Since California’s Determinate Sentencing Law was enacted in 1976, state lawmakers have introduced state sentencing commission–enabling legislation on at least nine separate occasions. Proposals to create a sentencing commission in California have met with strong opposition, often based on the mistaken view that sentencing commissions are wolves in sheep’s clothing—nefarious attempts on the part of prison abolitionists to release dangerous criminals from prison. Underneath this curious paranoia, however, lies a healthy skepticism concerning the nature and purpose of a California sentencing commission—a skepticism born of simple lack of knowledge about what sentencing commissions are and do. In this article, I offer some suggestions for how Californians might think about designing a sentencing commission. Perhaps these suggestions will become useful if California lawmakers ever get serious about reforming the state’s dysfunctional sentencing system.

Among the available options for structuring a California state sentencing commission, two emerge as realistic contenders. One option is to create a commission whose mandate focuses solely on data collection, maintenance, and analysis. The other is to create a commission whose mandate includes data collection, maintenance, and analysis, as well as the development of sentencing guidelines grounded in historical sentencing practices. Throughout this article, I will refer to the former as a basic commission and the latter as an enhanced commission.

I believe that Californians would best be served by the creation of an enhanced commission because the state legislature is unlikely (and may, in fact, be unable at this point) to reform its sentencing apparatus. Nonetheless, creating an enhanced commission presents legal and political challenges that may be insurmountable. If a basic commission is all that Californians can realistically hope for, lawmakers should waste no time creating one.

In Part I of this article, I describe the essential components of a sentencing commission, whether basic or enhanced. Part II delineates the additional characteristics of an enhanced commission, including sentencing guidelines development, adoption, amendment, and application, as well as the question of whether the commission should conduct prison population projections. In Part III, I conclude by reviewing the political climate in Sacramento and making some assessments about the feasibility of creating a state sentencing commission at all.

I. Essentials of a Basic or Enhanced Sentencing Commission

Legislation establishing a sentencing commission, even a very basic one, should contain certain key provisions that serve in part to distinguish the commission from other state-level criminal justice agencies, such as parole boards and justice departments. At a minimum, the enabling legislation should contain provisions establishing the commission, describing the purposes of sentencing, setting forth the rules for selecting commission members, explaining the commission’s duties, and providing for commission staff.

A. Establishment

The Model Penal Code (MPC) prescribes a sentencing commission that exists as a permanent and independent state agency. The preference for a permanent agency reflects the understanding that temporary sentencing commissions have been significantly less effective in implementing long-term sentencing reforms. The development of rational sentencing policy is a long-term process, and those responsible for it must continually be open to change—an evolution that is not possible with a temporary commission.

The notion of independence refers not to location in government, but rather to the principles of non-partisanship and representativeness. In other words, the commission should neither be nor appear to be in alliance with any political party or candidate, and it should be broadly representative of the criminal justice
system and the public. Sentencing commissions can, and do, reside in each branch of government.1 If California creates a sentencing commission, assignment to the judiciary (with close ties to the legislative and executive branches) would be ideal because it would ensure judicial involvement in the development of criminal sentencing policy and allow commission members to set sentencing polices based more on reasoned analysis than on political experience.

B. Purposes of Sentencing
Although it does not contain any specific information about what a sentencing commission is supposed to do, the provision setting forth the purposes of sentencing is primary among the components of commission-enabling legislation, for one simple reason: Anyone who plays any role in imposing criminal punishments in California should be guided first and foremost by a shared set of purposes and principles.

The notion of legislatively enacting a set of purposes to guide the imposition of criminal sentences is relatively new. Until the late nineteenth century, lawmakers saw little reason to mention the purpose of punishment in the criminal codes they enacted; perhaps they thought the purpose was obvious. Indeed, it probably was—prior to the twentieth century, criminal law was dominated by a retributive view of sentencing, in which it was simply assumed that wrongdoers deserved to be punished for their malfeasance.6 For the most part, U.S. criminal codes did not address the purposes of punishment until the late nineteenth and early twentieth centuries, when many U.S. jurisdictions adopted indeterminate sentencing structures for the specific purposes of incapacitating offenders until they had been rehabilitated. California’s penal code said nothing about sentencing purposes until 1976, when the state legislature declared that the purpose of incarceration is punishment.7

