

Memorandum 2000-52**Criminal Sentencing Statutes: Consultants' Report**

BACKGROUND

In 1999 the Commission received legislative sanction to study "Whether the law governing criminal sentencing should be revised, nonsubstantively, to reorganize and clarify the sentencing procedure statutes in order to make them more logical and understandable." 1999 Cal. Stat. res. ch. 81.

The reason for this project is outlined in the Commission's annual report for 1998-99:

Criminal Sentencing

There appears to be a general consensus among prosecutors, defense attorneys, and others involved with the criminal justice system that some overhaul of criminal sentencing law is needed. The statutes have grown haphazardly without an overriding organization, with the result that they are now complex and convoluted. A third of the appeals in criminal cases involve sentencing error. The statutes need to be simplified and made easier to understand.

Because past reform efforts have failed for political reasons, a neutral Law Revision Commission study would be appropriate at this time. The objective of the study would be to propose a reorganization and clarification of the sentencing procedure statutes in order to make them more logical and understandable. This would be a nonsubstantive project.

As its initial step in this project, the Commission identified a number of experts in the field interested and available to work on it. The Commission assembled and contracted with a "team" of consultants — consisting of a judge, a prosecutor, and a defense attorney — to help develop an outline of what a reasonably organized sentencing statute might look like, including a general indication of which existing statutes would fit where in the outline.

Our consultants are Judge David S. Wesley of the Los Angeles County Superior Court, Deputy District Attorney David R. Ross of the Los Angeles

County District Attorney's Office, and Mark E. Overland, a private defense attorney in Santa Monica. Each has a depth of experience with the California criminal justice system, and has a long-standing interest in sentencing and sentencing reform. The outline prepared by the consultants, and a supplement to that outline, are attached. See Exhibit pp. 1-14.

We anticipate the following general procedure on this project. After reviewing our consultants' report and making whatever revisions appear appropriate, we will circulate the draft outline of the statute broadly in the criminal procedure community for review and comment. We will review the comments received and further refine the outline if necessary.

Once we have our outline or "blueprint" in place, the Commission's staff will begin the major task of drafting statutory provisions or moving them into their prescribed places in the framework, making any necessary interlinking connections, eliminating redundancies, etc., and creating detailed notes or correlation tables for old and new law. Through this process the Commission should be able to develop a satisfactory tentative recommendation proposing a revised sentencing statute.

CONSULTANTS' REPORT

Our consultants propose creation of a separate "Sentencing Code" organized as follows:

Sentencing Code

- I. Procedure
- II. Terms of Imprisonment
- III. Alternate Sentencing Schemes and Sentencing Options
- IV. Enhancements
- V. Multiple Counts
- VI. Probation
- VII. Restitution, Fines and Fees

The contents of each division are elaborated in the attached outline.

It is our consultants' recommendation that any references in the Sentencing Code be made to existing code sections, i.e., "that the existing sections *not* be renumbered in the Sentencing Code, since such renumbering would cause unnecessary confusion." Exhibit p. 1 (emphasis in original). The staff has asked that the consultants provide an example of how this might be implemented. That example is attached. See Exhibit pp. 15-16. The staff also requested that our

consultants attend the Commission's July meeting to present their proposals to the Commission.

SECTION RENUMBERING

The remainder of this memorandum focuses on our consultants' recommendation that existing sections not be renumbered. Our recent experience shows that concerns about section renumbering are important. The Commission's study of a possible reorganization of environmental and natural resource statutes evoked significant opposition to section renumbering. Practitioners were concerned that the new numbering would impose substantial transitional costs: those who use the statutes would need to learn new numbers, revise their forms, replace reference works, and use cross-referencing tools to relate section numbers in prior decisional law to the new section numbers. Opposition to renumbering was a factor in the Commission's decision to abandon the Environment Code effort.

On the other hand, a decision to avoid renumbering would appear to substantially limit our capacity to improve the organization of the sentencing law. We cannot break up those sections that are of unwieldy length or contain substantively dissimilar provisions. Nor can we relocate sections (or parts of sections) to achieve a different organizational order.

SENTENCING CODE AS PRACTICE GUIDE

Our consultants propose creation of a Sentencing Code without disturbing existing section numbering. This might be achieved by creating the Code as a *supplement* to existing law; a sort of statutory practice guide paralleling existing sentencing provisions. This would provide a tool for practitioners to use in applying sentencing laws, while still permitting reference to the existing sections, which would not be disturbed.

The concept of creating a practice guide is not completely foreign to the Commission. When we were exploring the possibility of creating an Environment Code from existing statutes, the suggestion was made that we leave existing statutes in place and instead create a reference tool, such as a comprehensive index of environmental laws.

The Commission rejected such an approach for environmental laws for a number of reasons, including:

- It was not clear if this could or should be done by statute.
- It was not clear who would have responsibility to maintain this tool so that it would remain current and accurate.
- This approach would substantially duplicate, without necessarily improving on, existing commercially-available reference tools that already consolidate and explain the interrelationships between environmental laws. It was not clear what additional benefit would be derived if the state were to produce similar tools.

These concerns seem to apply with equal force in the context of sentencing laws.

