A California Sentencing Commission: Learning from Other States to “Right Size” California’s Overcrowded Prisons

The Center for State and Local Government Law

UC Hastings College of the Law

by Erica Connolly (UC Hastings ’12) and Anastasia Cooper (’12)

Edited by Shannon Little (’08)

Supervised by Steven Bonorris, Associate Director for Research and Adjunct Assistant Professor of Law, UC Hastings College of the Law

June 2012
EXECUTIVE SUMMARY

After identifying three main sources of overcrowding in California prisons, we examined a variety of sentencing commissions set up in other states, leading us to recommend the creation of a California sentencing commission. The structure, mandates, responsibilities and track record of those other states’ commissions provide viable, evidence-based, long-term solutions for California’s management of its prison population, balancing the twin concerns of public safety and cost-effectiveness.

Sources of Prison Over-Crowding

Three primary factors have caused California’s prison overcrowding. First, California has a scattershot collection of reactive sentencing laws instead of a comprehensive system based on independent data. Second, California uses prisons and jails – its most expensive resources – to punish non-violent, low-level offenders; moreover, when offenders enter probation, they fail to receive adequate supervision and treatment and often are re-incarcerated. Third, California’s parole system requires further reform to end the cycle of offenders returning to incarceration. In addition, the 2011 realignment legislation shifted the responsibility for parole to the counties, and the new responsibilities may overwhelm the counties.

We addressed each of these problems with best practices from other states’ sentencing commissions:

I. A Lack of Cohesive Sentencing Scheme or Ongoing Data Collection and Reporting

California’s sentencing laws lack an underlying structure and serve primarily short-term goals. The North Carolina and Oregon sentencing commissions serve as models for reform because of their success in reducing prison populations by developing cohesive, data-based sentencing systems.

Takeaways

- **Develop a Comprehensive Sentencing Scheme**: A commission should be charged with studying and proposing presumptive sentencing guidelines.
- **Prepare Compliance Reports and Impact Analyses for Subsequent Sentencing Legislation Proposals**: The California commission should prepare and attach reports to proposed legislation detailing compliance with the presumptive guidelines and how it will impact resources.
- **Compile Recidivism Statistics and Prepare Regular Reports on California’s Recidivism Rates**: The commission should either assume data collection duties from the California Department of Corrections and Rehabilitation (CDCR) and independently prepare recidivism projection reports, or work with CDCR to continue compiling recidivism statistics based on pre-sentencing reform offenders.
➤ **Prepare Annual Correctional Population Forecasts:** A commission should create reports to aid both the Legislature and the commission in anticipating necessary correctional resource changes through prison population forecasts.

**Potential Downsides**

➤ **Mixed Results:** States with sentencing commission have had mixed results with incarceration and crime rates, but these can be attributed in part to problems in other areas (i.e. probation programs), not with the overall sentencing scheme.

➤ **Political Will Within California’s Legislature:** The commission’s recommendations will not bind the courts unless and until the Legislature agrees to amend the Determinate Sentencing Act (DSA).

II. **Lack of Alternative Sanctions or Active Supervision for Probationers**

California’s over-reliance on prison incarceration and lack of alternative sanctions are not cost-effective and exacerbate prison population problems. The Virginia and Alabama sentencing commissions serve as models for addressing these problems because of these commissions’ effective use of alternatives to reduce the number of prison admissions.

**Takeaways**

➤ **Develop Guidelines that Incorporate Alternative Sanctions:** A California commission should develop guidelines that provide specific and effective alternative sanctions that are administered by the state or the counties.

➤ **Adopt a Risk Assessment Instrument:** A risk assessment instrument would aid in further diversion of low-risk offenders who have been recommended for incarceration. The instrument should be combined with a needs assessment, which would provide judges with more information about the type of punishment that would be most effective.

➤ **Study a Variety of Alternative Sanctions:** The commission should study various alternative sanctions that save the state money, ensure public safety and serve rehabilitative needs.

III. **Parole System Failure**

California’s parole population generates most new admissions to state prisons. The Minnesota and Pennsylvania sentencing commissions and the New Hampshire and Texas parole systems serve as models for reform because of their creative solutions to parole issues.

**Takeaways**

➤ **Develop Guidelines for the Length of Post-Release Supervision:** The commission should develop guidelines for the duration of post-release supervision. Offenders should
be incarcerated for a substantial fraction of their sentence but have supervised release for the remainder.

- **Develop Guidelines for the Degree of Supervised Release:** The commission should use risk assessment tools to determine the degree of supervision that offenders require while on parole to ensure public safety and should explore alternatives sanctions for technical parole violations.

- **Develop Revocation Guidelines:** The commission should categorize parole violations by severity and assign restructuring, alternative sanctions, or incarceration sanctions based on the severity of the violation.

- **Collect Data on Realignment Efforts to Advise on Counties’ Best Practices:** The commission should provide correctional resource impacts and forecasts based on counties’ practices and compare the data with metrics for public safety (e.g. crime rates, recidivism rates) to determine best practices.

**Possible Downsides**

- **Technical Violations:** Strict enforcement of supervised release conditions may result in offenders being rearrested and re-imprisoned.

- **Counties’ Participation:** Because of the realignment, the commission would need access to county information and should develop guidelines that address county populations.
## Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Summary</td>
<td>1</td>
</tr>
<tr>
<td>First Recommendation: Develop a Cohesive Sentencing Scheme and Ensure</td>
<td>5</td>
</tr>
<tr>
<td>Ongoing Independent Data Collection and Reporting</td>
<td></td>
</tr>
<tr>
<td>Second Recommendation: Develop and Recommend Alternative Sanctions</td>
<td>16</td>
</tr>
<tr>
<td>for Low-Risk Offenders</td>
<td></td>
</tr>
<tr>
<td>Third Recommendation: Develop Parole and Post-Release Guidelines</td>
<td>29</td>
</tr>
<tr>
<td>Using Evidence-Based Practices</td>
<td></td>
</tr>
<tr>
<td>APPENDIX A: State Sentencing Commissions and the Legislative Veto</td>
<td>44</td>
</tr>
<tr>
<td>APPENDIX B: <em>Blakely</em>, <em>Booker</em>, and State Sentencing Commissions</td>
<td>46</td>
</tr>
<tr>
<td>APPENDIX C: Alabama Sentencing Commission</td>
<td>48</td>
</tr>
<tr>
<td>APPENDIX D: Minnesota Sentencing Guidelines Commission</td>
<td>51</td>
</tr>
<tr>
<td>APPENDIX E: North Carolina Sentencing and Policy Advisory Commission</td>
<td>54</td>
</tr>
<tr>
<td>APPENDIX F: Oregon Criminal Justice Commission</td>
<td>58</td>
</tr>
<tr>
<td>APPENDIX G: Pennsylvania Commission on Sentencing</td>
<td>61</td>
</tr>
<tr>
<td>APPENDIX H: Virginia Criminal Sentencing Commission</td>
<td>65</td>
</tr>
</tbody>
</table>
First Recommendation: Develop a Cohesive Sentencing Scheme and Ensure Ongoing Independent Data Collection and Reporting

Problem: California’s Sentencing Laws Lack an Underlying Structure and Serve Primarily Short-Term Goals

In 1976, California enacted the Determinate Sentencing Act (DSA) because of concerns about sentencing disparities under the previous indeterminate system. Since then, decades of legislation and ballot initiatives have amended the DSA, with the result that more offenders are incarcerated for growing lengths of time. A failure to correspondingly increase correctional resources has led to California’s current prison overcrowding crisis. In 2009, the prison population was 168,830, which was nearly 200% of the state’s prison capacity. Offenders who committed person offenses constituted 56.9% of the male prison population with the remaining 43.1% composed of drug offenders, property crime offenders, and other types of offenders.

In 2011, the California Legislature passed Assembly Bills 109 and 117 (AB 109/117) to address the prison overcrowding problem. AB 109/117 shifts the supervision and incarceration of low-level offenders to the counties. Instead of being sent to prison, non-serious and non-violent offenders will be sent to county jails, and counties must compensate the state if they send low-level offenders to state prisons. Only serious and violent offenders and sex offenders will continue to be sent to prison. AB 109/117 does not change the length of time offenders serve; it only redirects low-level offenders to jail instead of prison.

A long-term solution to California’s prison population problem is a sentencing commission with the power to develop a new sentencing scheme using correctional resources as a significant factor. The commission should analyze substantial independent data on admission rates, population forecasts, and recidivism to develop presumptive guidelines that replace the current patchwork sentencing laws. These guidelines may also strike a better balance between prosecutorial and judicial power in sentencing offenders, thereby avoiding many of the problems of the previous indeterminate and the current determinate sentencing systems. Ongoing data

---

1 Indeterminate sentencing refers to a system where statutes describe a range of time of incarceration for a criminal offense, leaving judges with discretion to pinpoint the exact sentence. In a determinate system, statutes impose fixed terms of incarceration for a criminal offense.


3 Id. at 7.


5 Id.

6 Id.

7 Id.

8 Id.

9 Id.

collection would enable the commission to track the sentencing scheme’s success and would provide the Legislature with analyses of future sentencing laws.

**Takeaways**

Duties analogous to those of the North Carolina Sentencing and Policy Advisory Commission (NCSPAC) and Oregon’s Criminal Justice Clinic (CJC) would enable a California sentencing commission to address the current problems with California’s sentencing laws. We recommend that a sentencing commission have following responsibilities:

- **Develop a Comprehensive Sentencing Scheme to Replace the DSA:** A commission study and propose presumptive sentencing guidelines. The commission should look to the DSA, but like NCSPAC and the CJC, be willing to abandon the DSA’s classifications if they cannot be reconciled with a rational approach to sentencing. The commission should consider both public safety and correctional resources when determining a sentencing scheme. The commission could offer the guidelines to the Legislature for passage or the commission could have authority to establish the guidelines with only passive review from the Legislature. (See Appendix A discussing California’s interpretation of the legislative veto over the actions of independent agencies).

- **Prepare Compliance Reports and Impact Analyses for Subsequent Sentencing Legislation Proposals:** Like NCSPAC, a commission should prepare and attach reports to proposed legislation detailing whether it complies with the presumptive sentencing guidelines and how the legislation would impact state resources. Like the CJC, it should use those impact analyses to recommend budget adjustments for effective alternative programs. An appropriation requirement similar to one imposed in Virginia would have an even greater impact by dissuading California legislators from passing bills that substantially burden the state’s correctional resources.

- **Compile Recidivism Statistics and Prepare Regular Reports on California’s Recidivism Rates:** A California commission should either take over the California Department of Corrections and Rehabilitation’s (CDCR’s) recidivism research project or work with the CDCR to continue compiling recidivism statistics based on pre-sentencing reform offenders. By assessing recidivism numbers before sentencing reform, the commission can develop a baseline to compare sentencing reform’s success or failure. The CDCR, the commission, or both should continue tracking recidivism rates after sentencing reform as one measure of success.

- **Prepare Annual Correctional Population Forecasts:** These annual reports should compare population trends to correctional resource allocation, and they should be based on the commission’s independent data collection and analysis. The reports should aid both the Legislature and the commission in anticipating correctional resource needs. The
CDCR’s data about actual prison population figures may aid in developing a forecasting model for the commission.11

Potential Downsides

➢ Mixed Results: Structured sentencing has had a mixed impact on North Carolina’s prisons. From 1993 to 1997, the admission rate to the state’s prisons dropped 52%,12 but since 2000, the prison population has increased 29%.13 The increase has been attributed in part to problems with the state’s management of its probation programs, not with the overall sentencing scheme.14 Oregon’s incarceration rate has tripled since the 1980s but remains below the U.S. average.15 Since 1995, Oregon’s violent crime rate has fallen by 46%, which was the third largest drop of all 50 states.16 The crime rate change after 1995 suggests incarceration has reduced crime. Research reveals that in Oregon every 10% increase in the incarceration rate led to a 2-4% decrease in the crime rate.17 Oregon’s estimates of this relationship show that incarceration accounted for about a 15% reduction in the crime rate from 1995 to 2008.18 The total crime rate decrease was 46%, thus incarceration explains roughly one-third of the decrease in crime and cannot explain two-thirds of the decrease.19

➢ Political Will Within California’s Legislature: The commission’s recommendations will not bind the courts unless and until the Legislature agrees to amend the DSA based on the commission’s recommendations. Commissions in other states have had difficulty obtaining approval from lawmakers, however. Massachusetts’ sentencing commission developed presumptive guidelines in 1996.20 Despite being introduced every year, the Massachusetts legislature has failed to enact the guidelines into law.21 Unlike

11 CDCR’s population projection model has been criticized for being statistically invalid. See generally Michael D. Maltz & Jan Chaiken, Forecasting California’s Prison Population: Final Report (2009), available at http://sociology.osu.edu/mdm/CDCRPopForecast.pdf. CDCR’s tally of actual prison populations may be more reliable.
14 Id.
18 Id.
19 Id.
21 Id.
Massachusetts, which has an indeterminate sentencing system, California’s DSA will remain binding unless it is replaced. The Legislature also may be able to ignore a commission’s reports and pass sentencing legislation that does not comport with the commission’s overall scheme. Even if the Legislature delegates most of its sentencing powers to the commission, it still retains the ability to pass legislation overruling the commission’s recommendations. The commission will also not be able to control ballot initiatives aimed at changing sentencing requirements. For example, the commission will be unable to amend California’s three strikes law, which was enacted by a voter initiative.

History of California’s Sentencing Laws

In 1976, California enacted the DSA to replace its indeterminate system. Under the indeterminate system, judges sentenced offenders to the broad range required by statute, and the parole board determined offenders’ actual sentence length based on behavior while they were imprisoned. Concerned that rehabilitative efforts were failing and that disparities pervaded the system, the Legislature enacted the DSA with the express intent that incarceration’s purpose was punishment. To establish more uniformity in sentencing, the Legislature established through the DSA crime categories and a triad sentencing system that required judges to give offenders a sentence based on aggravating and mitigating factors.

The Legislature began enhancing sentencing laws soon after the passage of the DSA, beginning in 1977 with a one-year enhancement for using a gun in the commission of a crime. By 2007, the Legislature had substantively amended the sentencing laws at least eighty times, often adding enhancements as reactions to headline-grabbing crimes. In 1994, California voters approved Proposition 184, the three-strikes law, which doubled sentences for second serious felonies and required an indeterminate sentence of twenty-five to life for third felonies. The Legislature and the public endorsed sentencing changes that served short-term desires for

25 Id.
27 See Cal. Penal Code §1170(b); see also Cunningham v. California, 549 U.S. 270 (2007) (explaining the functioning of the DSA’s triad system).
29 Id.
action but the long-term effects of the amendments, such as cost and impact on prisons and jails, were not examined. 31

Although the U.S. Supreme Court upheld the three-strikes law against constitutional challenges, 32 in 2007 the Court struck down the DSA’s triad system as a violation of offenders’ Sixth Amendment right to a jury trial. 33 (See Appendix B for an explanation of the Court’s decisions regarding sentencing guidelines). In response, the Legislature amended the DSA to make the triad system discretionary. 34 The measure was intended as only a stop-gap, but the Legislature has extended the corrective law until January 2014 because it has not yet undertaken the necessary reforms. 35

The result of the numerous amendments and singular focus on punishment has been a byzantine sentencing system and the increasing incarceration of all levels of offenders. 36 California’s crime rate, like the rest of the nation’s, has dropped substantially since the 1990s, 37 but the state’s prisons have become overcrowded to the point of unconstitutionality. 38 Faced with this overcrowding, the state has taken steps to begin more comprehensively collecting data and reforming its sentencing practices. The 2011 realignment legislation shifts the burden of incarcerating low-level offenders to the counties, and the CDCR is currently implementing its Strategic Offender Management System (SOMS). 39 With SOMS, the CDCR will consolidate more than 40 paper and electronic databases, creating a Central File for each offender. 40 The CDCR also provides an annual report with statistics about the prison population, the parole population and, for the first time in 2010, recidivism rates. 41

A California sentencing commission should continue and deepen these initial steps by independently collecting and analyzing data about the state’s correctional resources and sentencing trends. With this information, the commission should develop a comprehensive sentencing scheme and should create fiscal and correctional resource impact reports for every piece of legislation and ballot initiative. The North Carolina Sentencing and Policy Advisory Commission and the Oregon Criminal Justice Commission provide ideal models for these initiatives.