The proper purposes for a sentencing scheme remain open for debate. Most scholars and experts tend to agree that a sentencing scheme ought, at minimum, to describe the extent to which its provisions are intended to serve the traditional purposes of retributivism (often incorporating the twin principles of proportionality and desert) and utilitarianism (often divided into the distinct but related categories of deterrence, rehabilitation, and incapacitation). Many scholars and experts have begun to offer some more nuanced purposes and considerations such as “limiting retributivism,” reparations for victims,9 and the reintegration of offenders after release.10

The MPC divides its purposes of punishment provision into two subsections: one setting forth the purposes of the provisions on sentencing in decisions affecting the sentencing of individual offenders, and one setting forth the purposes of the provisions on sentencing in decisions affecting the administration of the entire sentencing system.11 The first section reflects an investment in utilitarian crime-reductive goals, including rehabilitation and incapacitation, but also emphasizes the importance of proportionality limits.12 In addition, it captures the principle of parsimony—the idea that sentences should be no more severe than necessary to achieve the stated purposes—which is widely accepted as a core sentencing principle among experts. The second section captures the importance of a systemwide approach to planning, coordination, and oversight.

California has never seriously engaged in a thorough examination of how to approach the problem of crime.13 The 1976 California determinate sentencing law’s declaration that the purpose of incarceration is punishment does not really qualify as a statutory purposes of sentencing provision. Statutory provisions setting forth a jurisdiction’s preferred purposes of sentencing typically make some effort to examine the purposes different punishments are intended to serve and to explain how, precisely, a particular sentencing practice serves the purpose for which it is intended.14 Even if “the purpose of incarceration is punishment” were accepted as a guiding principle, it is not obvious what sentencing policies or practices would be consistent with it. California’s commission-enabling legislation should contain a purposes of sentencing provision to remedy this problem. The MPC represents one of the most promising attempts in recent history to set forth a thorough and principled explanation of the purposes of sentencing, and so deserves serious consideration in California.

C. Commission Membership
State sentencing commissions are all over the map in terms of the number and role of their commissioners. Some have relatively few members (Minnesota’s has eleven), whereas others are quite large (North Carolina’s has twenty-nine). Most comprise some combination of judges, legislators, executive officials, legal practitioners, local criminal justice officials, legal scholars, and social science researchers. Often one or two seats are designated for members of the public, who may be crime victims, formerly incarcerated people, or others with an interest and expertise in the area. Finally, it is also important that the commission contain several appellate and trial judges because sentencing is, at its core, a judicial function.15

A commission’s effectiveness depends greatly on the strength of its membership. Members should be willing to lead and to exert energy and creativity, and should be widely respected in their fields. One of the critical factors related to membership is individuals’ ability to articulate views or concerns related to their respective backgrounds (prosecutor, corrections, or defense counsel) while being able to positively contribute to the initiatives that the commission puts forth and supports. This type of involvement is often a balancing act for commission members because the criminal justice community as a whole will not always embrace specific actions or recommendations that the commission brings forth.
Commission membership and appointment authority have emerged as the most contentious elements of the sentencing commission debate in California, aside from the more foundational question of whether the commission will develop binding sentencing guidelines. A 2007 bill to create a sentencing commission almost died because of factionalism over membership and appointing authority, with reformers and law enforcement continually objecting that the other side was more heavily represented. Legislators finally reached a compromise regarding membership and appointing authority, but the bill ultimately failed because it could not garner enough support among Assembly Democrats.16

A 2009 version of the bill failed as well, in large part because reformers objected on the grounds that members of the law enforcement community would have been dominant among the commission membership; commission actions were to be by majority vote, but required the concurrence of at least two members of the law enforcement community (giving members of law enforcement effective veto power over any commission action); and the Governor would have been given the authority to appoint nine of the commission’s fourteen members on the basis of recommendations made by such professional associations as the California District Attorney Association and the California Police Chiefs Association.17

If California is ever to have a successful sentencing commission, its members must be broadly representative of the criminal justice community, and the appointing authority should be fairly evenly distributed. It is fine for legislators to use this area as the main forum for making political compromises, but those compromises should not overwhelm the purpose and legitimacy of the commission.

D. Commission Duties

The California sentencing commission, whether basic or enhanced, should be mandated to accomplish a set of clearly defined duties.18 Primary among these duties is to develop a computerized information system to track criminal cases using individual case-level sentencing data obtained from sentencing courts. This critical function of sentencing commissions is often misunderstood. Opponents of a sentencing commission in California often argue that a commission is unnecessary because there are already state agencies accomplishing this purpose. This view reflects a misunderstanding of the types of information a sentencing commission is designed to collect. Existing agencies collect aggregate, systemwide information. No state agency, however, collects statewide individual case-level data on specific sentencing outcomes, and no state agency has the ability to track the effectiveness of sentences imposed in California.