Maintenance Problem

As mentioned above, one of the problems with creating a practice guide is responsibility for maintenance. Under such a scheme, any change to substantive sentencing law would also need to be reflected in the practice guide, or the two would drift apart. A recent example illustrates this problem: In 1998, the Legislature enacted a purported list of all exemptions to the Public Records Act, with cross-references to the specific code sections where the exemption is to be found. Gov't Code §§ 6275-6276.48. The list contains about 500 cross-references, and occupies about 20 pages in the annotated codes. The Legislature expressed its intent to keep the list current — “It is the intent of the Legislature that, after January 1, 1999, each addition or amendment to a statute that exempts any information contained in a public record from disclosure pursuant to subdivision (k) of Section 6254 shall be listed and described in this article.” Gov't Code § 6275. In a survey of 1999 legislation, the staff located four new exemptions from the Public Records Act (Health & Safety Code §§ 25356.2, 101848.2; Mil. & Vet. Code § 73.6; Pub. Cont. Code § 20101). *None of these exemptions were added to the statutory list.*

Probably the best way to avoid the problem described above is to assign responsibility for maintenance to a single entity. Obvious candidates include the Commission itself, the Attorney General's office, and the Legislative Counsel's office. **If we pursue the idea of a statutory practice guide, we should investigate which agency is best equipped to undertake the maintenance responsibility.**

Ongoing maintenance would impose costs on the responsible agency, which would need to monitor all proposed legislation for bills affecting sentencing and would need to draft and sponsor legislation to make any necessary changes to the practice guide. These costs would continue so long as the practice guide exists. **In weighing the merits of the practice guide approach, we should**

consider whether the ongoing cost of maintenance would outweigh the short-term cost of section renumbering.

Another inherent maintenance problem involves timing. Ideally, if a bill is introduced that would affect sentencing laws, a bill to update the practice guide accordingly would be introduced in the same year. If a bill updating the practice guide were not introduced in the same year as the bill changing sentencing laws, the practice guide would be inaccurate for the time it took for the updating legislation to be enacted and take effect. However, it may not always be possible to update the practice guide simultaneously with changes in the underlying sentencing law.

Inconsistency Problem

Even with careful maintenance, inconsistencies between the practice guide and the sentencing laws may develop. If an inconsistency does develop, which law controls? The statute adding the list of exemptions from the Public Records Act (described above) addresses this problem by expressly providing that the list is not controlling (Gov't Code § 6275):

The listing of a statute in this article does not itself create an exemption. Requesters of public records and public agencies are cautioned to review the applicable statute to determine the extent to which the statute, in light of the circumstances surrounding the request, exempts public records from disclosure.

The consultants' example includes a similar provision:

It is the intent of the Legislature that this Code serve merely as a nonsubstantive compilation of sentencing provisions. Nothing in this Code shall have any substantive effect on the application of any sentencing provision, including, but not limited to, all of the following: omission of any sentencing provision, inclusion of any obsolete sentencing provision, or inaccurate reference or summary of any sentence provision. The fact that there is a repetition of provisions has no significance.

One advantage of making the practice guide nonsubstantive is that we would have greater latitude to include interpretive material. This is the approach taken in the consultants' example, which refers to and paraphrases existing sentencing provisions, rather than reiterating them verbatim. If the practice guide were given legal effect, even a simple paraphrase might be viewed as a substantive

change to sentencing laws. This would be contrary to our legislative mandate to prepare a nonsubstantive reorganization.

The disadvantage of a nonsubstantive practice guide is that there will be less of an incentive to maintain it properly. Errors and omissions in the practice guide will have no legal effect and therefore will be perceived as less important. This will increase the likelihood of maintenance problems. If the practice guide is not maintained correctly it will come to be viewed as unreliable and its value as a reference tool will diminish.

If the practice guide is to include interpretive material, it should be made clear that it does not have legal effect. Conversely, if the Commission decides that the practice guide should have legal effect, we should probably avoid including any interpretive material in the practice guide.

OTHER ALTERNATIVES TO RENUMBERING

Preserve Key Numbers

Another approach would be to replace existing law with a new Sentencing Code, but attempt to keep key numbers in the Sentencing Code the same as they are in existing law. This would minimize the transitional cost of renumbering, because some commonly-used numbers would not have changed. By way of illustration, in the Commission's investigation of the possibility of a new Environment Code, we designed the code structure so that the California Environmental Quality Act (CEQA) (Gov't Code § 21000 *et seq.*) would keep the same numbers in the new code — Environment Code § 21000 *et seq.* This presumably reduced the burden on the many practitioners who work with CEQA regularly. However, it also substantially limited our ability to improve the organization of CEQA. The extent to which something analogous could be done in a Sentencing Code is not clear.

Dual Reference System

Another alternative would be to replace existing law with a new Sentencing Code but make clear that the new code sections can be cited by reference to their old section numbers. There are at least two ways that this might be implemented:

(1) Add a general rule providing that sections of the Sentencing Code can be cited by reference to the provisions that they replace. Thus, if Sentencing Code Section 100 replaces Penal Code Section 1170, a reference to former Penal Code

Section 1170 would be treated as a reference to Sentencing Code 100. This would ease the transition to the new numbering scheme. Note that this would be consistent with the principle expressed in Government Code Section 9604:

When the provisions of one statute are carried into another statute under circumstances in which they are required to be construed as restatements and continuations and not as new enactments, any reference made by any statute, charter or ordinance to such provisions shall, unless a contrary intent appears, be deemed a reference to the restatements and continuations.

