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# Supreme Court Limits Judges' Sentencing Power

By [LINDA GREENHOUSE](#)

WASHINGTON, Jan. 22 — The Supreme Court invalidated California's criminal sentencing law on Monday, ruling that the 30-year-old statute gave judges authority that the Constitution places with juries.

The 6-to-3 decision will require the California courts to reconsider thousands of sentences as the Legislature contemplates its options for amending the statute to meet the justices' objections.

While no other state is directly affected, Justice [Ruth Bader Ginsburg](#)'s forcefully worded majority opinion demonstrated that the Roberts court is committed to carrying out the full implications of the revolution in criminal sentencing that the court began seven years ago in *Apprendi v. New Jersey*.

In fact, with Chief Justice [John G. Roberts](#) Jr. joining the majority, the court planted its stake more firmly than ever in what criminal law scholars and practitioners have taken to referring to as *Apprendi-land*.

That decision invalidated New Jersey's hate-crime statute, which gave judges the power to make the specific factual findings that converted an ordinary crime into a hate crime, with an enhanced sentence. The court ruled that the Sixth Amendment right to trial by jury gave that role to juries.

That decision was followed four years later by *Blakely v. Washington*, which invalidated Washington's sentencing guidelines for giving judges the power to impose sentences beyond the normal range based on specific findings about the defendant's conduct.

And two years ago, in *United States v. Booker*, the court applied that reasoning to the federal sentencing guidelines, ruling that the guidelines could be deemed constitutional only if they were regarded as "advisory" rather than mandatory.

All three cases were decided by 5-to-4 margins, with Chief Justice [William H. Rehnquist](#) a consistent dissenter from the court's Sixth Amendment analysis.

So Chief Justice Roberts's vote with the majority on Monday strengthened the court's *Apprendi* majority, which cuts across the court's normal ideological lines and in addition to Justice Ginsburg consists of Justices [John Paul Stevens](#), [Antonin Scalia](#), [David H. Souter](#) and [Clarence Thomas](#).

Writing the principal dissenting opinion on Monday, Justice [Samuel A. Alito Jr.](#) stepped into the shoes of his predecessor, Justice [Sandra Day O'Connor](#), a strong dissenter from all the *Apprendi* cases. Justices [Anthony M. Kennedy](#) and [Stephen G. Breyer](#) also dissented.

Douglas A. Berman, a law professor at [Ohio State University](#) and a leading authority on sentencing, said the decision confirmed the Supreme Court as "the most liberal, pro-defendant court in the country on sentencing procedure."

The California law represented an early legislative effort to make sentences more uniform and predictable, an effort that Congress picked up when it adopted the federal guidelines system in 1984. Under California's previous system, judges imposed open-ended sentences, often one year to life, and left it to the parole board to determine the time an offender would actually serve.

The 1977 law adopted what is known as a determinate-sentencing approach. Each crime carried three possible sentences. The middle

sentence was presumed to be the correct one unless the judge made findings that justified the higher or lower alternatives.

As the Supreme Court proceeded with the Apprendi cases, the California law looked increasingly vulnerable.

In the case the court decided on Monday, the law was challenged by a former police officer, John Cunningham, who was convicted of sexually abusing his young son and who received the longest of the three sentences, 16 years as opposed to the other options, 12 and 6 years.

The judge found that six aggravating factors, including the victim's vulnerability and the defendant's violent conduct, merited the highest sentence.

The California Court of Appeal upheld the sentence, ruling that the Sixth Amendment concerns were satisfied as long as the judge issued a sentence within the statutory range, in this instance 6 to 16 years.

That was not the correct analysis, Justice Ginsburg said in her majority opinion, *Cunningham v. California*, No. 05-6551. She said the California law presented the judge not with a range, but with a "triad." The judge "had no discretion to select a sentence within a range of 6 to 16 years," Justice Ginsburg continued, adding:

"His instruction was to select 12 years, nothing less and nothing more, unless he found facts allowing the imposition of a sentence of 6 or 16 years. Factfinding to elevate a sentence from 12 to 16 years, our decisions make plain, falls within the province of the jury."

The California sentencing law, Justice Ginsburg concluded, "violates Apprendi's bright-line rule."

In his dissent, Justice Alito said that, to the contrary, the California system was "not meaningfully different" from the remedy the court endorsed, with Justice Ginsburg's concurrence, two years ago in the Booker case, on the federal sentencing guidelines.

By rendering the federal sentencing guidelines advisory, Justice Alito said, the court in the Booker case necessarily gave judges discretion to make factual findings to support their choice of sentence, a choice the court made subject to appellate review for "reasonableness."

Therefore, he said, the Booker decision "necessarily stands for the proposition that it is consistent with the Sixth Amendment for the imposition of an enhanced sentence to be conditioned on a factual finding made by a sentencing judge and not by a jury."

Next month in *Rita v. United States*, No. 06-5754, the court will hear arguments on whether a federal sentence within the guidelines range should be presumed to be reasonable.

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- [U.S.](#)
- [N.Y. / Region](#)
- [Business](#)
- [Technology](#)
- [Science](#)
- [Health](#)
- [Sports](#)
- [Opinion](#)
- [Arts](#)
- [Style](#)
- [Travel](#)
- [Jobs](#)
- [Real Estate](#)

- [Automobiles](#)
- [Back to Top](#)

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