Data collected by the sentencing commission can be used to identify sentencing trends for individual offenses or groups of offenses. In addition, analysis of sentencing data can help identify potential problems or unintended consequences of existing laws or policies before a crisis arises. Finally, the California commission could use this data to monitor the effectiveness of sentencing in meeting the statutorily prescribed purposes of sentencing. California does not currently engage in this kind of reflective analysis.

Second, the commission should be mandated to educate the public about the sentencing system and its laws, practices, and effectiveness. One key feature of sentencing commissions is that they inject transparency and accountability (values completely lacking in California’s current structure) into the sentencing system. A sentencing commission can be invaluable in communicating with the public about why certain sentencing policies are adopted and what the consequences are for the system as a whole.

Third, the commission should be required to conduct a recurring omnibus review of the sentencing system (the MPC recommends that this function be accomplished every ten years, but California could choose a shorter or longer time frame).19 Such a review is not a core function of sentencing commissions, but it can be extremely helpful to a state striving to continually improve its sentencing system. Part of the difficulty in constructing a rational sentencing system is that information about previous systems is somewhat difficult to come by. A sentencing commission mandated to compile relevant information on an ongoing basis, as well as make recommendations based on updated data, could be extremely helpful to the California criminal justice system.

E. Commission Staff

Most sentencing commissions have a full-time staff dedicated to performing the commission’s functions. Sentencing commissions participate in statewide policymaking that will have profound effects on the lives of individual crime victims and offenders, their families, and the broader community. Their work also has a significant impact on state and local budgets. Given the importance of a sentencing commission’s work on the functioning of a state’s criminal justice system, it is important that the commission have a dedicated and full-time professional staff.20

The California sentencing commission should have, at a minimum, one executive director who is either a lawyer or a legal scholar with experience and expertise in the criminal justice system, or a social science researcher with a background focusing on criminal justice research and analysis. Ideally, the executive director would have some familiarity with the operation of sentencing guidelines and the administration of sentencing commissions. The executive director would hire his or her own staff, including a research director, a director of education and training, and all other staff necessary to perform the commission’s functions.21
II. Characteristics of an Enhanced Sentencing Commission

If California lawmakrs simply want to create a commission to collect and analyze sentencing data, they need read no further. In working with the state legislature, however, I have encountered several legislators who are committed to long-term sentencing reform and agree that a sentencing commission is a necessary first step in that direction. Those legislators might benefit from the following description of a possible enhanced commission for the state of California.

A. Development of Sentencing Guidelines

The MPC recommends that in addition to all the aforementioned basic responsibilities, a sentencing commission be mandated to develop sentencing guidelines and collaborate over time with the trial and appellate courts in the development of a common law of sentencing within the legislative framework. In accomplishing that mission, the commission would be required to collect massive amounts of data from county courts, probation departments, and prison and parole officials. Three years is a reasonable amount of time in which to make significant progress toward this objective; five years should be enough to develop a complete set of initial sentencing guidelines. The enhanced commission should also be authorized to facilitate the implementation of the guidelines throughout the sentencing system, monitor their implementation and effectiveness, and publish annual reports to the legislature.

A primary responsibility of the commission would be to develop a system of presumptive sentencing guidelines. In a presumptive guidelines system such as that provided for in the MPC, judges are presumptively required to impose sentences within ranges set forth in the guidelines, but maintain the discretion to impose sentences above or below the range when the circumstances warrant it. Under such a system, California judges would have considerably more discretion in sentencing, but they would still be constrained in the imposition of sentences by the guidelines, which will have been promulgated by the commission and formally adopted by the legislature.

The commission’s authority should be limited such that no recommendation or guideline promulgated by the commission can have more than presumptive force. No sentence recommended by the guidelines should ever exceed the statutory maximum penalty for the offense or offenses of conviction. This mandate is standard across all jurisdictions, and helps shield the guidelines system from a challenge under the U.S. Supreme Court’s decision in *Blakely v. Washington*.

The commission should be required to consider the correctional-population forecasting model in developing sentencing guidelines. This requirement would not prohibit the commission from formulating guidelines that would require new or additional correctional resources. It simply means that the commission must be mindful of existing resources in promulgating guidelines and must work with the legislature to ensure that the resources exist to implement any amended guidelines the commission may adopt. Again, this approach would be a tremendous benefit in California, which is facing severely overcrowded prisons and overextended budgets.