(2) Assign dual section numbers to the Sentencing Code provisions. For example, a provision might be officially designated as both Penal Code Section 1170 and Sentencing Code Section 100. After a period of adjustment the old numbers could perhaps be deleted. This is a novel approach that might create a number of practical problems. For example, how would it work when a section of the Sentencing Code only contains a single subdivision of an existing provision? Would dual section numbers create problems for existing computer retrieval systems, such as Lexis and Westlaw? How would amendment and repeal of a dual-numbered section be handled in the legislative process? It seems likely that this approach would be confusing, at least initially.

Internal Reference

Section renumbering could also be avoided by creating a well-organized Sentencing Code that includes internal cross-references to existing law — every provision of the new Code would include a statutory reference to its source. This is similar to what the consultants have done in their example, where every subdivision begins “Pursuant to ___ Code Section ___” This is really just a variation of the practice guide approach, and would involve the same maintenance and inconsistency problems discussed above.

CONCLUSION

The simplest approach would be to repeal existing sentencing laws and continue the repealed provisions, without substantive change, in a thoroughly reorganized Sentencing Code. This would entirely avoid the problems inherent in maintaining a parallel statutory practice guide (maintenance costs and inconsistency resulting from failures in maintenance). This “clean slate” approach would also give the greatest flexibility for organizational improvement,

as sections could be broken up and moved around as necessary. Balanced against these advantages is the transitional cost resulting from changes in section numbering (and the potential political opposition that renumbering might provoke).

It would probably be helpful if the Commission where to make a tentative decision on which approach it prefers. That decision could then be stated and explained in the proposed outline, with a request for public comment on the decision.

Respectfully submitted,

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June 13, 2000

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Re: Criminal Sentencing Project

Dear Nat:

After discussion with Dave Wesley and Dave Ross, we recommend that there be a separate "Sentencing Code" divided into the following parts: I. PROCEDURE; II. CRIMES; III. ALTERNATE SENTENCING SCHEMES; IV. ENHANCEMENTS; V. MULTIPLE COUNTS; VI. PROBATION; VII. RESTITUTION, FINES AND FEES.

It is also our recommendation that any references in the Sentencing Code be made to existing code sections, i.e., that the existing sections not be renumbered in the Sentencing Code, since such renumbering would cause unnecessary confusion.

Enclosed is an outline of the proposed Sentencing Code. We look forward to your comments and working with you in the future.

Sincerely,


Mark E. Overland

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Enc.

I. PROCEDURE:

- A. *Alternate Felony/ Misdemeanor* Pen. C. § 17, 18
- B. *Court's Power to Strike Findings* Pen. C. § 1385
- C. *Recall of Sentence* Pen. C. § 1170(d)
- D. *Imposition of Terms*
 - 1. Notice Pen. C. § 1203(b)
 - 2. Burden of Proof Pen. C. § 1170(b)
 - 3. Selecting the Term Pen. C. §§ 1170(b), 1170.1, 1170.12
 - a. Evidence Pen. C. § 1204
 - 4. Statutory aggravating circumstances Pen. C. §§ 1170.7 ff.
 - 5. Limits on Total Term of Imprisonment
Pen. C. §§ 654, 1170.1(a), 1170.1(f), (g)
 - 6. Plea Bargain Prohibition Pen. C. § 1192.5
 - 7. Credit for Presentence Jail Time Pen. C. §§2900.5,2933.1, 4019
 - 8. Violent Sex Offenses.....Pen. C. § 667.6
 - 9. Indeterminate Terms.....Pen. C. §§ 669,1168,3046
- E. *Special Proceedings (Diversion/Deferred Entry of Judgment)*
. Pen.C §§ 1000-1001.90
- F. *Probation*
 - Misdemeanors Pen. C. §§ 1203(4)(d), 1203a, 1203b
 - Felonies Pen. C. § 1203
 - Child Abuse Pen. C. § 1203h
 - Victim Statement Pen. C. § 1203.01
 - Home Detention Pen. C. § 1203.016
 - Denial of Probation - Reasons Pen. C. § 1170(c)
 - Grant of Probation - Reasons Pen. C. § 1203(f)

II. TERMS OF IMPRISONMENT:

- A. *General Felony*.....Pen. C. §§ 18, 1170(b), 1168(b)
- B. *General Misdemeanor*.....Pen. C. §§ 17,18.
- C. *Parole* Pen. C. §§ 3000, 3000.1, 3001

[This part of the outline should contain a listing of all crimes and their corresponding punishments. There are several sources from which this list can be compiled, e.g., the CJER Felony Sentencing Handbook which contains a list of crimes from the Penal Code, Business and Professions Code, Civil Code, Corporations Code, Elections Code, Financial Code, Fish and Game Code, Food and Agriculture Code, Government Code, Harbor & Navigations Code, Health and Safety Code, Insurance Code, Labor Code, Military & Veterans Code, Public Contracts Code, Public Resources Code, Public Utilities Code, Revenue and Taxation Code, Unemployment Insurance Code, Vehicle Code, and Welfare and Institutions Code.

