

First Supplement to Memorandum 2001-69

Criminal Sentencing Statutes (Comments on Tentative Recommendation)

The Commission has received a letter from Attorney General Lockyer opposing the tentative recommendation. The letter is attached. The Attorney General shares many of the concerns expressed by the California District Attorneys Association (CDAA), which are discussed in the main memorandum. In addition, the Attorney General maintains that the proposed reorganization “would even make future substantive reform efforts more difficult, given the resistance that would develop to a repeated changing of the law, with the inevitable expense and confusion involved.”

In the main memorandum, the staff mischaracterized CDAA concerns regarding errors in Penal Code Section 1170.1. The tentative recommendation would amend subdivisions (f) and (g) of Section 1170.1. CDAA objected to errors in subdivisions (a) and (h). In light of the fact that the Commission was not intending to make any changes to those subdivisions, the staff incorrectly assumed that CDAA was objecting to a failure to address defects in existing law. In fact, the tentative recommendation misstates subdivisions (a) and (h). This resulted from an editorial error in updating the draft tentative recommendation to reflect legislative changes made in 2000. If the Commission decides to proceed with the sentencing project, the staff will correct subdivisions (a) and (h). It would also be necessary to review 2001 legislation to determine whether any further updates are required.

Respectfully submitted,

Brian Hebert
Staff Counsel



STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
BILL LOCKYER
ATTORNEY GENERAL

Law Revision Commission
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August 15, 2001

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California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Re: Criminal Sentencing: Weapon and Injury Enhancements
(March 2001 Tentative Recommendation)

Dear California Law Revision Commission:

I have reviewed the California Law Revision Commission's March 2001 tentative recommendation entitled "Criminal Sentencing: Weapon and Injury Enhancements." This proposal had the stated goal of "nonsubstantive reorganization of sentence enhancement provisions [and of improving] the accessibility and comprehensibility of these provisions." While I commend the Commission for recognizing the need to simplify this area of criminal sentencing, the current proposal does not accomplish this goal, and will in fact increase the complexity of the law with accompanying significant fiscal costs. I, therefore, oppose the proposal.

The Commission has previously received a letter of opposition from the California District Attorneys Association, signed by CDAA President Thomas J. Orloff. I concur with the analysis and conclusion presented in that July 27, 2001, letter.

The primary problem with the proposal is that it will add to, rather than subtract from, the complexity of the law. Practitioners will be forced to be conversant with both the new and old statutes and case law schemes for years to come. Also, for decades, prior convictions, which are extremely relevant in the charging of new offenses, have been charged under the current numbers. This past case law and charging history will not be going away anytime soon. Thus, experienced practitioners would be forced to learn the new scheme, while maintaining their knowledge of the old. New practitioners would be forced to learn the entire current scheme, on top of the new one.

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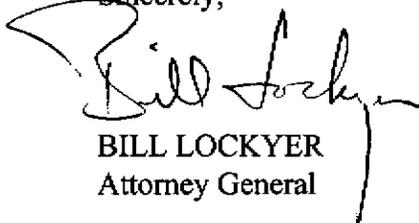
Additionally, the proposal will be very expensive. Forms will have to be discarded and rewritten. Numerous computer programs will have to be rewritten, including the charging programs of local district attorneys. Extensive ongoing training, with new training materials, will be necessary. Brief banks and other criminal data banks will have to be rewritten and cross referenced.

Another result will be confusion for law enforcement agencies, prosecutors, defense counsel, probation officers and judges. Confusion will breed error, which will lead to an increase in appellate reversals in this area, just the opposite of the result sought by the proposal.

To offset these profound negative effects, I can see no offsetting benefits in the proposal. The proposal expressly avoids any simplification or streamlining of the substantive law. In fact, the proposal breaks up and increases the number of code sections. The sections are arranged in a manner that is no more intuitive than the current scheme, which at least has the virtue of familiarity. As a small but telling example, the proposal adds 8-digit code sections (for example "17523.110") which seems unnecessarily difficult to memorize and use.

In conclusion, I commend the Commission for recognizing the need to simplify sentencing law. Unfortunately, the current proposal has the contrary effect and will lead to expense, confusion and appellate reversals, with no commensurate substantive benefits. If passed, the scheme would even make future substantive reform efforts more difficult, given the resistance that would develop to a repeated changing of the law, with the inevitable expense and confusion involved. I, therefore, oppose this proposal and will work with others to oppose any efforts taken toward its implementation.

Sincerely,



BILL LOCKYER
Attorney General