B. Adoption and Amendment of Sentencing Guidelines

California has three viable options concerning the adoption of sentencing guidelines. As discussed previously, one option is to create a basic sentencing commission with no guidelines mandate at all. This approach is certainly the simplest, but it is opposed by those who believe a basic commission would ultimately end up being ineffective at reforming California’s sentencing structure.

A second option is for the legislature to delegate to the commission authority to devise sentencing guidelines for each and every individual provision of the California Penal Code that in some way involves the imposition of criminal sentences. This option is probably the cleanest, although it requires the legislature to enact enabling legislation delegating thousands of code provisions. This option is opposed by those who still have confidence in California’s current approach of asking uninformed legislators to vote on sentencing bills.

A third option is for California to enact enabling legislation creating a sentencing commission and requiring it to propose to the legislature one or more sets of sentencing guidelines within the first three to five years of its existence. The enabling legislation could require that any set of sentencing guidelines presented to the legislature be promulgated in accordance with a statutory mandate prescribing a specific guideline framework. If one set of guidelines is adopted by a majority vote of the legislature, that set of guidelines would take effect and other sets of guidelines presented by the commission would be disregarded. If the legislature did not vote to adopt any set of guidelines, the commission could present a different set of guidelines during any subsequent legislative session. Unless and until the legislature adopted a set of guidelines, the commission could be required to perform the other functions set forth in its mandate. This compromise should be acceptable to most sentencing actors.

California must also decide on a manner of guideline amendment. One option is to authorize the commission to amend the guidelines in its discretion (this approach is the cleanest in terms of workability, but is likely to be disfavored by those who have opposed sentencing commission proposals in the past). Another is to require the commission to propose amendments to the legislature and mandate that amendments take effect only if approved by a majority of the legislature (although this approach would hamstring the commission in its efforts to design an empirically grounded sentencing system aligned with the aforementioned purposes of sentencing). Alternatively, a compromise could be reached whereby amendments would be submitted to the
legislature to take effect unless a majority of the legislature rejected them. This alternative is probably the safest political compromise among the options.

C. Application of Sentencing Guidelines

Judges in California have very little sentencing discretion under the current sentencing system. They frequently have the discretion to determine whether an offender will be sentenced to prison or probation (although even this arena of discretion has diminished over time). Once a judge imposes a prison sentence, however, sentence length is determined almost entirely by legislatively enacted sentencing laws.

With the commission in place, sentencing courts would be required to impose sentences by exercising their authority consistent with the purposes of sentencing.\textsuperscript{30} They would be presumptively required to sentence offenders in accordance with the guidelines, with authority to depart under specifically delineated circumstances,\textsuperscript{31} and would be required to provide written explanations for any decisions to depart from the guidelines.\textsuperscript{32}

In imposing sentences, judges would be permitted to rely on facts necessary to the conviction, facts admitted by the defendant, and facts in the pre-sentence reports that are not contested by the parties.\textsuperscript{33} Except when prohibited by \textit{Blakely}, they would also be able to make additional findings of fact during sentencing proceedings, provided those facts are established by a preponderance of the evidence.\textsuperscript{34}

Facts subject to a defendant’s right under the federal or state constitution to trial by jury (those facts that subject the defendant to a penalty in excess of the statutory maximum) should be tried to a jury unless the defendant waives that right.\textsuperscript{35} Such facts must be proven beyond a reasonable doubt unless agreed to by the defendant.\textsuperscript{36}

Once a set of sentencing guidelines has been adopted, the commission would provide any necessary training in the application of sentencing guidelines to judges, prosecutors, and defense counsel.

D. The Question of Population Projections

In addition to promulgating guidelines, an enhanced commission should also be given a mandate to develop and implement a correctional-population projection model used to predict the consequences of guidelines and guideline amendments on the correctional population as a whole. The California Department of Corrections and Rehabilitation does correctional population forecasting, but it does not currently conduct prison population projections every time a law related to sentencing or supervision policy is proposed. If conducted accurately, this type of analysis could identify both long-term and short-term effects of proposed policies on the various components of California’s criminal justice system, including courts, corrections, probation, and parole.