Also, "Crime Time," (Computerized Criminal Sentence Calculation) has an outline of Penal Code, Vehicle Code, and Welfare and Institution Code offenses and relates each to various enhancements. If you need copies of these, we can provide them to you.

We recommend, however, that the list of crimes in the Sentencing Code should include those punishable by life sentences and misdemeanors (not included in CJER).

It is our recommendation that this part of the Sentencing Code be organized according to the section numbers of the various codes, listed alphabetically and starting with the lowest section number.]

III. ALTERNATIVE SENTENCING SCHEMES AND SENTENCING OPTIONS

- A. *Diagnostic Study* Pen. C. § 1203.03
- B. *Youth Authority*
 - 1. Eligibility - Suitability for Commitment
W & I §§ 1731.5, 1732, 1732.5, 1732.6, 1732.7
 - 2. Diagnostic Study W & I § 707.2
 - 3. Recalling a Youth Authority Commitment W & I § 1737
 - 4. Return as Incurable W & I § 1737.1
 - 5. Detention Period
 - a.. Misdemeanors W & I § 1770
 - b. Felonies W & I § 1771
 - c. Extended Detention W & I § 1800-1803
 - d. Commitment after Period of Control Expires
W & I §§ 1780 ff.
 - e. Detention in State Prison W & I § 1753
 - f. Detention in Local Facility W & I § 1753.3
 - g. Detention in Youth Authority of Defendant Committed to State
Prison W & I § 1731.5
- C. *Indeterminate Sentence* Pen C § 1168
- D. *Three strikes and habitual offender statutes*

Pen C §667.51(d)	Penal Code §288 with 2 prior sex crimes
Pen C §667.61	"One Strike" Sex Offenses.
Pen C §667.7	Habitual Offender, GBI.
Pen C §667.71	Habitual Sexual Offender.
Pen C §667.75	Habitual Offender, drugs, minors.
Pen C §667(b)-(i)	3 strikes statute 3/7/94.
Pen C §1170.12(a)-(d)	3 strikes initiative 11/9/94.
- E. Deferred Entry of Judgement/Diversion.....Pen.C. § 1000-1001.90
- F. Pregnant and Parenting Womens Alternative Sentencing Program..Pen.C. § 1174

- G. California Rehabilitation Center..... W&I. C. § 3051
- H Restitution Center.....Pen.C.§ 6220

IV ENHANCEMENTS

A. *CONDUCT ENHANCEMENTS*

1) **ARMED ALLEGATIONS**

- 1. *Principal Armed With a Firearm.* Pen. C. § 12022(a)(1)
- 2. *Principal Armed with an Assault Weapon or Machine Gun*
..... Pen. C. § 12022(a)(2)
- 3. *Personally Armed with Firearm - Controlled Substance Offenses*
..... Pen. C. § §12022(c), (d)
- 4. *Principal Armed with a Firearm (Or a Deadly Weapon) - Sex Offenses*
..... Pen. C. § 12022.3(b)
- 5. *Miscellaneous Armed Enhancements*
 - (a) Pen C §12021.5(a). Carrying a loaded firearm on the person or in a vehicle while committing any street gang crime as described in Penal Code §186.22 (a) or (b).
 - (b) Pen C §12021.5(b). Carrying a loaded or unloaded firearm together with a detachable magazine or belt feeding device on the person or in a vehicle while committing any street gang crime as described in 186.22 (a) or (b).
 - (c) Pen C §12280(c). The commission of any crime (felony or misdemeanor) while engaging in unlawful assault weapon activity as defined in Penal Code §12280(a).
- 4. *Limitation* Pen. C. § 1170.1(f)

2) **USE ALLEGATIONS**

- 1. *Personal Use of a Dangerous or Deadly Weapon*
..... Pen C §12022(b)(1) & (2)
- 2. *Personal Use of a Firearm* Pen. C. § 12022.5(a)(1) & (2)
- 3. *Personal Use of an Assault Weapon or Machine Gun*
..... Pen. C. § 12022.5(b)(2)
- 4. *Personal Use of a Firearm in Controlled Substance Offenses*
..... Pen C §12022.5(c)
- 5. *Use of a Firearm (Or a Deadly Weapon) in Sex Offenses*
..... Pen C § 12022.3(a)
- 6. *Discharge of a Firearm at an Occupied Motor Vehicle Causing GBI or Death* Pen C § 12022.5(b)(1).
- 7. *Discharge of a Firearm From a Motor Vehicle* Pen C § 12022.55.
- 8. *Firearms & Injury Enhancements: 10-20-life Statute*

