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## Editorial: Momentum builds

### Court's decision puts focus on sentencing

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California finally is on its way toward creating an expert, independent commission to recommend sentencing guidelines for felony cases.

Gov. Arnold Schwarzenegger supports the idea and included \$457,000 in his 2007-2008 budget proposal to get a commission going. That won't be enough to pay for the sophisticated data gathering that has been key to the success of sentencing commissions nationwide. The commission will need to collect extensive data on all sentences imposed each year, including their impact on public safety, and use detailed models to project the expected prison population that would result from each proposed sentencing guideline. Still, the governor's proposal is a starting point for negotiations with legislators.

In the Legislature, Assemblywoman Sally Lieber, D-Mountain View, has presented a comprehensive bill, Assembly Bill 160, based on successful models from other states. In her bill, a sentencing commission would submit sentencing guidelines to the Legislature by Jan. 1, 2009; these would go into effect unless the Legislature provides otherwise. Sen. Gloria Romero, D-Los Angeles, has a placeholder bill with details still to be negotiated.

Both the governor and Lieber have said that a sentencing commission would not make recommendations on sentences established by voters in an initiative. In other words, "three strikes" laws stay in place.

These efforts all gained increased urgency Monday, when the U.S. Supreme Court, in a 6-3 decision, declared a portion of the state's sentencing law unconstitutional. "The ball lies in California's court," wrote the justices, to fix California's sentencing law. Without prescribing any particular solution, the justices said that California "may follow the paths taken by its sister states" (including options to permit judges to select a specific sentence within a defined range) or "otherwise alter its system." Doing nothing, though, is not an option.

Over the years, California has lurched between two extremes on sentencing. At one extreme, the pre-1976 "indeterminate" sentencing system gave judges total discretion to sentence an offender from, say, one year to life in prison. It also gave parole boards total discretion to release offenders before the end of their terms. It was an inconsistent and unfair system.

At the other extreme, the post-1976 "determinate" system took away judges' discretion, mandating binding sentences and abolishing discretionary parole -- a system that is consistent but that has had the terrible effect of taking away incentives for good behavior.

Successful sentencing commissions produce guidelines that constrain judges' discretion but also provide for some flexibility. For example, a particular crime might require a sentence of six to 16 years, giving judges some discretion based on an assessment of the offender's dangerousness to society -- not an arbitrary range of one year to life, or a mandatory sentence of 12 years regardless of behavior.

In 1976, Californians recognized that their indeterminate sentencing system wasn't working and legislators passed reform. Thirty years later, the determinate sentencing system also has shown major flaws and needs major reform. Legislators and the governor should make passage of a nonpartisan, professional, independent sentencing commission an early and top priority in this legislative session.

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