31 Id.
33 See Cunningham, 549 U.S. at 275 (finding the triad system violated defendants’ Sixth Amendment rights).
35 See 2008 Cal. Stat. ch. 416 (extending the sunset provision to 2011); 2010 Cal. Stat. ch. 256 (extending sunset provision to 2012); see also S.B. 576 (extending the sunset provision to 2014).
39 CDCR 2010 Annual Report, supra note 2, at VI.
40 Id. at VI-VII.
41 See id. The CDCR’s 2010 report included its first recidivism rate study. The CDCR studied recidivism for offenders released in FY 2005-2006.
Model One: North Carolina Sentencing and Policy Advisory Commission

North Carolina’s Sentencing and Policy Advisory Commission (NCSPAC) is an appropriate model for two initiatives a California commission should undertake: first, to develop presumptive guidelines and second, to conduct ongoing data collection. After it established the NCSPAC and enacted its presumptive guidelines, North Carolina’s prison population decreased, although in the past decade the prison population again has grown.\(^{42}\) Throughout, the state has managed to keep the prison population within 130% of capacity, although many of its recent projections suggest future problems.\(^{43}\) Nevertheless, based on those projections, North Carolina is taking steps now to prevent future overcrowding.\(^{44}\)

Like California today, in the 1980s North Carolina faced numerous lawsuits about its growing prison population and the resulting overcrowding.\(^{45}\) Like California, North Carolina had a determinate sentencing structure, the Fair Sentencing Act (FSA), which had led in part to its prison-overcrowding problem. The state initially tried to address the problem through population caps and increased parole grants, but had limited success.\(^{46}\) In 1990, the legislature created NCSPAC. In the enabling legislation, the General Assembly charged NCSPAC with four mandates: 1) classify offenses by severity; 2) recommend sentencing structures; 3) recommend a community corrections plan; and 4) create a model to predict the impact of sentencing changes on prison populations.\(^{47}\) After three years, NCSPAC created a sentencing grid based on nine felony offense categories and six prior criminal history categories.\(^{48}\) NCSPAC ultimately rejected the state’s existing determinate sentencing structure in developing the guidelines.\(^{49}\)

The General Assembly, aware of decreasing public support for prison construction, adopted a plan from NCSPAC that did not require increased correctional resources.\(^{50}\) The legislature passed the Structured Sentencing Act (SSA) in 1993 with a few amendments to NCSPAC’s recommendations, including retaining parole for long-term violent offender sentences and presumptive probation lengths.\(^{51}\) The legislation included $314.2 million dollars

\(^{42}\) Justice Center, Justice Reinvestment in North Carolina: Detailed Data Analysis 5 (2010).
\(^{44}\) See 2011 N.C. Sess. Laws 192 (also known as the Justice Reinvestment Act).
\(^{46}\) Lubitz, supra note 45, at 129.
\(^{47}\) NCSPAC History, supra note 45, at 2.
\(^{48}\) Id. at 11.
\(^{49}\) Id. at 2-3.
\(^{50}\) Id. at 22.
\(^{51}\) Id. at 23.
to fund a community corrections plan and finish prison and jail construction that had already begun.\textsuperscript{52}

The legislation also required the General Assembly to consider “fiscal impact notes” for proposed legislation based on the NCSPAC’s population projection model.\textsuperscript{53} The rule had an impact in 1994 when the General Assembly convened an Extra Session to consider toughening the sentencing laws because of a spike in the state’s crime rate.\textsuperscript{54} The bills introduced would have resulted in a need for 20,000 additional prison beds over ten years.\textsuperscript{55} Faced with fiscal impact notes about the long-term effects of their bills, legislators instead passed legislation requiring 2,000 beds over a ten-year period.\textsuperscript{56}

In the ensuing years, the General Assembly enhanced NCSPAC’s data collection and reporting responsibilities. Currently, NCSCAP is charged with making several annual reports\textsuperscript{57}:

- **Statistical Reports**: NCSCAP collects data on sentencing practices and corrections, which it compiles into an annual report.\textsuperscript{58}

- **Correction Population Projections**: NCSCAP creates a prison population simulation report every year based on its data about arrests, convictions, probation revocations, and, when possible, new legislation.\textsuperscript{59}

- **Reports on Proposed Legislation**: NCSCAP drafts recommendations about the consistency of pending legislation with the state’s sentencing scheme, and, upon request, provides impact analysis for the legislation.\textsuperscript{60}

- **Community Corrections Report**: NCSCAP compiles a compendium of the state’s various community corrections programs, including their purposes, eligibility, organizational structure, supervision, and statutory authority.\textsuperscript{61}

- **Biennial Recidivism Reports**: NCSPAC drafts biennial reports on North Carolina’s recidivism rates and the effectiveness of the sentencing laws.\textsuperscript{62}

\textsuperscript{52} Id.
\textsuperscript{53} Id. at 24.
\textsuperscript{55} NCSPAC History, supra note 45, at 24; National Institute of Justice, supra note 54, at 9.
\textsuperscript{56} Id.
\textsuperscript{57} See N.C. Gen. Stat. § 164-43.
By requiring reports on pending sentencing legislation’s consistency with the SSA, North Carolina’s legislature has established the NCSCAP guidelines as a benchmark against which it can compare proposed legislation. The Commission also provides an analysis of the impact on correctional resources. While NCSCAP does not take positions on the merits of the proposed legislation, the reports increase transparency and provide proponents and opponents with accurate information about the potential impact.

In addition, NCSCAP data collection and regular reporting requirements allow the General Assembly to better foresee and react to long-term problems in the sentencing system. For example, in 2001, NCSCAP projected an increase in the prison population by 2012, and the General Assembly authorized NCSCAP to develop alternatives that would minimize the projected increase. Data collection increases the accuracy of the projections and provides feedback about the impact of legislative changes.

Along similar lines, Virginia law requires that any sentencing legislation that necessitates an increase in operational costs at correctional facilities be accompanied by an appropriation. Virginia’s Criminal Sentencing Commission provides fiscal impact reports for proposed sentencing legislation. If it shows increased costs, an appropriation in the amount of the largest increase in the subsequent six fiscal years is taken from the state’s general fund. Although not a direct power of the sentencing commission, the appropriation requirement is a powerful mechanism to ensure that the effects are understood before changes are made, potentially avoiding expensive changes to Virginia’s sentencing laws. It also ties correctional resources to the legislature’s assessment of sentencing legislation.

Model Two: Oregon Criminal Justice Commission

The Oregon Criminal Justice Commission (“CJC”) is another strong model for our recommendations for a California commission. While NCSPAC compiles significant data that is useful for developing a cohesive sentencing policy, Oregon’s CJC has effectively at employed its data in cost-benefit analyses to improve the effectiveness of its sentencing system. In addition, Oregon, like California, has a ballot initiative system, has dealt with prison overcrowding litigation and has a determinate sentencing scheme.

---

64 See, e.g., id. at 12.
65 NCSPAC History, supra note 45, at 25.
Oregon experienced a dramatic increase in violent crime in the 1970s that continued until the early 1990s. From 1960 to 1979, Oregon’s violent crime rate increased by 680 percent. In 1980, the inmate population was around 2,800 and by July 1989 it had grown to 5,300. Due to the increase in crime and the failure to create prison beds at the same pace, Oregon began to experience prison overcrowding in the mid-1970s. Like California, inmates initiated litigation alleging Oregon’s prison overpopulation violated the Eighth Amendment.

In response to overcrowding, Oregon’s legislature created the Oregon Prison Overcrowding Project and charged it with studying and recommending reforms to the sentencing system. The Project recommended that Oregon create a sentencing guideline system using the state’s correctional resources as its foundation. In 1987, the Oregon legislature created the State Sentencing Guidelines Board to develop the guidelines, and in 1989, the Oregon legislature ratified the Board’s recommended system.

In 1995, the Oregon legislature abolished earlier advisory bodies and created the CJC, which it charged with developing a long-range public safety plan for Oregon. CJC’s recommendations address the capacity and use of state prisons and local jails, implementation of community corrections programs and methods to reduce future criminal conduct. The CJC reviews new legislation that creates or modifies crimes and can amend its guidelines by majority vote, subject to legislative approval. In addition, the CJC has a role in funding and evaluating Oregon’s drug courts. The CJC also conducts research, develops impact estimates of crime-related legislation, and acts as a statistical and data clearinghouse. Currently, the CJC has the following data and recommendation reports available:

- **Statistical Reports:** The CJC collects, prepares, analyzes and disseminates information on state and local sentencing practices and crime rates.

- **Correction Population Projections:** It looks at the type, capacity and use of correctional facilities.

---

70 Id. at vi.
71 Id.
72 Id. at vii.
73 Id.
74 In 1982, in *Capps v Atiyeh*, a federal district court noted that though Oregon’s prison overcrowding had not yet reached the point of unconstitutionality, the state was nearing the point of violating the Eighth Amendment. 559 F. Supp. 894 (D.Or.1982).
75 Longitudinal Study, *supra* note 69, at 1.
76 Id. at 2.
77 Id.
79 O.R. Stat. § 137.656.
80 O.R. Stat. § 137.656.
82 Id.
83 Id.
84 O.R Stat. § 137.656.
Cost-Benefit Methodology: It assesses the effectiveness of juvenile and adult correctional programs, devices, and sanctions in reducing future criminal conduct, and studies methods of reducing the risk of future criminal conduct (We discuss Oregon’s specific uses of cost-benefit methodology below).86

Reports on Proposed and Passed Legislation: It reviews new legislation that creates new crimes or modifies existing crimes.87

Costs of the Criminal Justice System: It analyzes the different costs associated with the incarceration system and potential savings through sentencing reform and reallocation of funds to sentencing alternatives like drug courts.88

Oregon has been on the vanguard of analyzing how sentencing laws affect sentencing practices and prison populations. The CJC’s 2011 study of Oregon’s Measure 11 (M11) provides an example of the CJC’s ability to evaluate the impact of sentencing law amendments. M11 was passed in Oregon through a voter-initiative in 1994, and it established mandatory minimum prison sentences for sixteen violent or sexual offenses (with the lowest sentence in M11 being 70 months).89 Since 1994, the Oregon legislature has added six more crimes and increased the sentence lengths of four then-existing mandatory minimums.90 In 2011, the CJC studied M11 and discovered the bill created large disparities in sentencing between counties and among demographics.91 In particular, it evaluated the influence of prosecutorial discretion in offenders’ sentences. The CJC found that if Oregon had not passed M11, the prison system would require 2,900 fewer prison beds (around 20% of its current prison population).92 Notably, the CJC also highlighted M11’s unintended consequence of an increased prosecutorial role in sentencing decisions and the overall impact on the state’s sentencing practices.93

In 2006, the CJC developed a cost-benefit model for the state’s criminal justice system to provide information to policy makers and the public about the cost and effectiveness of programs designed to reduce crime.94 For example, in 2007, in its report to the legislature, the CJC examined the effect prisons have on reducing the number of crime victims to determine the net monetary benefit to the state.95 In 2008, it helped ECONorthwest evaluate the impact evidence-based programs had on the state’s recidivism rate (finding 1,261 felonies avoided from drug

85 Crime Report, supra note 16.
87 Legis. Counsel Committee, Judgment and Execution; Parole and Probation by the Court, available at http://­ww­w.­leg.­state.­or.­us/­ors/­1­37.­html (last visited Nov. 13, 2011).
89 Id.
90 Id.
91 Longitudinal Study, supra note 69, at xi.
92 Id.
93 Id. at ix.
94 Cost-Benefit, supra note 86, at 1.
95 Winter 2011, supra note 17, at 3.
treatment in the community, compared to 74 avoided from treatment in prison). In 2010, voters approved ballot initiative Measure 73 (M73), which required an increased minimum sentence for some sex crimes and repeat DUIs. The CJC and Secretary of State reported to the legislature M73’s projected impact, and in 2011, the legislature amended M73 to require 90-day jail terms for third-time convicted drivers, as opposed to the previously approved 13-month term.

The Oregon cost-benefit model has been integral to calculating the impact to the state general fund of sentencing changes and calculating the estimated change in crime from these same sentencing changes. It has also allowed policy makers to reinvest general fund savings from prison reduction into programs.

Using these models for a California sentencing commission’s duties will help ensure the commission can develop effective sentencing guidelines based on independent data collection and analysis.

99 Cost-Benefit, supra note 86, at 69.
100 Winter 2011, supra note 17, at 3.
Second Recommendation: Develop and Recommend Alternative Sanctions for Low-Risk Offenders

Problem: California’s Over-Reliance on Prison Incarceration and Lack of Alternative Sanctions Are Not Cost-Effective and Exacerbate Prison Population Problems

California’s retributive philosophy and failure to invest in alternative sanctions has resulted in many low-risk offenders being housed in prison. Though probation and probation with jail time are the most common sentences for felony offenders, offenders are insufficiently supervised or rehabilitated because the state has failed to properly fund or manage community-based sanctions programs. As a result, offenders whose probation has been revoked constitute 40% of new prison admissions. At its apex, California’s incarceration rate was 5% higher than the national average and its prisons were at 200% capacity, both of which were partially attributable to a lack of sentencing alternatives. The state’s 2011 realignment legislation and contracts with out-of-state prisons to hold offenders have resulted in initial declines in those numbers, but neither provides a sufficiently cost-effective long-term solution.

A California sentencing commission should develop an alternative sanctions program for non-violent, low-level offenders and incorporate it into presumptive sentencing guidelines. Prison is the state’s most expensive correctional resource, and evidence suggests it is no more effective at preventing recidivism among low-risk offenders than alternative sanctions. The commission should also develop an effective risk-assessment instrument to target low-risk offenders who can be diverted from prison incarceration.

California already has begun reforming its probation program with the California Community Corrections Performance Incentive Act and AB 109/117, and a sentencing commission could further direct the implementation of evidence-based sanctions into a comprehensive sentencing scheme. A commission empowered to recommend evidence-based

---

102 Cal. Dep’t of Justice, Crime in California 2010 53 (2011) (hereinafter Crime in California 2010). In 2010, probation-with-jail sentences were 58.2% of felony sentences, and probation only sentences were 17.1% of felony sentences. Id.
103 Warren, supra note 101, at 187.
104 Warren, supra note 101, at 187; Crime in California 2010, supra note 102, at 55.
106 CDCR 2010 Annual Report, supra note 2.
107 Little Hoover Comm’n, supra note 28, at 26-27.
109 Francis T. Cullen & Paul Gendreau, Assessing Correctional Rehabilitation: Policy, Practice, and Prospects, 3 Crim. Just. 109, 155 (2000) (Further, it appears that longer prison sentences are associated with greater criminal involvement, with offenders in the “more imprisonment” category having a recidivism rate three percentage points higher than those in the “less imprisonment” category.).
110 Warren, supra note 101, at 189.
alternative sanctions for low-level offenders can prevent prison overcrowding by diverting low-risk offenders away from incarceration and toward a more cost-effective system of rehabilitation.

**Takeaways**

- **Develop Guidelines that Incorporate Alternative Sanctions:** A commission should be charged with developing guidelines that recommend alternative sanctions for low-level offenders and offenders with minimal criminal history. The guidelines could provide specific alternative sanctions to be administered by the state. At the least, guidelines should broadly suggest alternative sanctions with judges retaining discretion over the actual type of punishment.

- **Adopt a Risk Assessment Instrument:** A risk assessment instrument would aid in further diversion of low-risk offenders who have been recommended for incarceration. The instrument could be combined with a needs assessment, which would provide judges with more information about the type of punishment that would be most effective for each offender.

- **Study a Variety of Alternative Sanctions:** The commission should be charged with studying various alternative sanctions that save the state money while ensuring public safety. These sanctions may also serve rehabilitative needs, which would be a more efficient allocation of correctional resources.

**California’s Probation System**

In California, the majority of felony offenders receive probation-only or probation-with-jail sentences. The 2010 conviction and sentence numbers reflect the trend in the state for the past five years:111

- Total Convictions: 201,820 (100%)
- Sentenced to State Institutions: 41,858 (20.7%)
- Sentenced to Probation Only: 34,556 (17.1%)
- Sentenced to Probation with Jail: 117,363 (58.2%)
- Sentenced to Jail: 8,043 (4.0%)

At first glance, the numbers suggest many felony offenders are diverted from prison, but probation outcomes reveal that many offenders end up incarcerated despite the initial diversion.112 Of the 311,692 adults on active probation in 2010, 167,918 were removed from probation during that year.113 Almost forty percent of the removals (about 66,783 offenders) were revocations of probation,114 and the CDCR calculated that an average of 19,000 of those

---

111 Crime in California 2010, supra note 102, at 53.
112 Id. at 53-55; Warren, supra note 101, at 187.
113 Crime in California, supra note 102, at 54-55.
114 Id. at 55.
revocations led to prison incarceration.\textsuperscript{115} California spends about $1 billion annually on incarceration, supervision, and treatment of probationers who are subsequently incarcerated.\textsuperscript{116}

The failure rate of California probationers is due in large part to the erosion of funding for community sanctions programs.\textsuperscript{117} In the 1960s and 1970s, the state provided incentives to counties to treat probationers and avoid incarcerating them in state prisons.\textsuperscript{118} California’s prison population declined dramatically, leading to the closure of eight prisons by 1972.\textsuperscript{119} As crime rates rose in the 1970s and 1980s, a retributive emphasis replaced the rehabilitative policy of the probation programs.\textsuperscript{120} The incentives dwindled as alternative sanctions became synonymous with being “soft” on crime.\textsuperscript{121} Probation officers focused on violations rather than rehabilitation or re-integration.\textsuperscript{122} Increasing convictions and decreasing funding led to immense caseloads for probation officers, which in turn led to decreasing supervision of felony probationers.\textsuperscript{123} Without active supervision or sufficient treatment options, probationers ended up incarcerated despite their initial diversion.\textsuperscript{124}

The lack of alternative sanctions also undermined the potential of diversion from incarceration. Judges have discretion to sentence low-level and non-violent offenders to local or alternative sanctions, but a lack of investment in these programs limits judges’ options.\textsuperscript{125} Because of inadequate space and a lack of alternative programs, judges have no choice but to sentence non-violent and low-level offenders to incarceration in state prisons or county jails.\textsuperscript{126} These offenders increase the overall prison population, and they fail to receive adequate treatment and rehabilitation.\textsuperscript{127} Judges may also be wary to send certain offenders to community programs because of their personal risk-averseness, and a commission can help by predetermining risks of offenders and the likelihood of recidivism.

**Senate Bill 687: California Community Corrections Performance Incentive Act**

To address the lack of programs for probationers, in 2009 the Legislature passed the California Community Corrections Performance Incentive Act.\textsuperscript{128} The act establishes “community corrections programs” in each county and uses funds saved by preventing probation

\textsuperscript{115} Warren, \textit{supra} note 101, at 188.
\textsuperscript{116} \textit{Id.} at 187.
\textsuperscript{117} \textit{Id.}
\textsuperscript{118} \textit{Id.}
\textsuperscript{119} \textit{Id.}
\textsuperscript{120} \textit{Id.} at 188.
\textsuperscript{121} \textit{Id.}
\textsuperscript{122} \textit{Id.}
\textsuperscript{123} \textit{Id.}
\textsuperscript{124} \textit{Id.}
\textsuperscript{125} Little Hoover Comm’n, \textit{supra} note 28, at 26-27.
\textsuperscript{126} \textit{Id.}
\textsuperscript{127} \textit{Id.}
\textsuperscript{128} \textit{Id.} at 189.
revocations to fund further probation reform. The community programs must consist of evidence-based programs with an emphasis on rehabilitation and reducing recidivism. The state provided initial funds to counties to begin implementing programs, but the counties must reduce the number of probationers sent to prison to continue receiving funding. Counties receive 45% of the savings from reductions below a baseline number of probation revocations or new felony convictions.

The programs funded under the act must provide ongoing reports on implementation to the California Administrative Office of the Courts, which has to provide quarterly reports to the Department of Finance and annual reports to the Governor and the Legislature. The act also mandates at least five percent of county probation departments’ funding must be used to evaluate the effectiveness of the community programs. The departments do not receive any state funding beyond the initial grants unless and until they reduce recidivism and/or revocation.

The program is still in its infancy, so it is too early to tell the degree of success the act has had on reducing recidivism or revocations. Nevertheless, the act reflects an initial step in integrating evidence-based sanctions into California’s sentencing scheme. A sentencing commission could further the policies underlying the act by providing data-driven results to counties and helping them tailor effective alternative sanction programs.

The Incarceration Problem

Once incarcerated, offenders have few rehabilitation options. The CDCR’s Adult Programs division is supposed to 1) provide effective evidence-based programming for adult offenders and 2) create strong partnerships with local government, community based providers and the communities to which offenders return to provide services that are critical to offenders’ success after incarceration. In 2006, the Division of Addiction and Recovery Services had some success in lowering the return-to-prison rate for men and women who completed in-prison and community-based programs (21.9% after one year and 35.4% after two years, compared to the 39.9% and 54.2% rate for all offenders). However, California’s ongoing fiscal crisis has led to a substantial cut in CDCR’s annual budget. The CDCR, in turn, reduced the budget for...
rehabilitative programs for adult offenders, including education, vocational, substance abuse and other programs for inmates and parolees by $250 million.138

The main problem with CDCR’s rehabilitation programs is that it cannot sufficiently fund them because of the number of prisoners CDCR must house. For example, in 2010-2011, the CDCR spent $2.72 billion on general security, $1.34 billion on inmate support (food and clothing), $2.13 billion on inmate healthcare, but just $400 million total on education, substance abuse programs, and inmate activities.139 Because CDCR must focus its attention on housing and medical care, it cannot fund rehabilitation. A commission could help in two ways: 1) by redirecting offenders through risk-analysis into alternative sanctions; and 2) by encouraging the allocation of corrections funding to community programs.

