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Overview of *Cunningham v. California* and Related Legislation

LEGISLATIVE ANALYST'S OFFICE

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Criminal Sentencing in California



Indeterminate Sentencing

- Under indeterminate sentencing, convicted felons receive a sentence range, such as 25-years-to-life, and typically appear before a parole board in order to be granted release from prison.
- Prior to 1977, all felonies in California were punishable with an indeterminate sentence. However, currently the state uses indeterminate sentencing for only the most serious crimes (such as first-degree murder), as well as for some repeat offenders.
- About 20 percent of state prison inmates are currently serving indeterminate life sentences.



Determinate Sentencing

- Under determinate sentencing, convicted felons receive fixed prison terms and do not appear before a parole board in order to be released from prison.
- Since the enactment of state legislation in 1976, most convicted felons in California receive a determinate sentence based on a “triad” sentencing structure. For example, first-degree burglary is punishable by two, four, or six years in prison. Certain offenders may also receive probation in lieu of prison.
- Roughly 77 percent of state prison inmates are currently serving determinate sentences.



Cunningham v. California (2007)

- Cunningham was convicted of continuous sexual abuse of a child under the age of 14. Under California's determinate sentencing law, this offense was punishable by 6, 12, or 16 years in prison.
- Under California law at the time, the judge was required to impose the middle term (12 years) unless he or she found that there were aggravating or mitigating circumstances. California court rules required the judge to find these circumstances as facts, based on a preponderance of the evidence.
- The judge found six aggravating circumstances and one mitigating circumstance and concluded that the aggravating circumstances outweighed the mitigating ones. On this basis, the judge sentenced Cunningham to the upper term (16 years).
- The sentence was appealed first in state court and, eventually, to the U.S. Supreme Court. Cunningham's appeal disputed some of the findings of the judge and contended that California's determinate sentencing law violated the right to a trial by jury guaranteed by the Sixth Amendment of the U.S. Constitution.



U.S. Supreme Court Decision on *Cunningham v. California*

- The U.S. Supreme Court found in the *Cunningham* case that the 16-year sentence was a violation of the Sixth Amendment right in the U.S. Constitution to a trial by jury. In general, this was because the court found, consistent with prior rulings in other cases, that sentences of criminal offenders must be based on findings determined by the jury, rather than by the judge.

- In this particular case, the Supreme Court found that, under then-existing California law, the maximum term allowable for Cunningham was the middle term (12 years). The jury would have had to have made a finding that there were aggravating circumstances in the case for Cunningham to have been sentenced to the upper term of 16 years.

- The U.S. Supreme Court left it up to the state to decide how to remedy the flaw in its determinate sentencing law. The court noted, however, that some states allow a jury to find the facts necessary to elevate a sentence, while other states allow judges more discretion to impose a sentence within a statutory range.



Chapter 3, Statutes of 2007 (SB 40, Romero)

- Two months after the *Cunningham* decision by the U.S. Supreme Court, the Legislature enacted Chapter 3, Statutes of 2007 (SB 40, Romero), which stated its intent to provide a temporary response to the ruling while the structure of California's sentencing laws was reviewed.
- Specifically, SB 40 modified California's determinate sentencing law to ensure that when there are three possible terms of imprisonment, the choice of the appropriate term would "rest within the sound discretion of the court."
- The legislation also required that (1) the California Department of Corrections and Rehabilitation collect data on the number of felons admitted to state prison with upper term sentences and (2) the Judicial Council report to the Legislature on its implementation of the sentencing law changes by January 1, 2008.
- Senate Bill 40 contained a sunset date of January 1, 2009. However, Chapter 256, Statutes of 2010 (AB 2263, Yamada) extended the sunset date to January 1, 2012.