..... Pen C § 12022.53

3) INJURY ALLEGATIONS

1. *Personal Infliction of Great Bodily Injury* Pen C § 12022.7(a).
2. *Victim Comatose Due to Brain Injury or Paralyzed* Pen C § 12022.7(b).
3. *Victim 70 Years Old or Older* Pen C § 12022.7(c)
4. *Domestic Violence* Pen C § 12022.7(d).
5. *Personal Infliction of GBI in Sex Offense* Pen C § 12022.8.
6. *Miscellaneous Injury Enhancements*
 - (a) H & S Code §11379.7(b) - GBI suffered by a child under 16 during the commission of a violation (or attempt) of Health and Safety Code §§11379.6(a) or 11383 as those sections relate to methamphetamine or phencyclidine.
 - (b) H & S Code §11379.9(a) - Death or GBI suffered by anyone during the commission of a violation (or attempt) of Health and Safety Code §§11379.6(a) or 11383 as those sections relate to methamphetamine or phencyclidine.
 - (c) H & S Code §25189.5(e) - Causing GBI or a substantial probability of death while violating subdivisions (b), (c) or (d), pertaining to disposal of hazardous waste.
 - (d) H & S Code §25189.7(c) - Causing GBI or a substantial probability of death while violating subdivision (b), pertaining to burning of hazardous waste.
 - (e) Pen C §273.4(a) - To felony conviction of §273a(a), Child Abuse, when the act constituting the crime is "female genital mutilation," as defined.
 - (f) Pen C §347(a) - Poisoning with a substance which may cause death or does cause GBI.
 - (g) Pen C §368(b)(2) & (3) - Victim of Elder Abuse suffering GBI or death.
 - (h) Pen C §451.1(a)(2) & (3) - GBI suffered by a peace officer, firefighter or emergency personnel as a result of §451 arson or GBI proximately caused on more than one victim during §451 arson.
 - (i) Pen C §452.1(a)(2) & (3) - GBI suffered by a peace officer, firefighter or emergency personnel as a result of §452 arson or GBI proximately caused on more than one victim during §452 arson.
 - (j) Pen C §550(g) - Causing GBI as a result of staged automobile collisions.
 - (k) Pen C §593a(b) - Bodily Injury when placing steel into saw logs.
 - (l) Pen C §600 (c) & (d) - GBI on a horse, dog or person while violating PC 600(a) or (b) [Malicious harm to, or interference with, police horses or dogs].

- (m) Pen C §12022.53 - GBI suffered as a result of firearm discharge in listed crimes.
- (n) Pen C §12022.9(a) - GBI on a pregnant woman, terminating the pregnancy.
- (o) Pen C §12022.9(b) - Violation of PC 12034(c) [Discharging a firearm from a motor vehicle] or PC 246 [Discharging a firearm at a motor vehicle], victim suffering paralysis, as defined.
- (p) Pen C §12022.95 - Conviction of PC§273a [Child abuse] where the victim dies.
- (q) Veh C §23558 - Causing bodily injury or death to more than one victim in violating Vehicle Code §§23153, or Penal Code §191.5 or 192(c)(3).
- (r) Veh C §23566(c) - Conviction of section 23153 with 4 specified priors and proximate causation of GBI.

7. *Limitation* Pen. C. § 1170.1(g)

4) CONTROLLED SUBSTANCE ALLEGATIONS

- 1. *H & S Code §11370.4, Punishment by quantity.*
- 2. *Pen C §12022.75. Administering a controlled substance to accomplish a crime.*
- 3. *H & S Code §§11353.1, 11380.1. Controlled substances where juveniles congregate or 4 year age difference.*
- 4. *H & S Code §11353.6(b),(c). The Juvenile Drug Trafficking and Schoolyard Act of 1988. Violations near schools.*
- 5. *H & S Code §11356.5. Inducing another to violate Health and Safety Code §§11351, 11352, 11379.5 or 11379.6 with regard to PCP or its analogs.*
- 6. *H & S Code §11380.5. Selling or possessing for sale heroin, cocaine, cocaine base, methamphetamine or PCP "upon the grounds of a public park, public library or ocean-front beach."*
- 7. *H & S Code §11379.7(a) and (b). A violation (or attempt) of §§11379.6(a) or 11383 as they relate to methamphetamine or phencyclidine when the crime occurs in a structure where a child under 16 is present.*

5) OFFENSES COMMITTED WHILE OUT ON BAIL/O.R. . . . Pen C § 12022.1

6) MISCELLANEOUS ENHANCEMENTS

- 1. *H & S Code §1522.01(c), Unlawful Use of*

- Information to Commit a Felony*
2. *Harbors and Navigation Code §668(k), Vessel "Hit & Run"*
 3. *Pen C § 186.10(c), Money Laundering*
 4. *Pen C § 186.11, Aggravated White Collar Crime*
 5. *Pen C § 186.22(b)(1), Gang Activity*
 6. *Pen C § 186.22(b)(5), Witness Intimidation*
 7. *Pen C § 186.26(d), Use of Minor, Gangs*
 8. *Pen C § 186.33(B)(1), Failure to Register, Gangs*
 9. *Pen C §190.26, Second Degree Murder
Of a Peace Officer*
 10. *Pen C §289.5(d), Sex Crime by Fugitive*
 11. *Pen C §290(q), Unlawful Use of
Information to Commit a Felony*
 12. *Pen C §290.4(b)(1), Unlawful Use of
Information to Commit a Felony*
 13. *Pen C §451.1(a)(4)&(5), Arson. Multiple
Structures or Use of Accelerant*
 14. *Pen C §452.1(a)(4), Arson. Multiple Structures*
 15. *Pen C § 456(b), Arson*
 16. *Pen C §664(a) Attempted Murder*
 17. *Pen C §667.16 Fraud/natural Disaster*
 18. *Pen C §667.17 Impersonating a Peace Officer*
 19. *Pen C § 667.8(a), Kidnapping to Commit a Sex Crime*
 20. *Pen C § 12022.2(a), Metal Piercing Ammunition*
 21. *Pen C § 12022.2(b), Body Armor*
 22. *Pen C § 12022.4, Furnishing a Firearm to Another*
 23. *Pen C § 12022.6, Excess Loss*
 24. *Pen C § 12022.85, Aids Transfer*
 25. *Pen C §12072(g)(4), Firearm Transfer*
 26. *Pen C § 12280(a)(2), Assault Weapon*
 27. *Veh C §20001(c), Fleeing Crime Scene*
 28. *Veh C §23582(a), DUI/speeding/reckless*
 29. *Welf & Inst C §10980, Welfare
Fraud by Electronic Means*