Alternative sentencing not only offers judges the opportunity to use discretion when sentencing offenders, but also offers a range of programs, strategies, and tactics to help offenders become successful members of society. Some offenders will reenter the prison system despite the state’s best efforts at rehabilitation, but this section highlights a few states’ strategies that have been effective at reducing recidivism and providing the most cost-effective techniques for managing offenders. Diverting individuals away from prison and jail saves money and in many cases provides a better solution for the individual. Alternative sentencing strategies offer offenders, taxpayers and society the best methods for successfully reintegrating offenders and are an important element of a comprehensive sentencing policy.

Model One: Virginia’s Offender Risk Assessment Instrument

Virginia’s offender risk assessment instrument is a data-driven method of identifying offenders who can be diverted from prison without increasing public safety risks. In Virginia, most low-level offenders already qualify for probation under the state’s guidelines. The instrument identifies low-level offenders with criminal histories that lead to incarceration recommendations under the guidelines, but the offenders are nevertheless at a low-risk for recidivating.140 The purpose of the risk assessment instrument is to avoid using prison – the state’s most expensive correctional resource – to incarcerate offenders who are unlikely to recidivate. Studies show the instrument is fairly accurate at predicting recidivism, offenders receiving a lower score with the instrument have been less likely to face re-conviction and the likelihood of re-conviction rises with offenders’ scores.141 While judges retain the discretion to sentence eligible offenders either to incarceration or an alternative sanction, they often use the

---

138 Id.
140 Id. at 15.
The instrument provides judges with an objective assessment of offenders that they can use to assess whether incarceration is the best option. The instrument acts as a cost-saving measure that aids judges in effectively allocating correctional resources.

In 1994, Virginia overhauled its sentencing laws. It abolished parole, required offenders to serve at least 85% of their sentences and charged the newly-created Virginia Criminal Sentencing Commission (VCSC) with drafting guidelines. The General Assembly emphasized incarcerating serious and violent offenders for lengthy periods of time, which it knew would have an impact on correctional resources. To deal with the growing stress, the General Assembly charged the VCSC with developing guidelines for alternative sanctions. The discretionary guidelines recommend alternative sanctions for low-level offenders without significant criminal histories. Alternative sanctions include:

- Fines;
- Boot camp incarceration;
- Local correctional facility incarceration;
- Diversion center incarceration;
- Detention center incarceration;
- Home incarceration/electronic monitoring;
- Day or evening reporting;
- Probation supervision;
- Intensive probation supervision; and
- Performance of community service.

The legislature also mandated that the VCSC develop a risk assessment instrument to help judges divert low-risk offenders who qualified for prison or jail incarceration into alternative programs. The legislature required the VCSC to study whether diverting 25% of offenders who qualify for prison sentences to alternative sanctions was feasible. The VCSC developed the instrument based on studies of recidivism rates of released prisoners from 1991 and 1992. VCSC tested the instrument in six pilot counties and based on its success in those counties, the VCSC extended its use throughout the state. The instrument limits diversion to

---

142 Offender Risk Assessment, note 141.
145 Offender Risk Assessment, supra note 141, at 15.
148 Id.
149 Offender Risk Assessment, supra note 141, at 25.
150 Id. at 10.
offenders convicted of larceny, fraud, or drug offenses and who are subject to either jail or prison sentences. Additionally, offenders’ criminal histories cannot include a violent offense.

The risk assessment comes at the end of the sentencing calculation. Judges first determine whether the offender qualifies for jail or prison incarceration under the guidelines. If the offender’s criminal history does not include a violent crime and the current offense is not a violent crime, he or she is evaluated under the risk assessment instrument. Judges use the offender’s characteristics and criminal history to calculate a point total that assesses the risk the offender will recidivate, which the judge can use to determine whether diversion is appropriate.

The risk assessment instrument consists of nine factors the VCSC found were relevant in determining an offender’s likelihood of recidivating:

- Age;
- Prior felony record;
- Offense type;
- Employment history;
- Gender;
- Prior adult incarcerations;
- Prior arrests within past 18 months;
- Additional offenses; and
- Marital status before age 26.

The instrument weighs the factors based on their predictive value, and judges add up points assessed for each factor. Offenders that have scores of 38 points or below are recommended for alternative sanctions, but judges retain discretion over the actual sentence. Regardless of whether the instrument recommends alternative sanctions, judges can sentence offenders to incarceration. In 2010, the risk assessment recommended alternative sanctions for 50% of...
eligible offenders. The VCSC classifies judges as complying with the guidelines if they sentence offenders to the original sentence or to an alternative sanction. Thus, although the discretion provides judges with flexibility, it also means that judges divert less than half of the offenders who qualify for alternative sanctions.

The risk assessment instrument does not recommend the most suitable type of alternative sanction. Judges have discretion over the sanction assigned, but they are limited by the available alternative sanctions in the locality in which they are sentencing. Many of the alternative sanctions are not administered at the state level. In 2010, the most common alternative sanctions included supervised probation, short terms in jail, restitution, indefinite and/or unsupervised probation and fines. Judges often combined alternative sanctions for diverted offenders.

The risk assessment instrument must be distinguished from a needs assessment. It is not intended to lower the chance of recidivism by diverting offenders into sanctions that are more appropriate for their rehabilitation. Rather, the instrument differentiates offenders likely to recidivate from those unlikely to recidivate. That purpose still aids the state to more efficiently allocate its correctional resources.

In 2002, the VCSC and the National Center for State Courts (NCSC) conducted a cost-benefit analysis of the pilot program. The study found $1.2 million in benefits to Virginia citizens, with most of the benefit at the state level. Based on that finding, the study concluded if the program were extended statewide, the benefit would be between $2.9 and $3.6 million. The report explained the net benefit:

- Gross benefit to state from eliminating prison sentences: $7.9 million
- Costs to the state for alternative sanctions: $2.1 million
- Costs to the state for re-incarcerating recidivists: $0.7 million
- Transfers from state to counties to offset increased jail costs: $2.3 million
- **Net benefit to the state: $3.1 million**

---

162 Id. at 38.
163 Id. at 39.
164 Id. at 40.
165 Id.; Offender Risk Assessment, supra note 141, at 3-4.
166 Id. at 4-5.
169 Id.; see also Offender Risk Assessment, supra note 141, at 4 (describing “package” sentences).
170 See generally Offender Risk Assessment, supra note 141.
171 Id. at 7.
172 Id.
173 Id.
• Costs to localities and counties for alternative sanctions: $1.9 million
• Benefits to localities: $300,000
• Net costs to localities and counties: $1.7 million
• Costs to victims for diverted offenders who recidivated: $266,000
• Net benefit to citizens: $1.2 million

The report suggested refining the risk assessment instrument’s original 11 factors before introducing the practice statewide. Subsequently, the VCSC eliminated certain factors, shifted the remaining factors’ weight, and chose a threshold score that diverted 25% of prison-bound offenders to alternative programs. In 2003, the General Assembly charged the VCSC with studying whether raising the eligible score would divert more offenders without risking public safety. The VCSC suggested and the General Assembly adopted a higher score for eligibility; the VCSC found that more than 500 additional offenders could be diverted without significant increases in recidivism rates.

The VCSC began revalidation of the risk assessment factors in 2010. It is studying the recidivism of offenders who were sentenced in 2004-2005 and who qualified for the risk assessment’s alternative sanctions recommendation. The VCSC will use the data to alter the factors and their weight to ensure the instrument’s accuracy in predicting recidivism. The revised instrument was to be included in the Commission’s 2011 annual report.

Model Two: Alabama’s Sentencing Commission

Following three decades of prison overcrowding and the creation of temporary committees formed to study and make recommendations to reform Alabama’s criminal justice system, the Alabama Legislature established the Alabama Sentencing Commission (ASC) in 2000. The ASC is an independent agency that serves as a permanent research arm of the state’s criminal justice system. The commission emphasizes data-driven research that reflects the practical impact of the sentencing system on correctional resources and the prison population. The commission has emphasized community corrections programs as part of its sentencing policy, with the result that thousands of offenders have been diverted from prison into alternative sanctions. As a result, Alabama has saved millions of dollars by limiting prison incarceration to its most serious offenders.

174 Id. at 8.
175 Re-validation, supra note 141.
176 Id.
177 Id.
179 Re-validation, supra note 141.
181 Id.
Evaluation of Alabama’s Criminal Justice System

Alabama’s new sentencing system required an investigation into the impact statewide sentencing reform would have on the prison population. Like VCSC, ASC wanted use past sentencing decisions to develop sentencing guidelines, which required an evaluation of the state’s actual sentencing practices.\(^{182}\)

The ASC researched offenders sent to prison, offenders sentenced to probation, available sentencing options and how judges used the available options. Following the initial analysis, the ASC staff evaluated the impact the recommended standards would have on correctional resources by comparing the projected sentencing practices after implementation with their research of pre-implementation practices. Simulation model projections revealed the new standards would divert more non-violent and less serious offenders to non-prison sanctions, and would continue to send violent and serious offenders to prison. Implemented in 2006, the standards are beginning to show shifts in sentencing practices, such as reductions in controlled substance offenders being sentenced to prison.\(^{183}\) Serious and violent offenders continue to serve time in prison,\(^{184}\) while incarceration sentences for drug and property offenses have declined.\(^{185}\) There has also been a 10% decline in prison sentences for first time drug and non-violent property offenders\(^{186}\) and just under a 10% reduction in crime rates for the same period.\(^{187}\)

In 2003, the ASC recommended the creation of more alternative sanctions.\(^{188}\) The recommendations included\(^{189}\):

- Increasing the number of probation officers;
- Adopting a risk and needs assessment instrument to provide individualized case planning and to more efficiently allocate scarce correctional resources;
- Increasing the use of community corrections programs for otherwise prison-bound offenders;
- Expanding drug courts and other specialty courts to address the substance abuse and other specific issues faced by many offenders; and
- Developing graduated sanctions from probation to prison.\(^{190}\)

\(^{182}\) Id.
\(^{183}\) Id. at 9.
\(^{184}\) Double-digit percentage point drops occurred with Forgery 2nd, Possession of a Forged Instrument 2nd, Receiving Stolen Property 2nd, Unauthorized Use/Breaking & Entering Vehicle, and Felony DUI convictions. Id.
\(^{185}\) Id. at 9.
\(^{186}\) Id.
\(^{188}\) Id.
\(^{189}\) Id.
\(^{190}\) Id.
Based on the ASC’s recommendation, the Alabama legislature amended the Community Corrections and Punishment Act in 2003 to encourage and aid counties to develop community corrections programs.\(^{191}\) As a result, from 2003 to 2008, the number of community corrections programs increased by 79% and the number of counties benefitting from the state’s funding of community programs increased by 114%.\(^{192}\) Offenders diverted to community correction programs from incarceration increased 51%.\(^{193}\) The act’s emphasis on increasing community corrections has led to a 1,700 bed decrease in prison-bed needs.\(^{194}\) The state saved more than $17 million by replacing $23,138,445 it would have spent on housing offenders in state prison with $6.1 million it spent on community corrections.\(^{195}\) Today, there are 34 community corrections programs (up from 15 in 2003) operating in 45 counties, which treat more than 3,000 felons diverted from prison each year.\(^{196}\) During fiscal year 2010, there were 3,197 felony offenders diverted to community corrections.\(^{197}\) Of these, 1,766 were new diversions and 1,431 were diverted offenders carried over from 2009.\(^{198}\) Without these programs, the state’s prisons would have had to house almost 3,200 more offenders.\(^{199}\)

**Cooperative Community Alternative Sentencing Project**

Faced with concerns that community corrections programs were not part of a comprehensive sentencing system, in 2008 the ASC and Chief Justice Sue Bell Cobb co-sponsored the Cooperative Community Alternative Sentencing Project (CCASP).\(^{200}\) The project’s goal is to develop a “true continuum of sanctions” that are evidence-based.\(^{201}\) As part of the process, the project encourages collaboration between state and local agencies charged with supervising offenders to eliminate redundancies and inefficiencies in the system.\(^{202}\) The project began in four pilot counties, which were charged with developing a local offender supervision plan.\(^{203}\) Notably, the counties have struggled to collect sufficient data to implement real evidence-based programs or a risk assessment tool.\(^{204}\)

Alabama adopted the Ohio Risk and Needs Assessment Tools (Alabama ORAS) in 2011, and CCASP sites and community corrections programs are implementing them.\(^{205}\) The state is hoping the instruments’ success in Ohio can be duplicated in Alabama.

\(^{191}\) *Id.* at 9.
\(^{193}\) *Id.*
\(^{194}\) *Id.*
\(^{195}\) *Id.*
\(^{197}\) *Id.*
\(^{198}\) *Id.*
\(^{199}\) *Id.*
\(^{200}\) *Id.*
\(^{201}\) *Id.*
\(^{202}\) *Id.*
\(^{203}\) *Id.*
\(^{204}\) *Id.* at 10.
\(^{205}\) *Id.* at 10.
officers are using the instruments to tailor sanctions to offenders based on the offenders’ needs, with the hope that using the instrument will aid in reducing recidivism and increasing public safety. The greatest benefit is the instruments’ ability to identify specific services that reduce the risk of recidivism, encouraging the efficient use of correctional resources. The instruments allow for a more directed use of available resources because they are able to produce statistically significant risk analyses for individual offenders.

Like the VCSC and the ASC, a California commission should be charged with developing guidelines that recommend non-prison sanctions for low-level and low-risk offenders. The guidelines could recommend specific alternative sanctions for particular offense and criminal history combinations; although the exact sanctions imposed will depend in part on the availability of state and local alternative sanctions. Regardless, non-prison sanctions should be solidified as part of the commission’s power to determine sentencing policy. The commission should aid counties in developing local practices for alternative sanctions. A risk assessment instrument like Virginia’s and Alabama’s should be used to further divert non-violent offenders. As in Virginia, the instrument should be suggestive but not binding on judges. Combined with mandatory guidelines, a suggestive instrument would protect judicial discretion in sentencing offenders who are recommended for incarceration, but would also provide an objective assessment.

Other States’ Approaches to Alternatives to Prison

Other states have similarly emphasized diversion of low-level offenders from prison incarceration. Minnesota’s sentencing guidelines recommend stayed sentences for most low-level crimes and for most offenders with minimal criminal history. Pennsylvania’s guidelines provide specific alternative sanction recommendations, such as boot camp and restrictive intermediate punishments, for low-level offenders. Oregon’s guidelines recommend jail sentences between 30 and 90 days with a maximum period between 90 and 180 days in which alternative sanctions can also be assigned. Offenders are subject to 18 months to three years of probation after the minimal incarceration and alternative sanctions.

States have used a variety of alternative sanctions with an eye toward preserving correctional resources. Florida’s Office of Program Policy Analysis and Government

---

206 Id.
207 Id.
211 Id.
Accountability studied the benefits of the state’s intermediate sanctions. The Office found substantial savings by substituting alternative sanctions for incarceration:

- GPS monitoring for non-violent offenders with minimum sentences of 12 to 24 months - $41.51 per offender per day.
- Non-treatment residential facilities for probation technical violators, non-violent offenders with restitution sentences, or non-violent offenders requiring structured assistance - $29.53 per offender per day.
- Day reporting centers for low-level felony or misdemeanor offenders - $44.06 per offender per day.
- Residential substance abuse treatment for offenders with substance abuse issues - $26.66 per offender per day.

Vermont recently authorized electronic monitoring and home arrest for non-violent offenders to replace incarceration. The Washington State Institute for Public Policy found electronic monitoring would save Washington $870 per offender. New Hampshire has a risk-based supervision system, where offenders are assigned a supervision level based on their risk assessment. If offenders comply with their conditions, their level of supervision is decreased. Similarly, Nevada has an incentive program that allows offenders to earn credits to reduce their probation based on compliance with their probation conditions.

Through the combination of guidelines recommending alternative sanctions for most low-level offenders, the development of a risk assessment instrument to divert other prison-bound offenders, and the development and funding of effective community corrections programs for probationers, a California sentencing commission could effectively minimize future prison-overcrowding.

---

213 Id.
214 Id.
215 Id.
216 Id. at 16.
217 Id.
218 Id.
Third Recommendation: Develop Parole and Post-Release Guidelines Using Evidence-Based Practices

Problem: California’s Parole Population Generates Most New Admissions to State Prisons

Parolees returning to incarceration drive most of the admissions to California prisons. In 2009, parolees returned to custody for technical violations (P-RTC) were a substantial percentage of admissions to state prisons (41%), and represented more than half of total parolees supervised (60.7%). Parolees sent back to prison with new terms (P-WNT) for convictions for new crimes were a much lower percentage (17%).

To address the parole system’s contributions to prison overcrowding, the Legislature passed Assembly Bills 109 and 117 (AB 109/117) in 2011, which shift supervision for non-violent and non-serious offenders to the counties. The legislation places these offenders into a post-release community supervision program (PRCS) and prohibits their revocation back to state

---

220 Id.
221 CDCR 2010 Annual Report, supra note 2, at 9.
222 Overview of AB 109, supra note 4.
prisons. Serious and violent offenders remain on state parole, but the Board of Parole Hearing’s (BPH) supervision of revocation hearings is set to phase out in 2013 and will be replaced by court oversight of the revocation process.

As it develops a comprehensive sentencing system, a California sentencing commission should be a part of the state’s parole reform process. The commission should be empowered to develop guidelines for the duration of supervised release following offenders’ incarceration. The commission’s guidelines would replace California’s mandatory parole and indeterminate sentencing parole systems. The commission could either directly develop parole and post-release supervision guidelines, as the Pennsylvania Commission on Sentencing has recently begun to do, or it could incorporate supervised release periods into the sentencing guidelines, as the Minnesota Sentencing Guidelines Commission has done.

Under either approach, the commission should be charged with collecting data and analyzing the impact of the realignment on counties. Based on these findings and on evidence-based results from other states, the commission should develop guidelines for the type and level of supervision offenders should receive while on parole or post-release supervision. Although AB109/117 encourages counties to use alternative sanctions in post-release supervision, the new legislation provides little guidance to the counties about how the sanctions should be applied. A commission’s guidance would help create uniformity among the counties and would be an important resource for the counties as they develop their supervision models. New Hampshire’s recent legislation changing its parole policies would be a model for these guidelines. Finally, a commission should develop parole and post-release revocation guidelines that would aid judges in their new role of assigning parole violators to jail or alternative sanctions.