Conducting this type of analysis would radically alter California’s approach to criminal sentencing. Many laws are proposed every legislative session that affect sentences, usually by increasing them. California legislators are currently asked to vote on bills without any information regarding the consequences of these bills on the state’s correctional population—an approach that has resulted in a prison system that is dangerously and unconstitutionally overcrowded\textsuperscript{37} and a corrections budget that has grown exponentially over the last ten years.\textsuperscript{38} This is a terrible way to shape public policy. If California’s sentencing commission were given a population forecasting function, the commission could work directly with the California Department of Corrections and Rehabilitation to conduct population projections on a regular basis, with particular attention paid to sentencing laws, and each time a new sentencing law is proposed.

This responsibility might seem appropriate for a basic commission, as well as the enhanced version. But a basic commission would face serious obstacles in developing a population prediction method. The current sentencing structure in California renders it impossible to undertake the population projections I have described here. To make accurate population projections, a state must have in place a sound sentencing structure and robust data collection capabilities, both of which are currently lacking in California. California’s current hodge-podge sentencing laws would make accurate forecasting impossible. Under these circumstances, it would not make sense to require a basic sentencing commission to conduct population forecasting.

On the other hand, some enhanced sentencing commissions have been able to conduct remarkably accurate population projections (North Carolina’s commission is an example) by developing guidelines based on historical sentencing data, monitoring the guidelines, collecting data on their effectiveness, and using the data collected to make predictions about the effect of future guideline amendments on prison populations. If California creates an enhanced sentencing commission, it could engage in the same type of analysis, giving lawmakers the information they need to enact sentencing laws the correctional apparatus can handle.

Consistent with the MPC, the California sentencing commission should be required to develop a correctional-population forecasting model to project future sentencing outcomes under existing or proposed legislation and sentencing guidelines.\textsuperscript{39} The commission should use the model at least once each year to project sentencing outcomes under existing legislation and guidelines. The commission should also use the model whenever new legislation affecting criminal punishment is introduced, or when new or amended sentencing guidelines are formally proposed, and generate projections of sentencing outcomes if the proposed legislation or guidelines were to take effect. The commission should be required to make and publish a report to the legislature and the public with each set of projections generated under this subsection.\textsuperscript{40}
III. Conclusion
As the articles in this issue of Federal Sentencing Reporter demonstrate, California is in dire need of structural sentencing reform. Many reformers have proposed suggestions for how to make small-scale improvements in the system, and the legislature adopted some of those improvements during budget negotiations in late 2009. But such changes, although needed, will not help bring about necessary changes in the state’s approach to punishing criminal offenders.

In theory, the California legislature could bring about this structural sentencing reform on its own, without the help of a sentencing commission. But the problems associated with the sentencing system are so vast, and the road to reform so long, that it is difficult to imagine the legislature actually ever getting there. A sentencing commission is probably necessary to get the California justice system where it needs to go.

As I have alluded to in the course of this article, I think that a basic sentencing commission would help. If nothing else, the commission would collect and analyze data, examine the effectiveness of the current sentencing system, and educate the public about California’s sentencing system, laws, and practices—all of which would be helpful.

Ultimately, though, very little will be accomplished if the legislature does not enact enabling legislation to create an enhanced sentencing commission according to one of the models set forth in part II of this article. The legislature has proven itself to be ineffectual at bringing about fundamental sentencing reforms on its own, and it is unlikely to be persuaded by a basic commission with a limited mandate. An enhanced commission similar to the one outlined here is the only type likely to help bring California out of its current sentencing quagmire.

Notes

2 In designing this system, I have relied most heavily on the American Law Institute’s Tentative Draft No. 1 of the Model Penal Code’s provisions on Sentencing, see American Law Institute, Model Penal Code: Sentencing, Tentative Draft No. 1 (April 9, 2007) (hereinafter Mpc). I have also considered the report generated after the first meeting of the Stanford Executive Sessions on Sentencing and Corrections in 2007, see http://www.law.stanford.edu/program/centers/scjc/#sentencing_and_corrections_policy_project; the enabling legislations of multiple existing state sentencing commissions; and the Stanford Criminal Justice Center’s previous research on sentencing commissions generally, see Kara Dansky, CONTEMPORARY SENTENCING REFORM: A REPORT TO THE LITTLE HOOVER COMMISSION (2006), available at http://www.law.stanford.edu/program/centers/scjc/pdf/Little_Hoover_Commission_written_testimony.pdf.

