pay the costs of increasing incarceration rates. The Commission should conduct data collection and analysis and develop statewide sentencing policy.
- Reevaluate the pronouncement in the Determinate Sentencing Act that “the purpose of imprisonment for crime is punishment.”<sup>32</sup> There are many additional perfectly legitimate (and politically palatable) purposes of sentencing, such as public safety and controlling recidivism. Redefining the purposes of sentencing opens up the legislature to consider a myriad of sensible sentencing possibilities, including intermediate sanctions.
- Empirically evaluate the success or failure of the Determinate Sentencing Act and make sentencing recommendations that are appropriate for California based on its findings, on public policy priorities, and on budgetary realities.
- If a Sentencing Commission determines that California's determinate sentencing law should remain in place, the Commission could, at the very least, consolidate and simplify it so that judges, practitioners, victims, and defendants can understand it. Even without changing the substantive sentencing structure, a Commission could recommend guidelines for parole revocations; limiting the number of people who return to prison annually as a result of a parole revocation would go a long way toward relieving California's overcrowding problem. Finally, even if a Commission did not recommend major changes to the sentencing system, it could continue to monitor the determinate sentencing law on a regular basis to determine what modifications, if any, should be made over time.
- If a Sentencing Commission determines that modifications to the current sentencing system are in order, the Commission can make the appropriate

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<sup>32</sup> Ca. Penal Code § 1170(a)(1).

recommendations to the legislature, explaining its recommendations in terms of California's public policy priorities.

- Regardless of the results of its empirical analysis and substantive recommendations, the Commission can and should be made permanent so that it can continue to evaluate and monitor California's sentencing policies, correctional resources, and parole policies. Commissions have proven to be remarkably successful in coming up with ways to relieve prison overcrowding (and to conserve scarce resources) without threatening public safety.

#### IV. Update: The Stanford Sentencing and Corrections Reform Project

As the Commission knows, the Criminal Justice Center has established the Stanford Sentencing and Corrections Reform Project (SCRCP), the purpose of which is to bring together the key public, academic, and organizational leaders in the field of sentencing and corrections policy in a spirit of cooperative movement toward reform of the sentencing and corrections systems in California. Below is a status report on each of the components of the SCRCP.

##### *The Executive Sessions on Sentencing and Corrections Reform*

- The first meeting of the Executive Sessions is scheduled for March 9, 2007. The proposed topic is "Providing Better Services for Mentally Ill and Elderly Inmates."
- Invitations explaining the Executive Sessions and inviting comments on the proposed list of topics have been sent. We have received several positive responses and no negative responses.
- We are in the process of seeking funding from the JEHT and OSI Foundations to fund the Executive Sessions. Nonetheless, the Sessions have the full support of Stanford University and Stanford Law School, should external funding not be available.

##### *The Community Web Form*

- We have reached out to Human-Computer Interaction faculty in the Computer Science Department, the Sociology Department, and the Political Science Department to establish intra-university partners in designing and launching this component of the Sentencing and Corrections Reform Project. We have every indication that there will be widespread support for it.
- We are seeking funding from both the Liberty Hill Foundation and the James Irvine Foundation to fund this component of the project.
- We are hoping to hire either a graduate student or a recent law school graduate (or both) to design and implement the project.

##### *Stanford Curriculum*

- We are in the process of developing a course on Sentencing Law and Policy, to coincide with the Executive Sessions in the Spring.
- We are also co-sponsoring a conference on the phenomenon of Back-End Sentencing with the student-run Criminal Law Society in November.<sup>33</sup> This conference is intended to result in the establishment of a student-led research agenda; students will conduct all of the research and publish their results.
- Finally, we are collaborating with the clinical department at the law school to develop a Three Strikes clinic. Students would both represent defendants currently serving Three Strikes sentences and work to reform Three Strikes at the policy level.

## V. Consensus-building on Sentencing Reform in California

The Stanford Criminal Justice views collaborations and partnerships amongst the various reform advocates to be essential, and would like to be of assistance to any entity interested in advocating in favor of the establishment of a sentencing commission.

- We are hoping to maintain a collaborative relationship with the Little Hoover Commission on the issue of sentencing and corrections reform, as well as on other criminal justice issues that the Commission intends to study in the future.
- We are attending the National Association of State Sentencing Commissions in August, 2006.
- We have established partnerships with Dr. Petersilia at U.C. Irvine, the Vera State Sentencing Project, the Prison Law Office, the CDCR, the CCPOA, and the National Council on Crime and Delinquency, each of whom is committed to sentencing and corrections reform in California.
- We have met with The Constitution Project and The Sentencing Project and have informed them of the work being done in California. Both organizations are fully in support of our collaborative efforts here.

The Stanford Criminal Justice Center stands ready to serve as a full partner in moving forward on sentencing and corrections reform in California. We will continue to make ourselves available by lending our space and our expertise to the discussion.

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<sup>33</sup> “Back-end sentencing” refers to the phenomenon by which a parolee is sent to prison upon a parole revocation decision. A parolee facing revocation is not entitled to counsel or to confront his witnesses, and the rules of evidence do not apply at revocation proceedings. Commissioners revoke for a myriad of reasons, both “technical” and “criminal.” This situation could successfully be addressed by the promulgation of revocation guidelines, as addressed above.