**Takeaways**

- **Develop Guidelines for the Duration of Post-Release Supervision:** The Legislature should charge a commission with developing guidelines for post-release supervision duration. These guidelines can either be incorporated into the sentencing guidelines, as in Minnesota and Texas, or the commission can develop them separately, as the Pennsylvania Commission on Sentencing is doing. Offenders should be incarcerated for a substantial fraction of their sentence but have supervised release for the remainder. If modeled after Minnesota or Texas, the commission should set presumptive guidelines for incarceration and post-release supervision, the CDCR/Division of Adult Parole Offices (DAPO) should set conditions for good-time credits and the counties or DAPO should set the terms of the supervised release, based on the type of offender. The conditions should be tailored to each offender.

---

223 *Id.*
224 *Id.*
Develop Guidelines for the Level of Supervised Release: The commission could create parole guidelines that advise the CDCR/DAPO and the counties about the type of supervision offenders should receive. The commission should use risk assessment tools and recidivism data to determine the level of supervision offenders require that ensures public safety. The commission should explore alternatives to revocations for technical parole violations, like graduated sanctions or closer supervision.

Develop Revocation Guidelines: The commission should use the Minnesota Department of Correction’s guidelines for revocation as a model. It should categorize violations by severity and assign restructuring, alternative sanctions or incarceration based on the severity of the violation. Revocation guidelines would help create uniformity among the counties as judges begin supervising revocation hearings.

Collect Data on Realignment Efforts to Advise on Counties’ Best Practices: The commission should collect data about supervision and revocation practices in the counties. Using the data, the commission should provide correctional resource impacts and forecasts based on the practices and compare the data with metrics for public safety (e.g. crime rates, recidivism rates) to determine best practices.

Possible Downsides

Technical Violations: Strict enforcement of supervised release conditions may result in offenders being rearrested and re-imprisoned. The CDCR and/or the commission should continue to promote alternative sanctions for technical parole violations.

Counties’ Participation: The realignment process has dramatically shifted responsibility for offenders to the counties. To be effective, the commission would need access to accurate county-level information and should develop guidelines that address disparate county populations and resources. Ensuring the counties’ implementation of commission recommendations may be difficult.

Parole in California

AB 109/117 attempts to address many of the parole system’s problems, in part by shifting responsibility for many parolees to the counties. An overview of the parole system’s problems is necessary to contextualize the reforms AB 109/117 proposes and to understand the role a sentencing commission can play in parole reform.

The immense size of the parole system (125,000 parolees in 2010)\textsuperscript{225} and its reliance on incarceration have led to a revolving door of violators moving into and out of prisons.\textsuperscript{226} The revolving door prevents rehabilitation of offenders by continually disrupting their attempts to rebuild their lives with returns to prison.\textsuperscript{227} The system also fails to closely oversee the most

\textsuperscript{225} Thomas Hoffaman, The Debate Around Parole Reform in California, 22 Fed. Sent’g Rep. 181 (Feb. 2010).
\textsuperscript{226} Little Hoover Comm’n, supra note 27, at 24.
\textsuperscript{227} Id. at 27.
risky parolees, or even to attempt to sort low-risk and high-risk parolees.\textsuperscript{228} The result of the mandatory system has been an increase in the recidivism rate as parole violators cycled into and out of prison.\textsuperscript{229} The system squanders scarce correctional resources on indiscriminate, short term incarcerations with little evidence showing this mandatory system improves public safety.\textsuperscript{230}

Under California’s sentencing system, determinate sentencing applies to most offenses,\textsuperscript{231} and indeterminate sentencing applies to specific serious ones.\textsuperscript{232} For offenders sentenced under the determinate system, the parole terms range from one year to three years, regardless of the offender’s level of rehabilitation.\textsuperscript{233} During that time, offenders are monitored by the DAPO and can be returned to prison for violations.\textsuperscript{234} By one account, DAPO deals with 160,000 parole violations each year, and about half of the violations require review by the BPH.\textsuperscript{235} Based in part on the BPH’s risk aversion, it revokes the parole of more than 85% of the offenders who have hearings for violations.\textsuperscript{236}

Indeterminate sentences typically range from a minimum term up to life imprisonment, and the BPH determines the release date. The BPH considers offenders’ behavior while incarcerated, counselors’ and psychologists’ reports about offenders’ counseling and treatment and offenders’ ability to reintegrate into the community after release.\textsuperscript{237} Historically, the BPH focused on the original crime in its determination of offenders’ suitability for parole, but in In re Lawrence, the California Supreme Court held the proper inquiry was offenders’ current threat to public safety.\textsuperscript{238} BPH may consider the original offense in light of how the circumstances of the original crime reflect offenders’ dangerousness after the required period of incarceration.\textsuperscript{239} Nevertheless, in 2008, the BPH recommended less than 300 offenders for parole, and the

\textsuperscript{228} Id.
\textsuperscript{229} Id. at ii.
\textsuperscript{230} Id. at 23.
\textsuperscript{232} These crimes include first degree murder without a special circumstance, attempted first degree murder, conspiracy to commit first degree murder, second degree murder, kidnapping, and certain repeat offenses. See Cal. Penal Code §§ 182, 190, 190.05, 209, 217.1, 664, 667.51, 667.
\textsuperscript{233} Little Hoover Comm’n, supra note 28, at 23.
\textsuperscript{234} Rappaport & Dansky, supra note 24, at 134 (also noting that S.B. 108 attempted to address this problem by changing parole conditions for low- and moderate-risk offenders).
\textsuperscript{235} Hoffman, supra note 228, at 183.
\textsuperscript{236} Id.
\textsuperscript{238} 44 Cal. 4th 1181 (2008).
\textsuperscript{239} Id.
Governor reversed most of those recommendations, resulting in less than 90 offenders being released. In the same year, over 1,000 offenders entered prison on indeterminate sentences.

Parolees are subject to both standard and individualized conditions. Standard conditions include informing parole agents of address and employment and changes to either employment or address, disclosing plans to travel and receiving permission to do so, and disclosing arrests and tickets. State regulations suggest terms of imprisonment for technical and substantive violations. For example, the regulations suggest zero to four months for violations including using alcohol, changing employment without informing an agent, failing to inform an agent of an arrest, and traveling without permission. The regulations suggest five to nine months for changing residence without informing an agent, not attending an outpatient clinic, and possessing a weapon. Parolees returned for technical violations are incarcerated for an average of 3.4 months. The system has also allowed prosecutors and parole officers to process offenders engaging in serious criminal activity through the administrative system rather than trying them for their new crimes.

Violations of either standard or specialized conditions may result in the BPH revoking parole. The BPH engages in an administrative process that requires a lower burden of proof than that required by criminal courts. The BPH is generally risk averse because of assumptions that technical violations may indicate future risks to public safety, which encourages the administrators to revoke parole despite a lack of empirical research that revocations actually increase public safety. In 2009, the BPH revoked the parole of more than 85% of the parolees brought before it for a hearing. Further inflating prison populations, the BPH rarely paroles offenders sentenced under the indeterminate system, despite reduced risks of recidivism because of age or infirmity.

The CDCR and DAPO currently collect raw data regarding parolees and recidivism rates and in 2011 released a “Five Year Roadmap to our Future” to reform parole with evidence-based...
practices. In the 2009-2010 fiscal year, however, the CDCR budget had been cut by $1.2 billion. CDCR, in turn, decreased DAPO’s budget by almost $50 million. CDCR additionally reduced spending for rehabilitation programs by $250 million, and there is no indication CDCR has reallocated other general funds to rehabilitation. Without adequate treatment and education during incarceration, offenders are ill-prepared to reenter society during their parole. Active supervision and alternative sanctions other than re-incarceration for technical violations are even more critical if offenders fail to receive treatment during incarceration.

Recent Parole Reform

AB 109/117 represents an important shift away from the reliance on prison, the state’s most expensive correctional resource, to solve public safety issues. The legislation categorizes low- and high-level offenders and shifts the burden of supervising low-level offenders to the counties. It encourages the use of evidence-based alternative sanctions and local incarceration to deal with parole violations. However, the counties’ preparedness for supervising low-level parolees and incarcerating both low-level and high-level parolees is unclear. Many counties will need significant support to establish and maintain evidence-based practices that ensure public safety and effective supervision of parolees. A sentencing commission could be an important resource for the success of AB 109/117 and continued parole reform.

AB 109/117 restructures supervision of offenders after their release from prison. Non-violent, non-serious, and certain sex offenders enter post-release community supervision (PRCS) when they leave prison. Neither the CDCR nor the BPH have jurisdiction over PRCS offenders; supervision and revocations are handled at the county level. PRCS offenders must remain under county supervision for violations of the conditions of their release. The legislation recommends counties use alternative sanctions and authorizes “flash incarceration.” Flash incarceration is a period of incarceration of up to 14 days in county jail that a county agency supervising the offender can recommend for violations of the conditions of release. The legislation does not specify other types of graduated sanctions, but it limits revocation incarceration to 180 days and prohibits revocation to state prison. AB 109/117 also authorizes

256 Cal. Penal Code § 3451.
257 Id. § 3455.
260 Id. § 3457.
262 Id. § 3455.
263 Id.
264 Overview of AB 109, supra note 4.
county agencies to discharge offenders who have not committed any violations for six consecutive months.265

Serious and violent offenders and high-risk sex offenders remain under the state parole system.266 The CDCR retains jurisdiction over them after their release, but parole revocations based on technical violations require incarceration in county jail.267 These offenders cannot be sent to state prison, nor can a county reimburse the state to house these offenders.268 The only offenders who can be sent back to state prison for parole violations are offenders who were initially sentenced to life imprisonment.269 The BPH retains jurisdiction over revocation hearings until July 2013, at which time local courts will take over.270 The legislation authorizes “flash incarceration” for parolees, although incarceration for longer than ten days requires an order from BPH.271

The system applies prospectively to offenders not yet released on parole.272 However, AB 109/117 provides that low-level offenders who are currently on parole and would qualify for the PRCS can be discharged in either of two situations.273 First, offenders can be discharged if they are on parole without a violation for six consecutive months after October 1, 2011.274 Second, offenders who have been on parole for one year on or before October 1, 2011, can be discharged.275 The BPH has the power to retain these offenders on parole for good cause.276

To implement these changes, AB 109/117 requires the counties to designate a department that will be responsible for the PRCS program, a step all counties have already taken.277 The legislation also mandates that the county-level Community Corrections Partnerships—established by Senate Bill 678 and chaired by the county’s chief probation officer with other stakeholder members—draft a plan for implementation of AB 109/117, which must be submitted to each county’s board of supervisors.278 An executive committee designated by the legislation votes on each plan.279 Unless four-fifths of the committee rejects the plan, it is considered

265 Id. § 3456.
266 Id. § 3000.08
267 Overview of AB 109, supra note 4.
268 Id.
269 Id.
270 Id.
271 Id.
273 Overview of AB 109, supra note 4.
274 Id.
275 Id.
276 Id.
277 Id.
279 Overview of AB 109, supra note 4.
accepted by the board of supervisors.  AB 109/117 mandates the executive committee members:

- The county’s Chief Probation Officer;
- Chief of Police;
- Sheriff;
- District Attorney;
- Public Defender;
- Presiding Judge of the Superior Court or designee; and
- An additional representative of the health and human service department that is appointed by the board of supervisors.

A sentencing commission could play an important role in the ongoing parole reform. As it develops a comprehensive sentencing policy, a commission should emphasize evidence-based treatments and supervision for parolees. A commission should use data collection to draft guidelines for parole and PRCS duration, level of supervision, and parole revocation. Guidelines would not only provide for more efficient uses of correctional resources, but would also provide the state parole system, the county PRCS programs and the courts with necessary guidance in their new roles.

Option One: Incorporate Post-Release Supervision Duration in Sentencing Guidelines and Develop Parole Revocation Guidelines

Model One: Minnesota Sentencing Guidelines Commission and Minnesota Department of Corrections

In Minnesota, the state’s sentencing guidelines describe the duration of offenders’ post-incarceration supervision. Sentences are two-part: offenders are incarcerated for two-thirds of the period recommended by the guidelines and are subject to supervised release for the last one-third. For example, under the guidelines, an offender with no criminal history convicted of assault should be sentenced to 86 months. The judge would split the sentence into a period of incarceration (57 months) and a period of supervised release (29 months). If offenders have disciplinary problems while in prison, the Commissioner of the Department of Corrections (DOC) can extend their period of incarceration up to the entire sentence. During supervised release, offenders are subject to conditions set by the DOC and their release can be revoked for

---

280 Id.
282 See Minn. Sent’g Guidelines, supra note 211.
283 Minn. Stat. § 244.101
284 See Minn. Sent’g Guidelines, supra note 211, at 57.
285 Minn. Stat. § 244.101
violations of those terms.\textsuperscript{286} They can be returned to prison for the remaining period of their sentence, if necessary.\textsuperscript{287} Through this system, the Minnesota Sentencing Guidelines Commission (MSGC) establishes through the guidelines appropriate periods of time that offenders should be supervised, but offenders spend a significant amount of that supervised time back in their communities.

Under Minnesota’s system, an offender’s length of supervised release is directly related to the offense severity and criminal history factors determined at sentencing. The MSGC can indirectly control the length of the supervised release through modifications of the guidelines, though that does not seem to be the focus of its modification decisions.\textsuperscript{288} The system provides transparency, certainty and incentives to offenders by providing them with definite periods of time of incarceration, and supervision that is conditioned upon their behavior in prison.\textsuperscript{289} Additionally, the system encourages a faster return of offenders to their communities, which conserves correctional resources and supports offenders’ rehabilitation.\textsuperscript{290}

Despite these advantages, the system has not been studied under a cost-benefit analysis, and other metrics of success, like recidivism rates, do not suggest the system is wholly effective. Because the period of supervised release is one-third of the entire sentence, offenders may be supervised for periods of time far beyond the one to three years California mandates for determinate sentences.\textsuperscript{291} The lengthy time of supervised release may be responsible for the Pew Center’s calculation that Minnesota’s recidivism rate from 2004-2007 was 61%. Specifically, the rate was 36% for new convictions and 26% for technical violations of supervised release or probation.\textsuperscript{292}

A closer look at Minnesota’s practices, however, reveals that despite the lengthy supervised period, the state’s revocation guidelines divert many technical violators into intermediate and alternative sanctions.\textsuperscript{293} In a 2009 study, the DOC calculated that only 49% of technical violations resulted in the offenders’ supervised release being revoked and their return

\begin{thebibliography}{99}
\bibitem{286} Minn. Stat. § 243.05.
\bibitem{287} Id.
\bibitem{289} See Minn. Stat. § 244.101 (noting the conditions the Department of Corrections can set for offenders to remain in compliance with prison mandates).
\bibitem{291} For example, for a sentence of 426 months (for second degree murder with the highest criminal history score), an offender spends 284 months in prison and 142 months on supervised release. \textit{See} Minn. Sent’g Guidelines, \textit{supra} note 211, at 58.
\bibitem{293} See Review of Guidelines, \textit{supra} note 294.
\end{thebibliography}
to prison. The remaining 51% of offenders received intermediate sanctions, such as restructuring their release to include enhanced supervision. Supervising agents have latitude to informally and formally restructure the terms of the supervision based on the nature of offenders’ violations and the risk to public safety. If the type or amount of violations suggests public safety is threatened or offenders are not successfully adjusting, supervising agents can have offenders arrested and the terms of their release reconsidered before the DOC’s Hearings and Release Unit (HRU).

The HRU uses revocation guidelines to determine the appropriate sanction for offenders’ violations. The guidelines categorize violations by severity level and provide presumptive dispositions based on the severity. For example, failure to make restitution payments is low severity, so the presumptive disposition for offenders is restructuring the terms of their release to address the violation. In contrast, assaultive behavior is classified as high severity, and the presumptive disposition is revocation of parole with 150 days imprisonment, or 180 days imprisonment if offenders are a risk to public safety. Generally, unless offenders are a threat to public safety, the HRU attempts to keep them in the community. Accordingly, as mentioned above, only 49% of “technical” violators return to prison. The remainder faces alternative sanctions like electronic monitoring or mandatory substance abuse program attendance as part of their restructured release.

In Minnesota, supervised release determinations are split between the MSGC and the DOC. The MSGC determines the presumptive length of supervised release based on guideline determinations, while the DOC has discretion in individual cases to extend the period of incarceration for disciplinary reasons, to determine the conditions of release and to determine the conditions for revocation or restructuring. Both agencies emphasize the efficient use of correctional resources by preserving prison for the highest risk offenders, so their practices generally align.

The Minnesota DOC’s guidelines are fairly broad: they essentially split sanctions into revocation or restructuring. If the sanction is revocation, the guidelines provide time period

294 Id. at 1.
295 Id.
296 Id. at 6.
297 Id.
298 Id. at 8.
299 Id.
300 Id.
301 Id.
302 Id. at 6.
303 Id. at 1.
304 Id. at 19.
305 See Minn. Sent’g Guidelines, supra note 211.
307 See id. at 6; Minn. Sent’g Guidelines, supra note 211, at 1.
308 Id.
suggestions for the length of incarceration.\textsuperscript{309} If the sanction is restructuring, the guidelines do not provide recommendations, though the DOC has a list of available alternative sanctions.\textsuperscript{310} The system most closely regulates incarceration as a sanction but allows flexibility for alternative sanctions.

A California sentencing commission should develop parole revocation guidelines similar to the Minnesota DOC’s guidelines. The guidelines should categorize parole violations based on severity, like the Minnesota DOC’s, and assign sanctions based on the categories.\textsuperscript{311} A California commission should also adopt a similar system to deemphasize re-incarceration for low-risk violations. The guidelines would preserve incarceration for the highest-risk, most serious offenders.

\textbf{Model Two: Pennsylvania Commission on Sentencing}

Consistency in policy decisions between a sentencing commission and a department of corrections is not guaranteed. To aid in an effective implementation of a comprehensive, evidence-based sentencing policy, a California sentencing commission should be empowered to determine both the appropriate length of post-release supervision and the guidelines for revocation.

Recent legislation in Pennsylvania suggests an alternative to the Minnesota division of responsibilities: a state sentencing commission could be an appropriate agency to oversee a post-release supervision system. The Pennsylvania Commission on Sentencing (PCS) recently began the process of drafting parole and recommitment guidelines.\textsuperscript{312} Under Pennsylvania’s indeterminate sentencing scheme, judges use the PCS’s guidelines for the minimum sentencing period and can set any maximum term up to the statutory maximum.\textsuperscript{313} Offenders are eligible for parole after they have served the minimum period.\textsuperscript{314} If parole is granted, offenders may remain supervised until they have served the maximum term.\textsuperscript{315}

In 2008, the Pennsylvania legislature charged the commission with creating guidelines for parole and resentencing and with collecting data about parole and resentencing practices.\textsuperscript{316} The Pennsylvania Board of Parole and Probation (PBPP) developed guidelines for parole practices, but after confrontations between parolees and police officers led to officer deaths,

\begin{footnotesize}
\textsuperscript{309} Id. \\
\textsuperscript{310} Id. at 8, 19. \\
\textsuperscript{311} See Review of Guidelines, \textit{supra} note 294, at 8. \\
\textsuperscript{315} Id. \\
\end{footnotesize}
Governor Edward Rendell ordered a moratorium on parole and a review of the parole practices. The Legislature passed the Crime Reform Act in 2008, which mandated the PCS study and devise new parole guidelines. The PBPP must consider the PCS parole guidelines when determining parole lengths.

