

RESOLUTION 02-18-2008

DIGEST

Corrections: Establishment of Sentencing Commission

Adds Penal Code section 1171 to establish a sentencing commission.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution adds Penal Code section 1171 to establish a sentencing commission. This resolution should be approved in principle because California needs a regulatory body that bears primary responsibility for collecting and analyzing statewide sentencing data, and for developing statewide sentencing policies.

In 1976, California enacted the Determinate Sentencing Law which provides that sentencing is punishment, rather than rehabilitation. The law divides crimes into categories with each category setting a low, middle, and high sentence. Judges setting the middle term could then apply mitigating and aggravating factors to sentence the low or high terms. The law also provides for the mandatory parole of felons. The result has been an overcrowded prison system, too many prisoners and too few correctional officers, racial inequalities, high recidivism among parolees, and out-of-control spending.

The purpose of the sentencing commission is to improve the collection and analysis of sentencing data. It is also to ensure that California sentencing is based on sound, data-driven, and rational sentencing policy, and to assist lawmakers in dealing with the correctional budget. In addition, the sentencing commission should also be tasked with dealing with the parole revocation system, the high number of people who return to prison on parole violations, and the lack of openness in the process.

Twenty-two states have sentencing commissions, as does the federal government and the District of Columbia. California has consistently refused to implement sentencing commissions with three vetoes by governors and rejection from four legislative committees. In the meantime, the federal government has taken over the prison medical system, is overseeing the parole revocation system, and is threatening to put a cap on the prison population. A sentencing commission is an opportunity to address our sentencing structure and take back control of our prison system.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to add sections 1171, 1171.1, 1171.2, 1171.3, 1171.4 and 1171.5 to the Penal Code to read as follows:

1 §1171.
2 There is hereby established in state government the California Sentencing Commission.
3 The commission shall consist of 16 members, one of whom the Governor shall appoint as
4 chairperson.
5 (a) The following four members are ex officio members:
6 (1) The Attorney General.
7 (2) The Director of Corrections.
8 (3) The Director of Finance.
9 (4) The State Public Defender.
10 (b) The Governor shall appoint six members as follows:
11 (1) One prosecuting attorney.
12 (2) One chief of police or sheriff.
13 (3) One public member who is not and has not ever been an attorney, judge, or law
14 enforcement officer.
15 (4) One person who is serving as an adult parole or probation officer, or who has
16 served in that capacity.
17 (5) One retired member of the California Supreme Court or a California Court of
18 Appeal.
19 (6) One public member.
20 (c) The Speaker of the Assembly shall appoint three members as follows:
21 (1) One public member who is not and has not ever been an
22 attorney, judge, or law enforcement officer.
23 (2) One prosecuting attorney.
24 (3) One public member who is currently active in criminology research or academia
25 in California.
26 (d) The Senate Committee on Rules shall appoint three members as follows:
27 (1) One public member who is not and has not ever been an attorney, judge, or law
28 enforcement officer.
29 (2) One public defender.
30 (3) One faculty member of a law school within this state.
31 (e) All members of the commission, except ex officio members, shall serve terms
32 of four years and until their successors are appointed and confirmed. However, of the
33 initial members, those designated in paragraphs (1) and (2) of subdivision (b), paragraph
34 (1) of subdivision (c), and paragraph (1) of subdivision (d) shall be appointed for terms of
35 four years; those designated in paragraphs (3) and (4) of subdivision (b), paragraph (2) of
36 subdivision (c), and paragraph (2) of subdivision (d) shall be appointed for terms of three
37 years; and those designated in paragraphs (4) and (5) of subdivision (b), paragraph (3) of
38 subdivision (c), and paragraph (3) of subdivision (d) shall be appointed for terms of two
39 years.
40 (f) The members of the commission shall be reimbursed for travel and other
41 expenses actually and necessarily incurred by them in the performance of their duties
42 under this article. In addition, each member of the commission shall receive in
43 compensation the amount of \$2,000.00 per meeting actually attended. Said compensation
44 is for attendance, preparation and travel to and from such meeting. If the member is a full-
45 time employee of a public agency and is compensated for participation in the work of the

46 commission, the compensation described herein shall be paid to his or her public agency
47 employer.

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

52
53 1171.1.

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

58
59 1171.2.

60 (a) The commission shall devise sentencing guidelines.

61 (b) The commission shall review the history of determinate and indeterminate
62 sentencing in this state, including constitutional questions that have been considered by
63 the courts, and shall consider an expansion of the use of indeterminate sentencing for
64 violent offenders. The commission shall also review and establish a committee to
65 study a full indeterminate sentencing scheme.

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

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

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

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

78
79 1171.3.

80 By January 1, 2010, the commission shall submit to the Legislature a report containing the
81 sentencing guidelines developed pursuant to subdivision (a) of Section 1171.2. In
82 preparing the report, the commission may hold hearings and shall consider the comments
83 of legislators and members of the public. Every two years the commission may
84 recommend to the Legislature revisions or modifications to the sentencing guidelines. If
85 implementation would result in exceeding the capacity of the correctional facilities, then
86 the commission shall accompany its recommendations with additional revisions and
87 modifications that are consistent with the capacity of the correctional facilities.

88
89 1171.4.

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

91

92 1171.5.
93 Each county may form a sentencing commission for the purpose of establishing sentencing
94 guidelines for county jail sentences for misdemeanors.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: National Lawyers Guild, San Francisco Chapter

STATEMENT OF REASONS:

Existing Law: Current California law, the Determinate Sentencing Act of 1976, has led the state into a dysfunctional and inequitable application of sentencing for criminal offenses.

This Resolution: Establishes a Sentencing Commission to help gather information about California's sentencing structure.

The Problem: California's prison system is in a state of crisis.

While there are many reasons for this crisis, a major factor is California's Determinate Sentencing Law, passed in 1976, which reduced judicial discretion in sentencing for various criminal acts.

Over the last three decades, the California legislature has added changes and enhancements to determinate sentencing. Those changes have created a complex, inconsistent and expensive sentencing structure.

The sentences given as a result of determinate sentencing along with the appetite of legislators and the public for increasingly long fixed sentences, exemplified by the three-strikes law, have led to severe overcrowding in state prisons.

As part of his effort to resolve the budget crisis of 2008, Governor Schwarznegger has proposed early release of 22,000 prisoners convicted of non-violent crimes. In considering this proposed release, it raises the question as to whether the initial sentences were too long.

A sentencing commission could help with that question by gathering information about California's sentencing structure. After that information has been collected and analyzed, the commission can make proposals to ensure that sentences for criminal actions in California are both rational and based on empirical evidence.

There have been several attempts to create a sentencing commission over the last 15 years, all of which have been vetoed by the governor at the time. The Little Hoover Commission in 2006 recommended such a commission. Governor Schwarznegger has also joined in that recommendation.

With this support and because of the budget crisis and overcrowding in prisons, the state is now ready to move towards a sentencing commission.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

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