7) HYBRID ENHANCEMENTS: CONDUCT AND VICTIM STATUS

1. *Pen C § 667.15, Obscene Matter,*

Minors, Sex Crimes

2. *Pen C § 667.8(b), Kidnaping, Victim under 14 for Sex Crimes*
3. *Pen C § 667.85, Kidnaping, Child Under 14, Custody Deprivation*
4. *Veh C § 23572, DUI with a Passenger under 14*

B. ENHANCEMENTS OTHER THAN CONDUCT ENHANCEMENTS

1) PRIOR CONVICTIONS

Pen C §273d(b)	Corporal Punishment on child with prior.
Pen C §451.1(a)(1)	Penal Code §451 Arson with arson prior.
Pen C §452.1(a)(1)	Penal Code §452 Arson with arson prior.
Pen C §548(b)	Defrauding insurer with prior of same.
Pen C §550(e)	Fraudulent insurance claim with prior.
Pen C §550(f)	Fraudulent insurance claim with 2 priors.
Pen C §667(a)(1)	Serious Felony with Serious Felony prior.
Pen C §667.5(a)	Violent Felony with Violent Felony prior.
Pen C §667.5(b)	Prison sentence with Prior prison sentence.
Pen C §667.51(a)	Penal Code § 288 with prior sex crimes.
Pen C §667.6(a) & (b)	Sex crimes with sex crime priors.
Pen C §670(c)	Fraud during a state of emergency with prior.
H & S Code § 11370.2	Controlled Substance offenses with priors.
Ins Code §1871.4(c)	Insurance fraud with a prior.
Ins Code §11760(b)	Employer workers' comp. fraud with prior.
Ins Code §11880(b).	Workers' comp. fraud with a prior.

2) HYBRID: CONDUCT AND PRIORS

..... Veh Code § 23566(c), Felony DUI, GBI, 4 Priors

3) VICTIM STATUS

Pen C §422.75(a),(b) & (c)	Hate crimes.
Pen C §667.9(a)	Crime against a vulnerable victim.
Pen C §674(a)	Sex crime by a primary care provider.
Pen C §674(b)	Sex crime by a primary care provider, acting in concert.

4) HYBRID: VICTIM STATUS AND PRIORS

H & S Code § 11353.4	Controlled Substance offenses, minors, priors.
Pen C §422.75(e)	Hate crime with hate crime prior.

Pen C §667.9(b)	Crime against a vulnerable victim with prior.
Pen C §667.10(a)	PC 289 against vulnerable victim with prior.

5) **HABITUAL OFFENDER STATUTES**

Pen C §186.22(b)(4)	Penal Code §186.22(b) [Gangs] during commission of a life crime.
Pen C §190.05(a)	2 ND degree murder with prior murder prison term.
Pen C §191.5(d)	Gross vehicular manslaughter with priors.
Pen C §273.55	Penal Code §273.5 with priors.
Pen C §451.5	Aggravated Arson (has a priors element).
Pen C §646.9(c)	Stalking with a stalking prior.
Pen C §666.5	Vehicle theft with vehicle theft prior.
Pen C §667.51(d)	Penal Code §288 with 2 prior sex crimes.
Pen C §667.61	"One Strike" Sex Offenses.
Pen C §667.7	Habitual Offender, GBI.
Pen C §667.71	Habitual Sexual Offender.
Pen C §667.75	Habitual Offender, drugs, minors.
Pen C §667(b)-(i)	3 strikes statute 3/7/94.
Pen C §1170.12(a)-(d)	3 strikes initiative 11/9/94.
Pen C §11418(a)	Weapons of Mass Destruction with priors.

C. *ALLEGATION AND FINDING* Pen C §§ 1170.1(e)

D. *COURT'S POWER TO STRIKE* Pen C §§1385, 1170.1(d)

V. MULTIPLE COUNTS

1) CONSECUTIVE SENTENCES Pen. C. § 669

1. Mandatory Consecutive

A. Sex Offenses Pen. C. § 667.6(c),(d), 1170.1(h)

B. Escape Pen. C. § 4532

C. Arson Pen. C. §§ 451(e), 452(e)

D. Burglary of custodial institution Pen. C. § 462.5(d)

- 2. Limitation on Consecutive Sentences Pen. C. § 1170.1(a)
- 3. Multiple Punishment Prohibited Pen. C. § 654