The PCS is currently collecting data and has not yet issued guidelines, so the interaction between the PCS and the PBPP and the effectiveness of parole guidelines is unknown. Nevertheless, the PCS’s experience with data collection about practices and resources should prove useful in aiding the PBPP with parole decisions in the future.

Option Two: Develop Parole Supervision Guidelines and Parole Revocation Guidelines under the Current System

Model One: New Hampshire’s Risk-Based Parole System

Even if California’s mandatory parole for determinate sentences remains, a sentencing commission should draft guidelines recommending appropriate levels of supervision. New Hampshire passed legislation in 2010 requiring its Department of Corrections (NHDOC) to assess offenders as high-, medium-, or low-risk for recidivating before they are paroled. For low- and medium-risk offenders, the NHDOC must actively supervise them for 18 months. If they comply with the conditions of their parole, offenders are moved to administrative supervision after the 18-month period. High-risk offenders and offenders who failed to comply with the terms of their parole may have longer supervision periods. The legislation also establishes alternative sanctions for parole violations, including a week-long residential intermediate sanction for minor parole violations and a 90-day parole revocation facility to “re-engage parole violators in treatment.”

With these changes, New Hampshire is expected to reduce spending on incarceration for parole violators. Diverting offenders with technical and low-risk violations is predicted to reduce revocations by 40% and eventually to reduce recidivism by 23%, saving the state between $7.8 and $10.8 million. Overall, the state is expected to avoid spending $179 million on the construction and operation of new prisons. The state plans to reinvest part of those funds into

---

321 Id.
322 Id.
323 The original legislation applied to any offender who was eligible for parole, but in August 2011, the legislature amended the statute to exclude sexual offenders. See 2011 N.H. Laws 244, codified at N.H. Rev. Stat. § 504-A:15.
327 Id.
its alternative sanctions programs.\textsuperscript{328} New Hampshire’s changes are still relatively new, but if these figures bear out, the state will avoid substantial increases in its correctional expenses.

**Model Two: The Role of Parole in Texas**

Texas does not currently have a sentencing commission but in recent years has been in the forefront of the movement to be tough and smart on crime.\textsuperscript{329} When faced with a prison bed shortage in the 1980s, Texas released thousands of offenders early to parole, including murderers and rapists, to avoid building new prisons.\textsuperscript{330} The public’s dissatisfaction with this solution led the state to build more prisons in the 1990s, but Texas again faced a prison overcrowding issue in 2005.\textsuperscript{331} That year, the Legislative Budget Board recommended building more than 17,000 new prison beds in anticipation of overcrowding.\textsuperscript{332} Texas again focused on releasing prisoners, but altered its tactics from the 1980s by targeting low-risk offenders who were unlikely to recidivate. As a result, Texas has avoided prison overcrowding, reduced its crime rate, and reduced the number of parole revocations.\textsuperscript{333} Texas’ crime rate has declined significantly (a 10% decrease in violent crime in the last ten years)\textsuperscript{334} as have its incarceration rates (a 9% drop in last five years),\textsuperscript{335} while the state has expanded alternatives to incarceration.\textsuperscript{336}

The Texas Board of Pardons and Paroles (TBPP) has 12 full-time commissioners whose responsibilities include determining whether an early release should be granted.\textsuperscript{337} Inmates are released through one of two procedures: discretionary mandatory supervision (DMS) and parole. Low-level offenders become eligible for DMS when the addition of their time served and their good-time credits equals their sentence. Offenders can receive up to a year of good time credit for every year they serve, meaning if they are well-behaved, offenders may spend only half of their sentence in prison before being eligible for DMS. Once offenders are eligible, the TBPP reviews their files, and determines whether the time served reflects offenders’ rehabilitation and whether they present a danger to society. Based on these findings, offenders are either released

\textsuperscript{328} Id.
\textsuperscript{331} Tex. Pub. Policy Found., supra note 337.
\textsuperscript{335} Tex. Pub. Policy Found., supra note 337.
\textsuperscript{336} Id.
under DMS or remain in prison until they are eligible for parole. In 2009, 48.28% of the inmates eligible for DMS were released.\(^{338}\)

Serious and violent offenders are ineligible for DMS, but may be released through parole. Offenders become eligible for parole when their time served plus good-time credits equal one-fourth of the sentence imposed or 15 years, whichever is less. Eligible inmates receive a score of between one and seven, with seven being the best, based on their offense level and individualized risk level. To determine the score, the TPBB first refers to a schedule that classifies over 1,900 offenses as low, medium, high, or very high severity.\(^{339}\) To assess individual risk factors, the TPBB considers an offender’s age, gang membership, employment history and prison disciplinary record. In 2001, the TPBB adopted guidelines that provide a recommended approval percentage for each of the seven levels. In 2009, 30.26% of inmates eligible for parole were released.\(^{340}\)

The Board decides conditions for parole and DMS supervision based on considerations of individualized need.\(^{341}\) In 2009, 7,471 parolees were revoked to prison, which represented 9% of the total parolees and a decrease from 14% in 2005.\(^{342}\) Of these revocations, 14% were for technical violations, much lower than California’s rate of 77%.\(^{343}\)

In addition to its shifted focus for parole, Texas uses two budgetary strategies to reduce its crime rate and avoid spending $2 billion on additional prison beds.\(^{344}\) First, the probation department agreed to target 10% fewer prison revocations and to implement graduated sanctions.\(^{345}\) Graduated sanctions are likely a main cause of the significantly lower revocation rates for technical violations as compared to California. Instead of revoking offenders back to prison, graduated sanctions provide intermediate steps for technical violations, such as increased reporting, extended term, electronic monitoring or a weekend in jail. The Texas program quickly imposes the sanctions to avoid accumulation of technical violations and to ensure active supervision over parolees. The program budget prioritizes facilitating closer supervision and consistent application of sanctions, leading to a decline in revocations that has saved taxpayers $119 million.\(^{346}\)

---


\(^{343}\) Id.


\(^{345}\) Id.

\(^{346}\) Levin, supra note 337.
The second strategy was the appropriation of $241 million in 2007 for a package of prison alternatives that included more intermediate sanctions and substance abuse treatment beds, drug courts and mental illness treatment slots. This was in response to statements from judges, prosecutors, and corrections officials, bolstered by data, indicating that increasing numbers of low-level, non-violent offenders were being directly sentenced or revoked from probation because of long waiting lists for many alternative sanctions.

Perhaps reflecting increased confidence in probation by judges, juries and prosecutors, sentences to prison declined 6% in 2009 while more non-violent offenders went on probation. This reversed the historical increase of 6% per year in prison commitments. It is important to note that parole costs the state $1,281 per year while incarceration costs $18,031 per year. Since 2005, Texas has had a 13% reduction in crime (its lowest crime rate since 1973), and its incarceration rate has declined 9%.

A California sentencing commission can and should play an important role in the ongoing parole reform. The commission should be charged with collecting data on the effectiveness of AB 109/117 and the counties’ tactics to supervise and incarcerate parolees. Using that information and looking to states like Minnesota, Texas, and New Hampshire, the commission should create a framework for parole and post-release supervision. The commission should draft guidelines addressing the duration of parole/post-release supervision, the type of supervision required, and how revocations are handled. The commission should be an important resource for counties and the state as they work together to ensure public safety through evidence-based practices for offenders leaving prison.

350 Levin, supra note 352.
APPENDIX A

Sentencing Commissions and the Legislative Veto

The California Legislature can constitutionally delegate its rule-making power to a sentencing commission. The Legislature can also stipulate that legislative review and inaction (a failure to pass a resolution) suffices for approval of the commission’s guideline creation and modification. Legislative action to disapprove of the commission’s actions, however, would face scrutiny under the United States Supreme Court’s I.N.S. v. Chadha decision. A resolution disapproving of the commission’s work would have to be passed in the General Assembly and the Senate, and presented to the Governor.

In 1983, in I.N.S. v. Chadha, the United States Supreme Court held that a provision allowing the House of Representatives to overturn actions by the Immigration and Naturalization Service violated the Constitution. Under the provision, either the House or the Senate could pass a single resolution to disapprove of the Attorney General’s decision to suspend an immigrant’s deportation proceedings. The Attorney General would have to continue with deportation proceedings upon passage of a resolution in either the House or the Senate, effectively creating a legislative veto over the executive branch’s enforcement of the law. The Court found Congress overstepped its constitutional power because the law avoided the constitutionally-mandated bicameral passage and presentation to the President for approval. The Court noted that Congress can delegate its legislative power to agencies, but that after delegation, Congress must pass new legislation to control the agency.

The California Supreme Court has not considered a legislative veto provision directly, though the Court referenced Chadha in a 2001 decision. In dicta in Carmel Valley Fire Protection District v. California, the California Supreme Court noted that the Legislature unconstitutionally retains power over an agency only when either house has the ability to veto the agency’s activities without bicameral passage and presentation to the Governor. Control through bicameral passage and gubernatorial presentation of a resolution is a constitutional exercise of legislative power.

---

354 See Sibbach v. Wilson & Co., 312 U.S. 1 (1941) (approving legislative provision allowing approval of rules if Congress failed to act because Congress could choose to retain for itself only a corrective power).
356 Id.
357 Id.
358 Id.
359 Id.
360 Id.; see also Bowsher v. Synar, 418 U.S. 714 (1986).
361 25 Cal. 4th 287.
362 Id.
The Pennsylvania Supreme Court’s ruling in Commonwealth v. Sessions provides an analysis of a sentencing commission’s powers and the legislature’s oversight in light of the Chadha decision. The sentencing commission’s enabling legislation contained a provision allowing the General Assembly to reject the commission’s guidelines through a concurrent resolution. The commission submitted its guidelines to the General Assembly, which used a resolution to reject the guidelines. The commission amended the guidelines in alignment with the General Assembly’s explanations for the rejection. The enabling legislation and rejection provision were challenged as unconstitutional under the U.S. Supreme Court’s Chadha decision.

The Pennsylvania Supreme Court found the General Assembly’s delegation of its legislative powers to the commission was a constitutional exercise of its powers, but found the rejection provision problematic. Like the U.S. Constitution, the Pennsylvania Constitution required presentation of laws passed by the General Assembly to the Governor for approval or veto. Because the rejection provision required only a concurrent resolution by the House and Senate without gubernatorial review, the General Assembly’s rejection of the commission’s guidelines was invalid. The Court also found the commission’s subsequent guidelines, drafted according to the General Assembly’s reasons for rejection, were a product of the legislature’s unconstitutional exercise of power. The legislature subsequently amended the provision by requiring presentation to the Governor for rejection of the guidelines.

The Sessions decision and the California Supreme Court’s comments in Carmel Valley suggest that the best structure for oversight of a California sentencing commission would be a passive review, which would allow guideline modifications to take force without a resolution by the Legislature. If the Legislature sought to reject the modifications, both the Senate and the General Assembly must pass a resolution and it must be signed by the Governor.

---

364 Id.
365 Id.
366 Id.
367 Id.
368 Id.
369 Id.
370 Id.
371 Id.
372 42 Pa. C.S. § 2155.
APPENDIX B

**Blakely, Booker, and State Sentencing Commissions**

A California sentencing commission must create guidelines that comply with the U.S. Supreme Court’s recent decisions regarding sentencing and the Sixth Amendment. Based on those decisions, a commission should draft mandatory guidelines and require either defendants to admit or juries to find aggravating factors that support lengthened sentences. Alternatively, and less ideally, the commission could promulgate discretionary guidelines that recommend ideal sentences but allow judges to sentence anywhere within a broad range allowed by statute.

In its 2004 *Blakely v. Washington* decision, the Supreme Court held that a defendant’s Sixth Amendment right to a jury trial is violated when a sentencing judge uses facts in the sentencing phase that go beyond those from the defendant’s conviction.\(^{373}\) The Supreme Court previously held in *Apprendi v. New Jersey* that a defendant’s sentence cannot be longer than the statutory maximum for the facts the defendant admitted or that a jury found.\(^{374}\) In *Blakely*, the Court held that Washington’s guidelines established the defendant’s statutory maximum because the judge could not depart from the guidelines without being overturned.\(^{375}\) To depart and not be overturned, the judge had to find other facts – in this case, deliberate cruelty.\(^{376}\) The Court held that the facts the judge used to lengthen the sentence violated the defendant’s Sixth Amendment rights since they had not been proven at the conviction phase.\(^{377}\) Because Washington’s sentencing guidelines were mandatory, judges could only sentence within the range as calculated by the facts of the conviction.\(^{378}\)

The Federal Sentencing Guidelines were very similar to the Washington version, and in 2006, the Supreme Court found they also violated defendants’ Sixth Amendment rights.\(^{379}\) In *United States v. Booker*, the Supreme Court held that the federal guidelines as enacted allowed judges to add aggravating factors, which lengthened defendants’ sentences, beyond juries’ findings or defendants’ plea bargains.\(^{380}\) In a split majority decision, the Court proposed two solutions to the constitutional problem: first, have juries decide aggravating factors and the guidelines remain mandatory\(^{381}\), or second, make the guidelines discretionary so judges have the freedom to sentence up to the maximum statutory period.\(^{382}\) Under the first method, juries find facts like deliberate cruelty or use of a firearm, and the judge can sentence anywhere within the

---

\(^{373}\) 542 U.S. 296 (2004).

\(^{374}\) 530 U.S. 466 (2000).

\(^{375}\) 542 U.S. at 304.

\(^{376}\) *Id.*

\(^{377}\) *Id.*

\(^{378}\) *Id.*

\(^{379}\) *See id.* at 305 n.9; *United States v. Booker*, 543 U.S. 220 (2006).

\(^{380}\) *Booker*, 543 U.S. at 234.

\(^{381}\) *Id.* at 244.

\(^{382}\) *Id.* at 245.
guideline range allowed from those facts. Under the second method, guidelines are only advisory and judges are no longer subject to appellate review. In that system, the guidelines are no longer the “statutory maximum” – instead, the maximum period in sentencing laws is the “statutory maximum.” Judges can find any aggravating factor and set any sentence that does not exceed the statute’s limits.

In *Booker*, the Supreme Court adopted the second method for the Federal Sentencing Guidelines by making the guidelines discretionary. California adopted a similar solution when the Supreme Court held the Determinate Sentencing Act’s triad system violated defendants’ Sixth Amendment rights. Many states have opted for the first method and require juries to find aggravating factors that increase sentences. For example, Minnesota’s Legislature amended its sentencing laws to require bifurcated trials and sentencing juries to decide aggravating factors. Washington’s Legislature similarly changed its sentencing procedures to require jury determination of aggravating factors. Presenting the additional facts to juries has not appeared to be particularly burdensome to those states, and they are able to retain mandatory sentencing guidelines.

---

383 *Id.* at 243-44.
384 *Id.* at 246.
385 *Id.*
386 *Id.*
387 *Id.*
392 *Id.*
### APPENDIX C

**Alabama Sentencing Commission**

| For each state with a sentencing commission, what is the scope of the commission's powers? What are the mandates of each commission? | The Alabama Sentencing Commission initially was charged with gathering sentencing data; developing a discrete-event prison population/sentencing simulation model to obtain forecasting ability; utilizing the felony database that had been developed. The Commission chose to use their model to encourage the use of alternative sentencing options for non-violent offenders to make room in the prisons for violent and serious offenders. The Commission has pursued these goals in two ways:  
- drafting and adopting the initial voluntary sentencing standards that were approved by the Legislature in 2006 and which became effective on October 1, 2006; and  
- providing recommendations and assistance in establishing a wider array of intermediate punishment options. It created voluntary sentencing guidelines for the 26 felony offenses that constituted 87% of most frequent crimes of conviction (the guidelines encourage, but don’t require, judges to follow their recommendations). The Commission is charged with:  
- reviewing, revising AL’s sentencing laws and practices and recommending ways to resolve jail, prison overcrowding;  
- establishing an effective, fair and efficient sentencing system for adult and juvenile criminal offenders;  
- promoting truth in sentencing; eliminating unwarranted sentencing disparity, preventing prison overcrowding and the premature release of prisoners; providing judges with flexibility in sentencing options and meaningful discretion in the imposition of sentences; and enhancing the availability and use of a wider array of sentencing options in appropriate cases. It is mandated to:  
- "serve as a clearinghouse for the collection, preparation, and dissemination of information on sentencing practices;"  
- "make recommendations to the Governor, Legislature, Attorney General, and Judicial Study Commission concerning the enactment of laws relating to criminal offenses, sentencing, and correctional and probation matters" and  
- "review the overcrowding problem in county jails, with particular emphasis on funding for the county jails and the proper removal of state prisoners from county jails pursuant to state law and state and federal court orders, and make recommendations for resolution of these issues to the Governor, Legislature, Attorney General, and the Judicial System Study Commission… :" §12-25-9, Code of Alabama 1975. |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>What are the limits, if any, to their authority? Are they independent of other branches of government?</td>
<td>The Commission creates voluntary sentencing guidelines and recommends legislation. It is an independent state agency under the judicial branch, the Alabama Supreme Court.</td>
</tr>
</tbody>
</table>
| How are the members of the commissions appointed? What are the required qualifications, if any? | The Commission is a 16 member, nonpartisan body. Its members are:  
- **Executive Branch:**  
  - Governor or his designee;  
  - Attorney General or designee;  
  - A county commissioner appointed by the Governor;  
  - A district attorney appointed by the President of the Alabama District |
any, for membership on these commissions?

| Attorneys' Association;  
| o Commissioner of the Department of Corrections or designee;  
| Legislative Branch:  
| o Chair of the House Judiciary Committee or designated committee member;  
| o Chair of the Senate Judiciary Committee or designated committee member;  
| o Chair of the Board of Pardons and Paroles or designee;  
| Judiciary Branch:  
| o Chief Justice of the Supreme Court, or a sitting or retired judge  
| designated by the Chief Justice, who serves as chair;  
| o Two circuit judges appointed by the President of the Alabama Association of Circuit Court Judges;  
| o A district judge appointed by the President of the Alabama Association of District Court Judges;  
| Private Sector:  
| o A defense attorney specializing in criminal law appointed by the President of the Alabama Criminal Defense Lawyer's Association;  
| o A private attorney specializing in criminal law appointed by the President of the Alabama Lawyers' Association;  
| o A victim of a violent felony or family member appointed by the Governor;  
| o A member of the academic community with a background in criminal justice or corrections policy appointed by the Chief Justice. (§ 12-25-3, Code of Alabama, 1975.)  