3 Parts I and II of this article assume for simplicity’s sake that California’s sentencing commission will be adopted through enabling legislation enacted by the state legislature. It is also possible for a commission to be created via executive order issued by the Governor or through the Judicial Council. Creating a sentencing commission via enabling legislation is preferable because it helps provide institutional legitimacy and ensure the commission’s longevity.

4 See MPC § 6A.01, Comment b.

5 “Assignment to one or another—or none—of the branches of government has made no obvious difference in commissions’ effectiveness within their respective states.” See MPC § 6A.01, Reporter’s Note, at 55.

6 When California’s first governor addressed the fledgling legislature in 1849, he said little on the subject of public safety, recommending simply that the legislature adopt “the definition of crimes and misdemeanors contained in the common law of England.” California’s first criminal code, adopted in 1850, contained no provision regarding philosophies of punishment, or purposes of sentencing or incarceration. Even the Indeterminate Sentencing Act, adopted in 1916, made no reference to the purposes of sentencing, even though most proponents of indeterminate sentencing during that era explicitly made reform of criminal offenders one of their primary objectives. See Dansky, supra note 1 at 49, 50, 61.


10 See Jeremy Travis, But They All Come Back: Facing the Challenges of Prisoner Reentry (Urban Institute Press, 2005).

11 See MPC §§ 1.02(2)(Xa) and 1.02(2)(Xb).

12 See MPC § 1.02(2)(2), Comment a.

13 See Dansky, supra note 1 at 82.

14 See, e.g., “The Commission shall develop discretionary sentencing guidelines to achieve the goals of certainty, consistency, and adequacy of punishment with due regard to the seriousness of the offense, the dangerousness of the offender, deference of individuals from committing criminal offenses and the use of alternative sanctions, where appropriate.” Va. Code Ann. § 17.1-801. See MPC § 6A.02, Comment b.

15 Legislators eventually agreed on a twenty-member commission consisting of the Secretary of the Department of Corrections and Rehabilitation, the Chief Justice of the California Supreme Court, a sitting or retired appellate judge, two trial judges, the Attorney General, a county district attorney, a county sheriff, a county mental health director, a prisoners’ rights attorney, a legal scholar, an academic expert in criminal justice policy, a public defender, a probation officer, a rank and file correctional officer, and a crime victim representative. Appointing authority was fairly evenly distributed among the Chief Justice, the Senate Rules Committee, the Speaker of the Assembly, and the Governor. See Senate Bill 110 (2007) at 246.

16 California Senate Bill 18XXX § 321 (2009).

17 The duties described here are taken in large part from the Model Penal Code’s section on sentencing commission duties.

18 See MPC § 6A.09, et. seq.

19 See MPC § 6A.03, Comment a.

20 See MPC § 6A.03(2)-(4).

21 See MPC § 6A.01(2)(a)-(b).

22 See MPC § 6B.04, et. seq. The commission should be required to set presumptive sentences for defined classes of cases.
that are proportionate to the gravity of offenses, the harms
done to crime victims, and the blameworthiness of offenders,
based on the commission’s collective judgment of appropri-
ate punishments for ordinary cases of the kind governed
by each presumptive sentence. See MPC § 6B.03(2). Once
adopted, the guidelines should have presumptive legal force
in the sentencing of individual offenders by sentencing
courts, subject to judicial discretion to depart from the
guidelines.
24 See MPC § 6B.02(7).
25 See MPC § 6B.02(8).
27 See MPC § 6B.02(9) and § 6B.02, Comment i.
28 This approach is taken in Senate Bill 110, introduced in the
2007 legislative session and reintroduced in the 2009
legislative session.
29 See MPC § 7.XX(1).
30 See MPC §§ 7.XX(2)(a)–(d), (3).
31 See MPC § 7.XX(4).
32 See Blakely v. Washington, 542 U.S. 296 (2004); Cunningham
33 See MPC § 7.07A(4).
34 See MPC § 7.07B(1)–(2).
35 See MPC § 7.07B(2). The enabling legislation could describe
the procedures to be followed in proceedings to establish
these facts.
36 See Don Specter, Everything Revolves Around Overcrowding:
(2010).
37 See Mac Taylor, Prisons vs. Universities Proposal Would
Unwisely Lock Up Budget Flexibility, LAO Policy Brief, at 1–2
(January 26, 2010), available at http://www.lao.ca.gov/
reports/2010/edu/educ_prisons/educ_prisons_012610.aspx
(last visited March 8, 2010).
38 See MPC § 6A.07, et. seq.
39 See MPC § 6A.07(1).