VI. PROBATION

- 1) *Eligible Only if Unusual Case -*
 - 1. Sex Offenses Pen C § 1203.065 (b); 1203.066(c)
 - 2. Drug Offenses Pen C §§ 1203(e)8); 1203.07(a)(1),(2),(4),(5), (6), (7), (10); 1203.073 (b)(1),(2), (3), (4), (5), (6), (7); 1203.074.
 - 3. Drug Offenses with Enumerated Prior H & S §§ 11370, 113381; Pen C § 1203.07(a)(3), (11).
 - 4. Burglary Pen C §§ 462(a); 462.5.
 - 5. Arson Pen C §§ 454; 1203.(e)(9)
 - 6. Escape Pen C § 4532(c)
 - 7. Offense by Public Official Pen C § 1203(e)(7)
 - 8. Weapon Possession Pen C § 1203(e)(11)
 - 9. Solicitation of Minor Pen C § 1203.046
 - 10. Failure to Register as Sex Offender Pen C § 290(g)(4)
 - 11. Unlawful Transfer of Firearm or Deadly Weapon Pen C § 1203(e)(12), (13)
 - 12. Armed with Deadly Weapon other than firearm Pen C § 1203(e)(1)
 - 13. Use of Deadly Weapon Pen C § 1203(e)(2)
 - 14. Personal Infliction of GBI Pen C § 1203(e)(3), (10)
 - 15. Excessive Taking Pen C §§ 115(c)(2); 1203.044(d); 1203.045; 1203.048; 1203.049(a)
 - 16. Elderly Victim Pen C §1203.09(f)
 - 17. Prior Convictions Pen C §§ 115(c)(1); 1203(e)(4), (5), (6); 1203.073(b)(8); Veh C § 10851(d)

- 2) *Mandatory Jail as Condition of Probation*
 - 1. Gang Pen C § 186.22(c)
 - 2. Kidnaping Pen C §§ 208(c); 209(c); 209.5(c)

3. Looting Pen C § 463
4. Possession/discharge of firearm in school zone Pen C § 626.9(g)
5. Excessive Taking Pen C § 1203.044(e)
6. Public Transit Offense Pen C § 1203.055(a)
7. Drug Offenses Pen C § 1203.076
8. Firearm Offenses Pen C §§ 1203.095; 12021.1; 12025(c); 12031(a)(5)

3) *Ineligible for Probation*

1. Sex Offenses Pen C §§ 667.61(h); 1203.065(a); 1203.066(a)(1), (6)
2. Drug Offenses Pen C § 1203.07
3. Destructive Devices Pen C §12311
4. Personal Use of Firearm in Enumerated Offenses Pen C. § 1203.06(a)(1)
5. Use or Discharge of Firearm Pen C § 12022.53(g)
6. Enumerated Controlled Substances Offenses
Pen. C. § 1203.07(a)(1),(2),(4),(5), (6), (7), (10)
7. Personal Infliction of GBI Pen C § 1203.075
8. Minor Victim Pen C §§ 1203.066(a)(2)-(4), (7)-(9); H & S § 11370(b)
9. Elderly or Disabled Victim Pen C §1203.09
10. Defendant on Parole Pen C § 1203.085
11. Defendant on Probation Pen C § 1203(k)
12. Prior Convictions Pen C §§ 550(d); 667(c); 1170.12(a); 1203.044(b)
1203.055(c); 1203.06(a)(2); 1203.066(a)(5); 1203.07(a)(3); 1203.08; H & S §
11370(a).

VII. RESTITUTION, FINES AND FEES

- A. *Restitution to the Victim*.....Pen C. §§ 1202.4, 1214
 1. Minor victim of sexual assault medical restitution.....Pen. C. § 1203.1g
 2. Vandalism, Graffiti Restitution.....Pen.C. § 594(c)
 3. Police Dog Injury Restitution.....Pen.C. § 600(e)
- B. *Fines*
 1. General Fines.....Pen C. § 672
 2. Restitution Fund Fine.....Pen.C. § 1202.4
 3. Parole Revocation Fine.....Pen.C. § 1202.45
 4. Sex Offense Fine.....Pen C. § 290.3(a)
 5. Child Abuse Prevention Fine.....Pen. C. § 294
 6. Drug Cases.....H&S C. § 11350 (d)
 7. Vehicle Code Violations.....See Specific Code Section
 8. Specific Felony Fines over \$10,000.....See attached examples
 9. Domestic Violence Fund.....Pen.C. §1203.097

C. *Fees*

1. Aids Education Fee.....Pen.C. § 647.1
2. Diversion Enrollment Fee.....Pen.C. §1001.15
3. Crime Prevention Program Fee.....Pen.C. § 1202.5
4. Drug Case Lab Fee.....H&S. C. § 11372.5

CRIMINAL DIVISION
The Superior Court
LOS ANGELES, CALIFORNIA 90012

CRIMINAL COURTS BUILDING
210 WEST TEMPLE STREET
(213) 974-1234

CHAMBERS OF
DAVID S. WESLEY
JUDGE

Law Revision Commission
RECEIVED

JUL - 3 2000

June 28, 2000

File: _____

Nathaniel Sterling
California Law Revision Commission
400 Middlefield Rd., Room D-1
Palo Alto CA 94303-4739

Re: Criminal Sentencing Project

Dear Nat,

Enclosed is a one page example of sections that permit fines in excess of \$10,000. This sample is from Judge Ryan's sentencing book. I meant to include it in the package -- sorry.

Very truly yours,



David S. Wesley
Superior Court Judge

DW:jm

Enclosure

Or, effective 1-1-97, and if the jurisdiction has a graffiti-abatement program, the [defendant/parents/guardians] are ordered to keep the [damaged/_____ (other)] property graffiti free for up to one year.