The membership of the commission shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of this state (§12-25-3(b)(3))  
- Terms of four years and may be reappointed for a second term.  
- Members of the commission who serve because of their public office or position shall serve only as long as they hold such office or position.

| How were they created (executive order, legislation, etc.)? What was the policy background that sparked the creation of the commission? | The commission was sparked by three decades of prison, jail overcrowding and the reluctance of Alabama prisons to change unless forced to comply with court orders.  
Alabama used incarceration as a punishment more often than almost any other state.  
Between 1973 and 2003, the inmate population of Alabama increased 600% while the census population of Alabama increased 30%.  
In 1998, Alabama Attorney General Bill Pryor and Alabama Supreme Court Chief Justice Perry Hooper created a special committee, the Judicial Study Commission (JSC), to study sentencing practices and policies in Alabama (1998-2000).  
JSC recommended the creation of the AL Sentencing Commission to serve as permanent research arm of criminal justice system.  
Chairman of the Judiciary Committee, Senator Rodger Smitherman sponsored legislation creating a commission.  
Title 12, chapter 25 created permanent Sentencing Commission as a separate state agency under the Alabama Supreme Court. |

| What impacts have the commissions' recommendations or decisions had on states' expenditures, specifically expenditures on the judicial system and the corrections/criminal justice system? | The number of community corrections programs has increased by 79% and the number of counties served has increased by 114%.  
The number of otherwise prison-bound felony offenders served increased by 51%.  
Most importantly, the number of beds saved by the prison system as of a specific date increased by 338% or 1,700 beds, almost an entire prison.  
To house these offenders in minimum custody in ADOC, at current spending levels for one year would have cost the state an additional $23,138,445 in fiscal year 2008 rather than the $6.1 million appropriated and used for community corrections.  
The savings of over $17 million is substantial. |

<p>| Have the commissions' decisions or | The Commission is now engaged in a pilot project. The Cooperative Community Alternative Sentencing Project (CCASP) uses a committee of local stakeholders to determine the best options for each jurisdiction, ultimately using evidence- |</p>
<table>
<thead>
<tr>
<th>Questions</th>
<th>Answers</th>
</tr>
</thead>
<tbody>
<tr>
<td>recommendations had any impacts on recidivism? If so, what are they?</td>
<td>based practices to accomplish changes in criminal behavior.</td>
</tr>
<tr>
<td>• It is testing a comprehensive risk and needs assessment system to address recidivism.</td>
<td></td>
</tr>
<tr>
<td>Do the sentencing commissions set a limit on the number of inmates in each prison system?</td>
<td>No</td>
</tr>
<tr>
<td>What impact have the commissions’ decisions or recommendations had on state prisons as well as local jails?</td>
<td>• Severe personal offenses still require prison after the Sentencing Standards became effective, consistent with the original intent of the Sentencing Standards to ensure that prison resources would be available for violent offenders.</td>
</tr>
<tr>
<td>• The use of prison for property and drug offenses declined after the Sentencing Standards were implemented.</td>
<td></td>
</tr>
<tr>
<td>• Double-digit percentage point drops in imprisonment rates occurred with Forgery 2nd, Possession of a Forged Instrument 2nd, Receiving Stolen Property 2nd, Unauthorized Use/Breaking &amp; Entering Vehicle, and Felony DUI convictions.</td>
<td></td>
</tr>
<tr>
<td>• Burglary 3rd and Possession of a Controlled Substance saw 9% drops in imprisonment.</td>
<td></td>
</tr>
<tr>
<td>• Assault 2nd, Robbery 2nd, and Robbery 3rd all experienced double digit percentage point drops in first timers receiving prison sentences.</td>
<td></td>
</tr>
<tr>
<td>• Intermediate punishment options are now more available than before the Sentencing Commission was established and began making recommendations for the expansion of alternative punishment and treatment programs.</td>
<td></td>
</tr>
<tr>
<td>• These options, initially recommended by the Commission, include drug courts, community corrections programs, transitions centers (LIFE Tech) for men and women, and a technical violator center for probationers and parolees on the verge of returning to prison.</td>
<td></td>
</tr>
<tr>
<td>• In 2009, these options have resulted in more than 3,000 otherwise prison-bound offenders either remaining in the community or being referred to other intermediate punishment options.</td>
<td></td>
</tr>
<tr>
<td>Do the commissions serve as a clearinghouse for collection and tracking of prisoner data, including population figures and parolee outcomes? If not, what government agency tracks such data? What data is collected?</td>
<td>Yes, the first year consisted of huge data collection project:</td>
</tr>
<tr>
<td>• “completed its systematic review and analysis of sentencing practices, criminal laws and procedures, and their impact on jail and prison populations”;</td>
<td></td>
</tr>
<tr>
<td>• compiled “a reliable and comprehensive sentencing database of 64,000 felony offenders convicted and sentenced over the last 4 years”;</td>
<td></td>
</tr>
<tr>
<td>• created computerized simulation model based on this data that can be used to predict the impact of changes in sentencing laws and practices on jail and prison populations;</td>
<td></td>
</tr>
<tr>
<td>• Continue to collect current data on whether judges are following the voluntary recommended sentencing guidelines and number of convicted persons entering alternative punishment programs;</td>
<td></td>
</tr>
<tr>
<td>• Continue to research effectiveness of alternative punishment programs.</td>
<td></td>
</tr>
<tr>
<td>How do the commissions track the impact of their sentencing law changes?</td>
<td>Collecting data is a main role of the Commission.</td>
</tr>
<tr>
<td>Can the Legislature or governor veto decisions of the commission?</td>
<td>The legislature chooses to adopt the recommendations by Commission.</td>
</tr>
</tbody>
</table>
# Minnesota Sentencing Guidelines Commission

## For each state with a sentencing commission, what is the scope of the commission's powers? What are the mandates of each commission?

<table>
<thead>
<tr>
<th>Mandates</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Minnesota Sentencing Guidelines Commission’s primary duties involve data collection, research, and modification of the guidelines (Minn. Stat. § 244.09)</td>
</tr>
<tr>
<td>- MSGC had to promulgate presumptive guidelines (Minn. Stat. § 244.09)</td>
</tr>
<tr>
<td>- Based on offense and offender characteristics</td>
</tr>
<tr>
<td>- Increases of 20% or decreases of 15% remain within the presumptive fixed sentence</td>
</tr>
<tr>
<td>- Beyond those limits, courts have departed; sentences are always appealable (Minn. Stat. § 244.11)</td>
</tr>
<tr>
<td>- Can recommend alternative sanctions including probation, fines, work programs, etc (Minn. Stat. § 244.09)</td>
</tr>
<tr>
<td>- MSGC has to study impact of guidelines and role and duties of commissioner of corrections (Minn. Stat. § 244.09)</td>
</tr>
<tr>
<td>- MSGC can modify the guidelines (Minn. Stat. § 244.09)</td>
</tr>
<tr>
<td>- Has to submit modifications to Legislature by January 15</td>
</tr>
<tr>
<td>- Subject to passive review; without legislative action, modifications effective August 1 of the same year</td>
</tr>
<tr>
<td>- Priority in developing guidelines is public safety, but MSGC must also consider sentencing and release practices; correctional resources, including local and state facilities’ capacities; long-term negative impact of crime on community (Minn. Stat. § 244.09)</td>
</tr>
<tr>
<td>- Acts as a clearing house and information center (Minn. Stat. § 244.09)</td>
</tr>
<tr>
<td>- Collect data on sentencing practices, use of the guidelines, use of imprisonment versus alternatives, use of plea bargaining, other matters related to criminal justice system</td>
</tr>
<tr>
<td>- MSGC can recommend changes to the criminal code, criminal procedures, or sentences</td>
</tr>
<tr>
<td>- Make annual reports to the Legislature (Minn. Stat. § 244.09)</td>
</tr>
<tr>
<td>MSGC’s guidelines are exempt from Minnesota’s administrative procedures and approval from the legislative commission that reviews administrative rules (Minn. Stat. § 244.09)</td>
</tr>
</tbody>
</table>

## What are the limits, if any, to their authority? Are they independent of other branches of government?

Based on its exemption from administrative requirements and its modifications are subject only to passive review by the Legislature, the MSGC is well-insulated from the political shifts in the Legislature. (See Minn. Stat. § 244.09) The MSGC’s appointed members cannot be removed. (See Minn. Stat. § 244.09) The membership is split between judicial and executive appointees, but the Legislature has final (passive) review of the MSGC’s modifications. (Minn. Stat. § 244.09). The MSGC is subject to the Legislature’s changes in the sentencing laws, such as new offenses or mandatory minimums. (See, e.g., Minn. Stat. § 244.10 (list of aggravating factors courts should consider)).

## How are the members of the commissions appointed? What are the required qualifications, if any, for membership on these commissions?

<table>
<thead>
<tr>
<th>Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Minnesota Sentencing Guidelines Commission has 11 members (Minn. Stat. § 244.09):</td>
</tr>
<tr>
<td>- Chief Justice of the Supreme Court or designee;</td>
</tr>
<tr>
<td>- One judge of Court of Appeals;</td>
</tr>
<tr>
<td>- Appointed by Chief Justice</td>
</tr>
<tr>
<td>- One district court judge;</td>
</tr>
<tr>
<td>- Appointed by Chief Justice</td>
</tr>
<tr>
<td>- One public defender;</td>
</tr>
<tr>
<td>- Appointed by governor from recommendation of state public defender</td>
</tr>
<tr>
<td>- One county attorney;</td>
</tr>
<tr>
<td>- Appointed by governor from recommendation of board of directors of Minnesota County Attorneys Association</td>
</tr>
<tr>
<td>- Commissioner of Corrections or designee;</td>
</tr>
<tr>
<td>- One peace officer; and</td>
</tr>
</tbody>
</table>
- Appointed by governor
  - Three public members;
  - Appointed by governor
  - One must be a victim of a felony
  - Appointing authorities mandated to make efforts to appoint members of minority groups
  - Governor appoints one member as chair of the commission
  - Four year terms and they can be reappointed
  - For positions appointed by governor, member’s term is coterminous with governor’s

How were they created (executive order, legislation, etc.)? What was the policy background that sparked the creation of the commission?


- Sentencing reform began with Senator William McCutcheon
  - Believed prisoners took advantage of rehabilitation programs only to shorten sentences
  - Concluded prison unrest was a result of disparities
  - In 1976, introduced dramatic determinate sentencing legislation, which was heavily modified
  - Legislation got bogged down in sentence lengths
  - First attempt was vetoed by governor
  - Second attempt in 1977, but Representative Kempe combined McCutcheon’s proposal with his judicial commission legislation
  - Kempe wanted guidelines prescribed by independent commission for judges to follow
  - Kempe’s control over the House meant that his version of the bill succeeded

What impacts have the commissions’ recommendations or decisions had on states’ expenditures, specifically expenditures on the judicial system and the corrections/criminal justice system?

- Minnesota’s 2012 corrections budget total = $456,133,000 (Minn. Dep’t of Corrections, *Department Budget*  
  - Prison budget = $323,916,000
  - Community Services Budget = $110,167,00
  - Operations Support = $22,050,000
  - 1996 Office of Legislative Auditor suggested Minnesota’s per-prisoner expense was one of the highest in the nation, but due in part to the numerous programs available to prisoners (Minn. Office of the Legislative Auditor, *Recidivism of Adult Felons* 1 (1996)).
  - MSGC hasn’t done a cost-benefit analysis after its implementation.
    - Because at its creation the commission’s goal was ending disparities, the cost-benefit element has not been emphasized.
    - Drug courts and other areas have more closely tracked the savings to the state of alternatives.

Have the commissions’ decisions or recommendations had any impacts on recidivism? If so, what are they?

- According to Pew Center report, Minnesota has highest rate of recidivism at 61%-36% new offenses and 26% technical violations (Pew Center on the States, *State of Recidivism: The Revolving Door of America’s Prisons* 10, 14 (2011).)
  - Pew Center counts rearrests, reconvictions, and returns to custody.
  - Offenders serve about one-third of their sentence under supervised release, so the recidivism rate may be affected by returns to custody for technical parole violations.
  - Minnesota’s internal study suggests three years out from discharge, 72% of felons remain crime-free (Data Definition Team, Minnesota Statewide Probation & Supervised Release Outcomes Annual Report 2010 4 (2010)).

Do the sentencing commissions set a limit on the number of inmates in each prison system?

In its enabling legislation, MSGC is required to consider correctional capacity in drafting and modifying the guidelines (Minn. Stat. § 244.09).

- MSGC used 95% of capacity as goal when drafting the guidelines (Minnesota Sentencing Guidelines Commission, Report to the Legislature 2 (1980)).
  - Less emphasis on the 95% capacity goal in recent commissions.

What impact have the commissions’ decisions

- A 1995 article suggested the MSGC’s mandate to consider correctional resources in devising guidelines led to slower prison growth (Thomas B. Marvell, *Guidelines & Prison Population Growth, 85 J. Crim. L. & Criminology* 6963, 703-04 (1995)).
<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>or recommendations had on state prisons as well as local jails?</td>
<td>In a 2005 report, Prof. Richard Frase noted Minnesota’s prison population rates remained below national averages through the 1980s and 1990s (Richard Frase, <em>Sentencing Policy and Criminal Justice in Minnesota: Past, Present, and Future</em>, Council on Crime and Justice). MSGC projects impact on jails with the assumption that offenders serve 2/3 of their pronounced sentence in jail, but information about actual durations of sentences is not available. The Commission will note jail impact, but its data is less sound for jails.</td>
</tr>
<tr>
<td>Do the commissions serve as a clearinghouse for collection and tracking of prisoner data, including population figures and parolee outcomes? If not, what government agency tracks such data? What data is collected?</td>
<td>The MSGC is mandated to research sentencing practices, plea bargaining, correctional resources, and any other subjects that could improve the criminal justice system (Minn. Stat. § 244.09). The MSGC’s annual reports focus on sentencing practices and compliance with the guidelines (See Minn. Sentencing Guidelines Commission, MSGC Report the Legislature 3 (2011)). The MSGC also reports on impact of statutory enhancements and works with Dep’t of Corrections to generate population forecasts (Id. at 10). MSGC drafts fiscal and population impact reports upon request for pending legislation (Id. at 10). The MSGC also drafts annual reports on sentencing practices (Minn. Sentencing Guidelines Commission, <em>Sentencing Practices: Annual Summary Statistics for Felony Offenders Sentenced in 2009</em> (2010)). Tracks case loads, departures, incarceration rates, average sentences (Id.). The Minn. Dep’t of Corrections tracks prison population figures (Minn. Dep’t of Corrections, Notable Statistics <a href="http://www.doc.state.mn.us/aboutdoc/stats/documents/notablestatistics.pdf">http://www.doc.state.mn.us/aboutdoc/stats/documents/notablestatistics.pdf</a> (last visited Oct. 15, 2011).</td>
</tr>
<tr>
<td>How do the commissions track the impact of their sentencing law changes?</td>
<td>Provides fiscal and population impact reports to Legislature for legislation that will affect prison populations (See Minn. Sentencing Guidelines Commission, MSGC Report the Legislature 3 (2011)). Tracks compliance and departures from sentencing guidelines and incarceration rates resulting from the sentences (Minn. Sentencing Guidelines Commission, <em>Sentencing Practices: Annual Summary Statistics for Felony Offenders Sentenced in 2009</em> (2010)). The DOC tracks the accuracy of the MSGC’s population projections and the MSGC has been accurate within a percentage point or two.</td>
</tr>
<tr>
<td>Can the Legislature or governor veto decisions of the commission?</td>
<td>The MSGC’s modifications to the guidelines must be presented to the Legislature by January 15 each year and are subject to the Legislature’s passive review. (Minn. Stat. § 244.09) If the Legislature does not pass legislation rejecting the MSGC’s recommendations, they become effective on August 1 of the same year. (Id.) The MSGC’s guidelines are subject to the Legislature’s sentencing law changes (such as statutory enhancements and mandatory minimums).</td>
</tr>
</tbody>
</table>
For each state with a sentencing commission, what is the scope of the commission's powers? What are the mandates of each commission?

<table>
<thead>
<tr>
<th>North Carolina’s Commission has several enumerated statutory responsibilities (N.C. Code § 164-35 seq.):</th>
</tr>
</thead>
<tbody>
<tr>
<td>o Broadly, the Commission should evaluate the sentencing laws and policies in connection with purposes of criminal and corrections systems and sentencing options (N.C. Code § 164-36):</td>
</tr>
<tr>
<td>▪ Commission makes recommendations to General Assembly to modify sentencing laws;</td>
</tr>
<tr>
<td>▪ Must report annually.</td>
</tr>
<tr>
<td>o Commission also responsible for juvenile sentencing options:</td>
</tr>
<tr>
<td>▪ Makes recommendations to General Assembly to modify;</td>
</tr>
<tr>
<td>▪ Must report annually.</td>
</tr>
<tr>
<td>o Responsible for population projection model and to draft projections based on changes in sentencing legislation when requested (N.C. Code § 164-40).</td>
</tr>
<tr>
<td>o Classify felonies and misdemeanors and assign ranges (N.C. Code § 164-41):</td>
</tr>
<tr>
<td>▪ Suggest terms for imprisonment, probation, alternative sanctions based on offense and offender characteristics;</td>
</tr>
<tr>
<td>▪ Commission has to provide estimates of effects of each structure on correctional resources including fiscal impact and population change.</td>
</tr>
<tr>
<td>o Responsibility for research and suggestions in certain policy areas (N.C. Code § 164-42.1):</td>
</tr>
<tr>
<td>▪ Long-range information and other needs of criminal justice and corrections systems;</td>
</tr>
<tr>
<td>▪ ID critical problems and recommend solutions;</td>
</tr>
<tr>
<td>▪ Assess cost-effectiveness of gov’t funds for those systems;</td>
</tr>
<tr>
<td>▪ Recommend goals for allocation of funds;</td>
</tr>
<tr>
<td>▪ Make recommendations about improving deterrence, rehabilitation, and effectiveness of systems;</td>
</tr>
<tr>
<td>▪ Create structures for parole;</td>
</tr>
<tr>
<td>▪ Other cost-benefit analysis including good time, mandatory sentence lengths, impact on families of offenders, impact on restitution, benefits of deterrence and rehabilitation.</td>
</tr>
<tr>
<td>o Create community corrections strategy (N.C. Code § 164-42.2).</td>
</tr>
<tr>
<td>o After development of guidelines and policies, responsible for ongoing monitoring and research including impact reports of new legislation on populations (N.C. Code § 164-43).</td>
</tr>
</tbody>
</table>

What are the limits, if any, to their authority? Are they independent of other branches of government?

Administered by Director of the Administrative Office of the Courts, but technically independent of that office (N.C. Code § 164-45). Commission is advisory so recommendations have to be adopted by the legislature.

How are the members of the commissions appointed? What are the required qualifications, if any, for membership on these commissions?

The North Carolina Commission has 30 members (N.C. Code § 164-37):
- Chairman: Appointed by Chief Justice; sitting or former Justice or judge;
- Chief Judge of NC Court of Appeals or a designee;
- Secretary of Correction or designee;
- Secretary of Crime Control and Public Safety or designee;
- Chairperson of the Parole Commission or designee;
- President of Conference of Superior Court Judges or designee:
  - Organization for continuing education and fellowship of superior court judges (see http://www.nccourts.org/News/NewsDetail.asp?id=1361&type=1&archive=False)
- President of the District Court Judges Association or designee;
  - Organization providing continuing education for district court judges (see http://www.sog.unc.edu/node/1270)
- President of NC Sheriff's Association or designee;
- Professional organization for NC’s sheriffs (advocacy group) (see http://www.ncsheriffs.org/)
  - President of NC Association of Chiefs of Police or designee;
  - Professional organization for Chiefs of Police (advocacy group) (see http://ncacp.org/index.php?option=com_content&view=article&id=66&Itemid=272)
- Member of public at large appointed by Governor;
  - Not currently licensed to practice law
- Member appointed by Lieutenant Governor;
- Three members from House of Representatives;
  - Appointed by Speaker of the House
- Three members from Senate;
  - Appointed by President Pro Tempore
- Representative of the NC Community Sentencing Association;
  - Appointed by President Pro Tempore based on recommendation from organization
- Member of the business community;
  - Appointed by Speaker of the House based on recommendation from President of the NC Retail Merchants Association
- Criminal defense attorney;
  - Appointed by Chief Justice based on recommendation of President of the NC Academy of Trial Lawyers
- Member of Conference of District Attorneys or designee;
- Member of NC Victim Assistance Network;
  - Appointed by Lieutenant Governor based on recommendation from President
  - Advocacy group for victims rights (see http://nc-van.org/)
- Rehabilitated former prison inmate;
  - Appointed by chairman
- President of the NC Association of County Commissioners or designee;
  - Advocacy group for counties (see http://www.ncacc.org/whncacc.htm)
- Member of academic community with background in criminal justice;
  - Appointed by Governor based on recommendation of President of UNC
- Attorney General or staff member appointed by Attorney General;
- Member of the NC Bar Association;
  - Appointed by Governor based on recommendation from President of the organization
- Member of the Justice Fellowship Task Force;
  - Must be resident of North Carolina; appointed by Chairman
- President of the Association of Clerks of Superior Court of NC or designee;
- Representative of the Department of Juvenile Justice and Delinquency Prevention;
  - Two year terms for appointed members (N.C. Code §164-38)

### How were they created (executive order, legislation, etc.)? What was the policy background that sparked the creation of the commission?
  - Lawsuits led to state putting cap on prisons in 1986
    - But no changes in sentencing so number of offenders coming in to the prisons increased 62% but prison capacity rose by only 7%
    - Parole board responsible for keeping capacity cap so prisoners served as low as 18% of their sentences. Because alternative sanctions were harder than the minimal prison time, offenders chose prison over alternative sanctions
  - It was third of three major sentencing reforms in NC
    - Fair Sentencing Act in 1979 provided presumptive sentencing for felonies with appellate review
    - Community Penalties Program in 1983 increased alternative sanctions for certain offenders who needed more than probation but less than
<table>
<thead>
<tr>
<th>What impacts have the commissions’ recommendations or decisions had on states’ expenditures, specifically expenditures on the judicial system and the corrections/criminal justice system?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Commission tracks beds, not money; Fiscal Analysis Department in legislature reports on the amount of money the sentencing laws cost or affect.</td>
</tr>
<tr>
<td>• Overall, the commission’s recommendations have helped the state anticipate its prison growth and stay even with its resources.</td>
</tr>
<tr>
<td>• The Legislature shifts between increasing correctional resources and shifting policy to reduce the number of offender entering prisons.</td>
</tr>
<tr>
<td>• In 2011, Legislature passed Justice Reinvestment Act (JRA) to reduce prison population growth by increasing probation sanctions, allowing early release based on in-prison rehabilitative programs, and increasing post-release supervision of higher risk felons.</td>
</tr>
<tr>
<td>• Commission provided resources, but the JRA was drafted by Justice Center; projected to reduce state’s expenses by $293 million over six years (see North Carolina Dep’t of Corrections, <em>Justice Reinvestment Act: Historic Progress for Correction</em>, Correction News (July 2011)).</td>
</tr>
<tr>
<td>• JRA intended to address projected prison population growth.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Have the commissions’ decisions or recommendations had any impacts on recidivism? If so, what are they?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commission has been tracking recidivism rates since 1998 (See North Carolina Sentencing and Policy Advisory Commission, Correctional Program Evaluation: Offenders Placed on Probation or Released from Prison in FY 2005/06 (2010)).</td>
</tr>
<tr>
<td>• Rates have increased from 36.8% for prisoners released 1993/34 to 40.1% for prisoners released 2005/06.</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Do the sentencing commissions set a limit on the number of inmates in each prison system?</th>
</tr>
</thead>
<tbody>
<tr>
<td>In its enabling legislation, Commission required to recommend guidelines based on prison capacity (N.C. Code § 164-41).</td>
</tr>
<tr>
<td>• Commission’s initial plan started with the prison capacity and drafted duration models based on that capacity (See Wright &amp; Ellis, <em>A Progress Report</em>).</td>
</tr>
<tr>
<td>• Commission continues to use capacity as a guideline, but statute requiring cap on capacity was repealed.</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>What impact have the commissions’ decisions or recommendations had on state prisons as well as local jails?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Before the commission, NC prisons were overcrowded and they were shipping offenders out of state; as part of consent decree, the legislature enacted prison capacity cap in statute.</td>
</tr>
<tr>
<td>• Prison entrance rate has dropped since guidelines in place, though overall prison population has increased – in part because of state population growth.</td>
</tr>
<tr>
<td>• Commission initially projected no changes in jail population growth because of guidelines, but has not tracked since initial projection.</td>
</tr>
<tr>
<td>• Under JRA, certain misdemeanants can be moved into jails, so jail impact may be reported in future.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Do the commissions serve as a clearinghouse for collection and tracking of prisoner data, including population</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Statutorily mandated to collect data on sentencing and corrections to make ongoing assessments (N.C. Code § 164-44).</td>
</tr>
<tr>
<td>• Annual correctional population forecast; annual sentencing statistics; annual report on community corrections programs; annual reports on pending legislation.</td>
</tr>
<tr>
<td>• Also mandated to produce with Department of Corrections biennial reports on imprisonment.</td>
</tr>
</tbody>
</table>
- In particular, focus on community corrections and in-prison treatments and their influence on the recidivism rates |
| How do the commissions track the impact of their sentencing law changes? | o Mandated to provide correctional population projections for both guidelines changes and new sentencing legislation (N.C. Code 164-43).  
o Also biennial recidivism reports to assess effectiveness of corrections system (N.C. Code §164-47). |
| Can the Legislature or governor veto decisions of the commission? | o Commission makes recommendations to the General Assembly, but legislature must affirmatively address recommendations before they become effective (see N.C. Code § 164-43).  
o Structure Sentencing Act passed as Commission’s recommendations in 1993 (see Citizen’s Guide to Structure Sentencing)  
APPENDIX F

Oregon Criminal Justice Commission

| For each state with a sentencing commission, what is the scope of the commission's powers? What are the mandates of each commission? | o Oregon’s Commission has several enumerated statutory responsibilities. (O.R. Stat. § 137.656):
  - The primary duty of the Commission is to:
    - develop and maintain a state criminal justice policy; and
    - a comprehensive, long-range plan for a coordinated state criminal justice system that encompasses public safety, offender accountability, crime reduction and prevention and offender treatment and rehabilitation.
  - The plan must include, but need not be limited to, recommendations regarding:
    - Capacity, utilization and type of state and local prison and jail facilities;
    - Implementation of community corrections programs;
    - Alternatives to the use of prison and jail facilities;
    - Appropriate use of existing facilities and programs;
    - Whether additional or different facilities and programs are necessary;
    - Methods of assessing the effectiveness of juvenile and adult correctional programs, devices and sanctions in reducing future criminal conduct by juvenile and adult offenders;
    - Methods of reducing the risk of future criminal conduct; and
    - The effective utilization of local public safety coordinating councils.
  - Other duties of the Commission are:
    - To conduct joint studies by agreement with other state agencies, boards or commissions on any matter within the jurisdiction of the commission.
    - To serve as a clearinghouse for the collection, preparation, analysis and dissemination of information on state and local sentencing practices.
    - To provide technical assistance and support to local public safety coordinating councils.
    - To receive grant applications to start or expand drug court programs as defined in O.R. Stat. § 3.450 (Drug court programs) and to make rules to govern the grant process and to award grant funds according to the rules.
  - The Commission shall review all new legislation that creates new crimes or modifies existing crimes. (O.R. Stat. § 137.665)
  - The Commission establishes the information that must be submitted under O.R. Stat. § 137.010 (Duty of court to ascertain and impose punishment)
    - A rule adopted under this Commission must be approved by the Chief Justice of the Supreme Court before it takes effect.
  - Mandatory Sentences:
    - The guidelines adopted control the sentences for all crimes committed after the effective date of such guidelines. (O.R. Stat. § 137.669)
    - A court may impose a sentence outside the presumptive sentence for a |
specific offense if it finds there are substantial and compelling reasons justifying a deviation from the presumptive sentence.

| How are the members of the commissions appointed? What are the required qualifications, if any, for membership on these commissions? | o The Oregon Criminal Justice Commission has nine members. (O.R. Stat. § 137.654):
  - The Governor appoints seven members who are subject to confirmation by the Senate pursuant to section 4, Article III of the Oregon Constitution.
  - Two nonvoting members:
    - The President of the Senate shall appoint one state Senator as a nonvoting member.
    - The Speaker of the House of Representatives shall appoint one state Representative as a nonvoting member.
  - The Governor shall appoint members of the Commission consistent with the following:
    - Members shall be appointed with consideration of the different geographic regions of the state.
    - Not more than four members may belong to the same political party (determined by official election registration cards).
  - Members serve at the pleasure of the appointing authority.
  - The term of office of each member is four years or until the end of a legislative member’s legislative term, whichever occurs first.
  - Before the expiration of the term of a member, the appointing authority shall appoint a successor whose term begins immediately upon the expiration of the term of the current member.
  - A member is eligible for reappointment but may serve no more than two consecutive terms.
  - In case of a vacancy for any cause, the appointing authority shall appoint a person to fill the office for the unexpired term.
    - When a person is appointed under this paragraph, the unexpired term may not be considered for purposes of the limitation to two consecutive terms of service. |
| How were they created (executive order, legislation, etc.)? What was the policy background that sparked the creation of the commission? | Background of Oregon Commission (David Factor, Life Cycle of a Sentencing Commission: The Oregon Experience, 8 Fed. Sent. Rep. 93 (1995-1996)).
  - Lawsuits led to state putting cap on prisons in 1986.
  - Through the decade from 1975 to 1985 the state prison population doubled from 2001 to 4001 inmates.
  - 18 of the 33 county jails were operating under federal court population caps.
  - By the mid-1980s, offenders failing on parole accounted for nearly 40% of prison admissions.
  - Despite the swelling prison population, no new prisons had been built in more than 10 years.
  - In 1995, the Oregon legislative assembly abolished the state’s Sentencing Guidelines Board as well as its parent agency, the Oregon Criminal Justice Council.
    - The Council had been an independent agency that was too big, unfocused, and the Governor could control the direction with who he or she chose as the chairperson.
  - The bill to abolish the Council was amended to create a new Criminal Justice Commission in the governor’s office. |
| What impacts have the commissions’ recommendations or decisions had on states' expenditures, specifically expenditures on the judicial system and the corrections/criminal | o From 1995-2007, the state general fund dollars spent per household on criminal justice have increased approximately 23%.
  o From 1985-1995 (pre-commission), the state fund dollars spent per household on criminal justice increased 30%. |
<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
</table>
| Have the commissions’ decisions or recommendations had any impacts on  | From 1999-2002, Oregon’s recidivism rate was 33.4%.  
| recidivism? If so, what are they?                                       | From 2004-2007, Oregon’s recidivism rate was 22.8%.  
|                                                                        |   - Oregon’s low rate reflects the fact that it rarely revokes inmates back to prison.  
|                                                                        |   - The second reason may be that Oregon has a far higher percentage (about 70%) of violent and sex criminals in prison than most other states.  
|                                                                        |   - Violent and sex criminals recidivate at far lower rates than property and drug criminals.  
| Do the sentencing commissions set a limit on the number of inmates in  | Per the enabling legislation, the Commission must use alternatives to the use of prison and jail facilities and ensure the appropriate use of existing facilities and programs. (O.R. Stat. § 137.656)  
| each prison system?                                                    |   - This implies that it must avoid overcrowding but no set number is in place.  
| What impact have the commissions’ decisions or recommendations had on  | There has been a 19% increase in the Oregon population since 1995 and a 50% increase in prison population.  
| state prisons as well as local jails?                                   | There has been a 20% increase of people in prison with life sentences since 1995.  
|                                                                        |   - This may have been caused by voter-initiatives like Measure 11.  
| Do the commissions serve as a clearinghouse for collection and        | Statutorily mandated to provide analytical and statistical information (O.R. Stat. § 137.656).  
| tracking of prisoner data, including population figures and parolee  | Serves as a clearinghouse and information center for the:  
| outcomes? If not, what government agency tracks such data? What data  |   - collection,  
| is collected?                                                           |   - preparation,  
|                                                                        |   - analysis and  
|                                                                        |   - dissemination of information on state and local sentencing practices.  
|                                                                        | The Commission collects data on:  
|                                                                        |   - prison population,  
|                                                                        |   - recidivism,  
|                                                                        |   - expenditures on the criminal justice system,  
|                                                                        |   - crime rates, and  
|                                                                        |   - arrest rates.  
| How do the commissions track the impact of their sentencing law       | The Commission introduced a sophisticated cost-benefit model in 2006 to track the impact of new laws on prison populations and expenditures on the criminal justice system.  
| changes?                                                               | Can the Legislature or governor veto decisions of the commission?  
|                                                                        | The commission may adopt by majority vote of all of its voting members amendments to the sentencing guidelines. (O.R. Stat. § 137.669)  
|                                                                        | But the commission must submit the amendments to the Legislative Assembly for its approval.  
|                                                                        | The amendments do not become effective unless approved by the Legislative Assembly by law.  
|                                                                        | The Legislative Assembly may by law amend, repeal or supplement any of the amendments.
## Pennsylvania Commission on Sentencing

<table>
<thead>
<tr>
<th>For each state with a sentencing commission, what is the scope of the commission's powers? What are the mandates of each commission?</th>
<th>Pennsylvania Commission on Sentencing (PCS) powers (42 Pa. C. S. § 2153):</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>o Establish general policies and promulgate rules and regulations as necessary to carry out duties; use services, personnel, facilities, etc. of other private or public agencies with or without reimbursement; enter into contracts, etc. as necessary to perform functions;</td>
</tr>
<tr>
<td></td>
<td>o Request data from any agency/officer of Commonwealth;</td>
</tr>
<tr>
<td></td>
<td>o Arrange with head of any gov’t unit for performance by that unit of any commission function;</td>
</tr>
<tr>
<td></td>
<td>o Issue invitations requesting attendance &amp; testimony and the production of evidence relating to the commission’s powers;</td>
</tr>
<tr>
<td></td>
<td>o Establish research and development program to serve as clearinghouse and information center for sentencing, resentencing, and parole practices; and to assist as a consulting body to develop sound sentencing, resentencing, and parole practices;</td>
</tr>
<tr>
<td></td>
<td>o Collect systematically data about sentencing processes;</td>
</tr>
<tr>
<td></td>
<td>o Publish data about sentencing &amp; parole processes;</td>
</tr>
<tr>
<td></td>
<td>o Collect systematically and disseminate info about parole dispositions &amp; sentences actually imposed, including modifications;</td>
</tr>
<tr>
<td></td>
<td>o Collect and disseminate information about effectiveness of parole and sentencing practices;</td>
</tr>
<tr>
<td></td>
<td>o Make recommendations to General Assembly about modification or enactment of sentencing, parole, correctional statutes to carry out effective policies;</td>
</tr>
<tr>
<td></td>
<td>o Establish plan and timetable to collect and disseminate information about incapacitation, recidivism, deterrence, and overall sentencing/parole practices;</td>
</tr>
<tr>
<td></td>
<td>o Establish program to monitor compliance with sentencing guidelines, mandatory sentencing laws, parole guidelines, and recidivism risk reduction incentive – create forms and require completion to monitor;</td>
</tr>
<tr>
<td></td>
<td>o Before changes to guidelines for sentencing, resentencing, parole, use correctional population simulation model to determine resources required under current guidelines and ranges and resources required to carry out proposed changes; and</td>
</tr>
<tr>
<td></td>
<td>o Provide annual reports to the General Assembly, Administrative Office of Pennsylvania Courts, and Governor.</td>
</tr>
<tr>
<td></td>
<td>PCS Duties (42 Pa. C.S. § 2154):</td>
</tr>
<tr>
<td></td>
<td>o Adopt guidelines, focusing on public safety, effect of crime on victim and community, and rehabilitation requirements of offender;</td>
</tr>
<tr>
<td></td>
<td>▪ Mandated to use seriousness of offense, criminal history, criminal behavior differences, aggravated and mitigated ranges</td>
</tr>
<tr>
<td></td>
<td>o Adopt guidelines to identify offenders who should be sentenced to state and county intermediate programs (42 Pa. C.S. §§ 2154.1-2154.2);</td>
</tr>
<tr>
<td></td>
<td>o Adopt guidelines for fines or other lawful sanctions (42 Pa. C.S. § 2154.3);</td>
</tr>
<tr>
<td></td>
<td>▪ Based on criminal history and crime severity</td>
</tr>
<tr>
<td></td>
<td>▪ Create community service alternatives to the fines</td>
</tr>
<tr>
<td></td>
<td>o Adopt guidelines for resentencing after revocation of probation or intermediate punishments (42 Pa. C.S. § 2154.4);</td>
</tr>
<tr>
<td></td>
<td>▪ Consider both public safety and offender’s rehabilitative needs</td>
</tr>
<tr>
<td></td>
<td>o Adopt guidelines for parole (42 Pa. C.S. § 2154.5);</td>
</tr>
<tr>
<td></td>
<td>▪ Consider public safety, victim input, incentives for offenders to follow rules of parole</td>
</tr>
<tr>
<td></td>
<td>o Adopt recommitment ranges for Board of Probation and Parole to consider (42 Pa. C.S. § 2154.6);</td>
</tr>
<tr>
<td></td>
<td>▪ If board departs from the range, it has to record its reasons</td>
</tr>
<tr>
<td></td>
<td>o Develop risk assessment instrument to help determine appropriate sentence and likelihood of recidivism (42 Pa. C.S. § 2154.7).</td>
</tr>
<tr>
<td></td>
<td>▪ Instrument can be used to determine appropriateness of alternative sanctions</td>
</tr>
</tbody>
</table>