§11.27 Fines

[] Determine an appropriate penal fine:

Defendant is to pay a fine of \$_____, plus penalty assessment. [Read the punishment section to determine the maximum fine. See Pen C §672.]

These are a sampling of sections which permit fines over \$10,000:

Offense	Maximum Fine	Authority	Eff. Date
<i>Penal Code:</i>			
115.5(a)	\$75,000	115.5(a)	1-1-85
186.10 (1st offense)	\$250,000 or 2 x value	186.10(a)	1-1-87
186.10 (2nd offense)	\$500,000 or 5 x value	186.10(a)	1-1-86
186.11	\$500,000	186.11(c)	1-1-96
311.2	\$100,000	311.2(b)	1-1-86
350	\$250,000	350(a)(2)	1-1-94
350 (corporate defendant)	\$500,000	350(a)(2)	1-1-94
387 (corporate defendant)	\$1,000,000	387(a)	1-1-91
548	\$50,000	548(b)	1-1-90 ¹⁰
550	\$50,000 or 2 x loss	550(c)	1-1-93
593d(b)	\$250,000	593d(d)(2)(A)	1-1-97
594	\$50,000	594(b)(1)	1-1-90
594.4(b)(1)	\$50,000	594.4(b)(1)	1-1-94
594.4(b)(2)	\$10,000	594.4(b)(2)	1-1-94
594.4(b)(3)	\$5,000	594.4(b)(3)	1-1-94
594.4(b)(4)	\$1,000	594.4(b)(4)	1-1-94
653h(a) (1st offense)	\$25,000	653h(c)	1-1-89
653h(a), +1,000	\$250,000	653h(b)	1-1-90
653h(a) with a prior	\$100,000	653h(c)	1-1-90
653w (1st offense)	\$25,000	653w(b)(2)	1-1-89
653w with a prior	\$100,000	653w(c)(3)	1-1-89
653w (1,000 audio)	\$250,000	653w(b)(1)	1-1-89
653w (100 video)	\$250,000	653w(b)(1)	1-1-91
<i>Health and Safety Code:</i>			
11350-11353	\$20,000	11372(a)	1-1-77
11351 or 11352 +14.25yr	\$50,000	11352.5	1-1-77
11355	\$20,000	11372(a)	1-1-77
11359-11361	\$20,000	11372(a)	1-1-77
11366.7	\$25,000	11366.7(b)	1-1-95
11370.4(a)(1)	\$1,000,000	11372(b)	1-1-88
11370.4(a)(2)	\$4,000,000	11372(c)	1-1-88
11370.4(a)(3)	\$8,000,000	11372(d)	1-1-88
11370.9	\$250,000 (2 x value)	11370.9(e)	1-1-93
11379.6	\$50,000	11379.6	1-1-90
<i>Insurance Code:</i>			
1871.1(a)	\$50,000	1871.1(b)	1-1-90

CALIFORNIA SENTENCING CODE

INTRODUCTION

It is the intent of the Legislature that this Code serve merely as a nonsubstantive compilation of sentencing provisions. Nothing in this Code shall have any substantive effect on the application of any sentencing provision, including, but not limited to, all of the following: omission of any sentencing provision, inclusion of any obsolete sentencing provision, or inaccurate reference or summary of any sentence provision. The fact that there is a repetition of provisions has no significance.

It is the intent of the Legislature to amend this section as necessary to reflect current sentencing provisions, including the addition of new provisions and the deletion of obsolete provisions.

SAMPLE STATUTE:

ARTICLE _____ - ARMED ALLEGATIONS

Section _____ - Principal Armed with Firearm

a) Pursuant to Penal Code section 12022(a)(1), a defendant who is convicted of a felony wherein a principal is armed with a firearm shall be subject to a consecutive sentence of 1 year.

b) Pursuant to Penal Code section 12022(a)(2), a defendant convicted of a felony wherein a principal is armed with an assault weapon or machine gun shall be subject to a consecutive sentence of 3 years.

c) Pursuant to Penal Code section 12022(d), a defendant convicted of the controlled substances offenses enumerated therein wherein a principal is armed with a firearm, shall be subject to a consecutive term of 1, 2, or 3 years.

Section _____ - Personally Armed with Firearm

a) Pursuant to Penal Code section 12022.3(b), a defendant convicted of the sex offenses enumerated therein shall be subject to a consecutive term of 1, 2, or 5 years if he or she is personally armed with a firearm at the time of the commission of the offense. (Note: Our outline refers to this section as "Principal armed", but a reading of the statute and case law seems to indicate that the defendant must be personally armed in order for this section to be applicable. See, People v. Crooks (1997) 55 Cal. App.4th 797, 800.)

b) Pursuant to Penal Code section 12022(c), a defendant convicted of the controlled substances offenses enumerated therein shall be subject to a consecutive term of 3, 4, or 5 years if he or she is personally armed with a firearm at the time of the commission of the offense.

Section _____ - Limitation on Armed Enhancements

Pursuant to Penal Code Sections 1170.1(e) and (f), only armed enhancements which have been alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true may be imposed. The court may only impose the greatest armed enhancement when two or more such enhancements may be imposed for the commission of a single offense.