What are the limits, if PCS is an agency of the General Assembly (Pa. C.S. § 2151.2) and is closely linked with the Legislature. (Pa. Comm’n on Sentencing, Sentencing in Pennsylvania: |
<table>
<thead>
<tr>
<th>Question</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>any, to their authority? Are they independent of other branches of government?</td>
<td>Are they independent of other branches of government? Compliance rates for sentencing guidelines remain around 90% (Pa. Comm’n on Sentencing, Sentencing in Pennsylvania: Annual Report 2009 41 (2009)).  Both the House and Senate review the PCS’s regulations.  (Id.)</td>
</tr>
<tr>
<td>How are the members of the commissions appointed? What are the required qualifications, if any, for membership on these commissions?</td>
<td>The PCS has 11 voting members and 3 ex officio nonvoting members (Pa. C.S. § 2152):  o Two members of the House of Representatives;  ▪ Selected by Speaker of the House  ▪ No more than one can be from same political party as Speaker  o Two members of the Senate;  ▪ Appointed by President pro tempe  ▪ No more than one can be from same political party as President pro tempe  o Four judges of courts of record;  ▪ Selected by Chief Justice  o Three persons appointed by Governor;  ▪ A district attorney  ▪ A defense attorney  ▪ Either a professor of law or a criminologist  o Ex officio members;  ▪ Secretary of Corrections  ▪ Victim advocate  ▪ Chairman of the Board of Probation and Parole  o Term is two years.  o Commission must meet at least four times per year and not less than semiannually to establish general policies and rules.  o Seven members constitute quorum for adopting guidelines; majority is quorum for all other purposes</td>
</tr>
<tr>
<td>How were they created (executive order, legislation, etc.)? What was the policy background that sparked the creation of the commission?</td>
<td>From John H. Kramer &amp; Cynthia Kempinen, History of Pennsylvania Sentencing Reform, 6 Fed. Sentencing Reporter 152, 152 (1993)  o Legislature passed sentencing reform in 1975 requiring councils of judges to jointly sentence offenders; PA Supreme Court ruled the law unconstitutional.  o Legislature responded by almost passing mandatory minimum sentencing laws with enhancements for firearms; bill would’ve required $23 – 93 million dollars in additional space.  o Pennsylvania Joint Council for Criminal Justice studied sentencing reform and recommended against mandatory minimums; suggested a commission instead.  o Legislature passed bill creating commission and mandating it create guidelines in 1978.  ▪ Retained indeterminate sentencing system; no good time credits; offenders eligible for parole after minimum sentence served  ▪ Guidelines only suggest minimum sentence – judges can determine maximum  ▪ Senator Michael O’Pake argued the purpose of the bill was to avoid judge shopping and lack of uniformity</td>
</tr>
<tr>
<td>What impacts have the commissions’ recommendations or decisions had on states’ expenditures, specifically expenditures on the judicial system and the corrections/criminal justice system?</td>
<td>PCS doesn’t track expenses, but it tracks types of sentences (Pa. Comm’n on Sentencing, Sentencing in Pennsylvania: Annual Report 2009 35 (2009)).  ▪ Non-incarceration sentences have risen (38% in 2009), while sentences to state prison have minimally increased (14% in 2009) and to county jail have moderately increased (34%) (Id.).</td>
</tr>
<tr>
<td>Have the commissions’ decisions or</td>
<td>In 2008 Pennsylvania began the Recidivism Risk Reduction Incentive Program (RRRI) which identifies offenders to participate in activities that evidence shows reduce recidivism; in exchange, offenders serve a reduced sentence ((Pa.</td>
</tr>
</tbody>
</table>
| Recommendations had any impacts on recidivism? If so, what are they? | Comm’n on Sentencing, Sentencing in Pennsylvania: Annual Report 2009 22 (2009)).  
- PCS must conduct annual reports on the effects, but too new to have substantive data.  
- PCS tracks recidivism rates for the State Intermediate Punishment (SIP) program – for six months and one year out, SIP participants’ rates were slightly more than half of similar prisoners (Pa. Comm’n on Sentencing, Pennsylvania’s State Intermediate Punishment Program: 2010 Report to the Legislature 15 (2010)).  
- PCS is currently undertaking a multi-year study of sentencing and its effects on recidivism (Pa. Comm’n on Sentencing, Effectiveness of Sentencing Project http://pcs.la.psu.edu/publications/research-and-evaluation-reports/special-reports/effectiveness-of-sentencing-project (last visited Oct. 18, 2011)). |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Do the sentencing commissions set a limit on the number of inmates in each prison system?</td>
<td>○ The PCS and the DOC generate population forecasts, but capacity considerations are not part of the PCS’s legislative mandate or the focus of its studies.</td>
</tr>
</tbody>
</table>
| What impact have the commissions’ decisions or recommendations had on state prisons as well as local jails? | ○ Prison populations have risen, as have correctional resources (Pa. Dep’t of Corrections, Annual Statistical Report 29 (2009)).  
- Capacity rates have remained steady, however, ranging in the last ten years from a low of 108% to a high of 118.9%, with last year’s rate at 117.9% (Id. at 28).  
- 84.9% of incarcerated individuals are sentenced offenders; 14.9% are parole violators.  
- Though PCS has not reduced the number of offenders entering prison, correctional resources have grown at a comparable rate so that overcrowding has not been as substantial.  
- In 2009, sentences to county jails (34,061) were more than double sentences to state prison (13,709) but the sentence durations in county jail were less than half (Pa. Comm’n on Sentencing, Sentencing in Pennsylvania: Annual Report 2009 37 (2009)).  
- PCS tracks rates of sentences to county jails, but neither it nor DOC seem to track impact on populations in the jails. |
| Do the commissions serve as a clearinghouse for collection and tracking of prisoner data, including population figures and parolee outcomes? If not, what government agency tracks such data? What data is collected? | ○ The PCS is housed at Penn State and works with Penn State, Duquesne, and Villanova to contract out sentencing research projects (Pa. Comm’n on Sentencing, Sentencing in Pennsylvania: Annual Report 2009 3 (2009)).  
○ The PCS uses software to aid judges with determining sentences according to guidelines, and to report their sentencing decisions (Pa. Comm’n on Sentencing, Sentencing in Pennsylvania: Annual Report 2009 10 (2009)).  
○ Population projections drafted by a committee that includes PCS, Board of Probation & Parole, Dep’t of Corrections, Commission on Crime & Delinquency, and Governor’s Budget & Policy Offices (Pa. Comm’n on Sentencing, Sentencing in Pennsylvania: Annual Report 2009 18 (2009)).  
- Committee is responsible for annual population projections based on changes in sentencing programs and policies.  
○ PCS completes impact reports for changes in policies, laws, or practices (Pa. Comm’n on Sentencing, Sentencing in Pennsylvania: Annual Report 2009 18 (2009)).  
○ In 2008, PCS charged with developing data-based parole, resentencing, and recommitment guidelines.  
○ Dep’t of Corrections publishes annual reports on prison population statistics (Pa. Dep’t of Corrections, Annual Statistical Report 23 (2009)).  
- In 2009, the population grew 4.4%; 84.9% were sentenced offenders, 14.9% were parole violators (Id.)  
- Tracks incarceration per capita rates (Id. at 27) |
| How do the commissions track the impact of their sentencing law changes? | PCS participates with Board of Probation & Parole, Dep't of Corrections, Commission on Crime & Delinquency, and Governor’s Budget & Policy Offices to conduct annual population projections based on changes in sentencing policies and programs (Pa. Comm'n on Sentencing, Sentencing in Pennsylvania: Annual Report 2009 18 (2009)). |
| Can the Legislature or governor veto decisions of the commission? | Prior to adoption, PCS has to publish any proposed changes to sentencing, parole, resentencing, or recommitment guidelines in Pennsylvania Bulletin. (42 Pa. C.S. § 2155) It must hold hearings no sooner than 30 days and no later than 60 days after publication, and it must allow the following parties to testify:  
  - Pennsylvania District Attorneys Association;  
  - Chiefs of Police Associations;  
  - Fraternal Order of Police;  
  - Public Defenders Organization;  
  - Law school faculty members;  
  - Board of Probation and Parole;  
  - Department of Corrections;  
  - Pennsylvania Bar Association;  
  - Pennsylvania Wardens Association;  
  - Pennsylvania Association on Probation, Parole and Corrections;  
  - Pennsylvania Conference of State Trial Judges;  
  - Any other interested persons.  
After public comment, PCS has to publish adopted guidelines. The General Assembly, subject to gubernatorial review, can pass concurrent resolution rejecting the PCS’s revisions. The General Assembly has to pass the resolution within 90 days of the publication of the new guidelines. |
### Virginia Criminal Sentencing Commission

For each state with a sentencing commission, what is the scope of the commission’s powers? What are the mandates of each commission?

<table>
<thead>
<tr>
<th>Virginia’s commission has five categories of powers/duties (Virg. Code § 17.1-803):</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Develop, maintain, modify discretionary sentencing guidelines;</td>
</tr>
<tr>
<td>- Initial guideline range calculation was mandated by legislation (See Va. Code Ann. § 17.1-805 (describing midpoint and enhancement calculations based on type of crimes and criminal history))</td>
</tr>
<tr>
<td>- Modifications are included in annual report (see below) and become law on July 1 unless legislature intervenes (Va. Code Ann. § 17.1-806)</td>
</tr>
<tr>
<td>- Responsibility for creating and updating sentencing worksheets for both calculating range and explaining departures</td>
</tr>
<tr>
<td>- Create guidelines to determine candidates for alternative sanctions</td>
</tr>
<tr>
<td>- Develop risk assessment metric to predict risk of offender’s threat to public safety;</td>
</tr>
<tr>
<td>- Attempt to divert 25% of offenders into alternative sanctions based on the risk assessment (except certain classes of violent offenders and drug distributors – see Va. Code Ann. § 17.1-805(A) &amp; (C))</td>
</tr>
<tr>
<td>- Monitor sentencing practices and maintain database of practices;</td>
</tr>
<tr>
<td>- Monitor sentence lengths and correctional facility populations; make recommendations about population projections</td>
</tr>
<tr>
<td>- Study and make recommendations for sentencing legislation; and</td>
</tr>
<tr>
<td>- Annual reports to General Assembly.</td>
</tr>
</tbody>
</table>

What are the limits, if any, to their authority? Are they independent of other branches of government?

| Virginia’s commission is part of the judiciary and almost half of its membership consists of judges (see Virg. Code § 17.1-800, § 17.1-802). |
| Initial guideline range mandated by legislation (see Virg. Code § 17.1-806). |
| Subsequent modifications part of annual report; become effective July 1 unless General Assembly intervenes (Virg. Code § 17.1-806). |
| The guidelines are driven by actual sentencing practices. The commission uses the data about sentencing practices to determine appropriate modifications to the worksheets the following year. The commission does not have the power to modify the guidelines outside of those ranges. |

How are the members of the commissions appointed? What are the required qualifications, if any, for membership on these commissions?

<table>
<thead>
<tr>
<th>The Virginia Criminal Sentencing Commission has seventeen members (Va. Code Ann. § 17.1-802):</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Chairman – appointed by Chief Justice and confirmed by General Assembly; cannot be active member of judiciary;</td>
</tr>
<tr>
<td>- Four year term</td>
</tr>
<tr>
<td>- Six judges/justices – appointed by Chief Justice;</td>
</tr>
<tr>
<td>- Four year term</td>
</tr>
<tr>
<td>- Four governor appointees;</td>
</tr>
<tr>
<td>- At least one must either be a victim of a crime or a representative of a crime victim organization</td>
</tr>
<tr>
<td>- Four year term</td>
</tr>
<tr>
<td>- Two Speaker of the House of Delegates appointees;</td>
</tr>
<tr>
<td>- Four year term</td>
</tr>
<tr>
<td>- Chairman of the House Courts of Justice Committee (or a designee from the committee);</td>
</tr>
<tr>
<td>- Coincident with term of office</td>
</tr>
<tr>
<td>- One Senate Committee on Rules appointee;</td>
</tr>
<tr>
<td>- Four year term</td>
</tr>
<tr>
<td>- Chairman of the Senate Courts of Justice Committee (or a designee from the committee);</td>
</tr>
<tr>
<td>- Coincident with term of office</td>
</tr>
<tr>
<td>- Attorney General; and</td>
</tr>
<tr>
<td>- Coincident with term of office</td>
</tr>
<tr>
<td>- Members, besides attorney general, limited to two consecutive terms.</td>
</tr>
</tbody>
</table>

How were they created (executive order, State judiciary created voluntary guidelines in 1991 (see Richard Kern, Sentencing Reform in Virginia, 8 Fed. Sent. Rep. 84 (1995)). |
| Gov. George Allen won the 1993 gubernatorial race on an “abolish parole” platform |
**legislation, etc.?) What was the policy background that sparked the creation of the commission?**

| Commission initially sought to use federal model, but judiciary’s voluntary guidelines approach prevailed, but with explanation of departures required (Id.). |
| Governor’s Commission paired with the Criminal Justice Research Center to examine data about offenders’ actual time served (rather than sentences) to calculate guideline ranges (Id.). |
| But added enhancements based on violent offenses, |
| Criminal Justice Research Center found time served and age of offenders had largest impact on tendency to recidivate, |
| Commission determined lengthier sentences for serious/violent offenders was appropriate, in combination with truth-in-sentencing change abolishing parole, |
| Calculated prison bed effects of new guidelines, |
| First, the Criminal Justice Research Center created baseline based on new Governor’s change in parole board that slashed parole rates. The Governor’s proposal would double prison bed need over ten years. |
| Guideline reform, which focused on lengthening stays only for violent offenders, actually had lower prison bed projection: |
| proposed more alternative sanctions and risk assessment metric to counteract effect on correctional resources; |
| also calculated rates of recidivism and how many crimes would have been avoided if longer guideline sentence had been imposed; |
| retained jury sentences to provide community data on punishment. |
| Commission used Virginia’s Criminal Justice Research Center to generate data (Id.). |
| Staffed with criminologists, sociologists, psychologists, statisticians |
| Part of Virginia’s Department of Criminal Justice Services |
| Commission suggested abolishing parole, instead limiting good time credits to no more than 15% of sentence. |
| But judges could still suspend sentence or alter sentence to allow probation |
| Gov. Allen called joint session in 1994 to push through legislation incorporating the reforms and creating the commission. |
| As part of its enabling legislation, the commission had to adopt the guidelines established by the Governor’s Commission, but was empowered to modify and update the guidelines as necessary (Va. Code Ann. § 17.1-803) |
| Codified at Virginia Code § 17.1-800 seq. |

**What impacts have the commissions’ recommendations or decisions had on states’ expenditures, specifically expenditures on the judicial system and the corrections/criminal justice system?**

| The commission participated in a study with the National Center for State Courts evaluating the benefits of the risk assessment instrument. (Nat’l Center for State Courts & Va. Crim. Sentencing Comm’n, Offender Risk Assessment in Virginia 9 (2002)) Based on the state’s savings in the instrument’s pilot program, the commission recommended and the legislature adopted the risk assessment statewide. No follow-up cost-benefit analysis of the instrument has been found. |
| Because the Governor’s Commission used past time served to determine the new guidelines, and the Sentencing Commission modifies the guidelines based on judicial practices, a representative at the commission did not believe the guidelines had significant effects on government expenses. A cost-benefit analysis of the guidelines has not been conducted. |

**Have the commissions’ decisions or recommendations had any impacts on recidivism? If so, what are they?**

| Virginia’s recidivism rate from 2004-2007 was 28.3% (from 1999-2002, 29%), one of the lowest in the nation (Pew Center on the States, State of Recidivism: The Revolving Door of America’s Prisons 11 (2011)). |
| In 2004, only 5% of the rate was from technical parole violations (Id. at 14). |
| Suggestion from Pew Center that reducing parole leads to less parole violations, which lowers recidivism. Virginia’s offenders only serve a maximum of 15% of their sentence in parole, which may explain why technical violations are such a low percentage. (Va. Crim. Sentencing Comm’n, 2010 Annual Report 17 (2010)) |
| Virginia employs several programs to help its offenders rehabilitate and reenter |

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
</table>
| Do the sentencing commissions set a limit on the number of inmates in each prison system? | - No apparent limit on number of inmates.  
- Participates in prison population projection, but part of greater task force under Secretary of Public Safety (Va. Crim. Sentencing Comm’n, 2010 Annual Report 12 (2010)).  
  ▪ Committee combines policy advisors and technical advisors. |
| What impact have the commissions’ decisions or recommendations had on state prisons as well as local jails? | - Prison populations grew until May 2008, after which they have been declining (2010 Annual Report, at 56).  
- Local jail populations grew until September 2006, after which they also began to decline (Id.).  
- Judges often sentence offenders who are recommended for alternative sanctions under the risk assessment instrument to jail instead of prison. The cost-benefit analysis of the instrument in 2002 suggested localities’ costs for alternative sanctions absorb most of the overall benefit to the state. (Nat’l Center for State Courts & Va. Crim. Sentencing Comm’n, Offender Risk Assessment in Virginia 9 (2002)).  
- Impact reports for proposed legislation include impacts on jail and local resources, not just state correctional resources (2010 Annual Report, at 11). |
| Do the commissions serve as a clearinghouse for collection and tracking of prisoner data, including population figures and parolee outcomes? If not, what government agency tracks such data? What data is collected? | - The commission focuses on collecting data about sentence compliance and making recommendations for changes to the guidelines based on those changes (see generally 2010 Annual Report).  
- Population projections are conducted by Secretary of Public Safety’s task force, of which the Virginia Criminal Sentencing Commission is a member (2010 Annual Report).  
- The Virginia Department of Corrections collects and reports data on prisoner populations, expenses per capita, and population trends. (see generally Va. Dep’t of Corrections, Management Information Summary Annual Report (2010)).  
- The Department of Corrections also tracks recidivism results after prisoner releases (see, e.g., Va. Dep’t of Corrections, Recidivism Trend 1990-2006 (2011)). |
| How do the commissions track the impact of their sentencing law changes? | - Virginia’s guidelines are tied to historical sentencing practices; annual assessment and recommendations for changes based on judges’ practices (2010 Annual Report).  
  ▪ If judges/juries are departing, Commission will amend the guidelines accordingly.  
- The commission does not compile reports on the impact of its guidelines. It creates impact reports on proposed legislation, but does not appear to track legislation after it is passed. |
| Can the Legislature or governor veto decisions of the commission? | - Commission’s recommendations become effective unless General Assembly affirmatively passes a law rejecting the modifications (Va. Code Ann. § 17.1-805).  
  ▪ But voluntary guidelines, so departures are not subject to appellate review. |