

Memorandum 2001-91

Criminal Sentencing Statutes

At its September meeting, the Commission decided to determine whether there were any substantive problems with criminal sentencing laws, especially those laws dealing with weapon use, which might be appropriate for Commission study. A letter soliciting suggested topics of study was sent to the Attorney General, the California District Attorneys Association, California Attorneys for Criminal Justice, the California Public Defenders Association, the California Peace Officers Association, the California Police Chiefs Association, the Commission’s consultants, and over 25 individual judges and attorneys. The letter requested that suggestions be submitted by October 31, 2001. To date, we have received two responses, which are attached as follows:

Exhibit p.

- 1. Dwight W. Moore, Supervising Deputy District Attorney, San Bernardino County (October 12, 2001) 1
- 2. David H. Rose, Deputy Attorney General (October 25, 2001) 3

LETTER OF DEPUTY DISTRICT ATTORNEY MOORE

Mr. Moore writes to point out the significant disparity between the duration of sentence enhancements for use of a firearm and the sentence enhancements for use of a dangerous or deadly weapon other than a firearm. He suggests that the enhancements for use of non-firearm weapons should be raised to match or approximate the enhancements for use of firearms, especially where great bodily injury is caused by use of the weapon. This could mean increasing the enhancement from a term of four years to a term of 25 years to life. Compare Penal Code Sections 12022(b)(1) (one year enhancement for use of deadly or dangerous weapon) and 12022.7(a) (three year enhancement for infliction of great bodily injury) with Penal Code Section 12022.53(d) (25 years to life enhancement for use of firearm proximately causing great bodily injury or death).

This substantial disparity in terms is not the result of an error. It is a conscious policy choice — and a fairly recent one. As the Legislature stated in

enacting Section 12022.53 in 1997: “The Legislature finds and declares that substantially longer prison sentences must be imposed on felons who use firearms in the commission of their crimes, in order to protect our citizens and to deter violent crime.” 1997 Cal. Stat. ch. 503, § 1. This language has been cited by the courts in cases holding that the disparity between the terms imposed by Section 12022.53 and the enhancement terms for use of weapons other than a firearm does not violate equal protection or constitute cruel and unusual punishment. See, e.g., *People v. Alvarez*, 106 Cal. Rptr. 2d 447, 453-54 (2001) (“The ease with which a victim of one of the enumerated felonies could be killed or injured if a firearm is involved clearly supports a legislative distinction treating firearm offenses more harshly than the same crimes committed by other means, in order to deter the use of firearms and save lives.”). Section 12022.53 has been amended every year since it was enacted, without disturbing the Legislature’s basic policy of imposing substantially greater penalties for use of a firearm.

Considering that the disparity pointed out by Mr. Moore reflects a clear legislative policy that has been repeatedly reexamined, by both the Legislature and the courts, the staff does not believe that it would be helpful for the Commission to study the matter.

LETTER OF DEPUTY ATTORNEY GENERAL ROSE

Mr. Rose writes to indicate that he is unaware of any problems with sentencing law that require legislative remediation. “At the current time, although the law is complex, most practitioners seem reasonably comfortable with the existing provisions. We currently hear of little confusion in the trial courts, and we see only a few reversals in the appellate courts based on issues in this area.” See Exhibit p. 3.

CONCLUSION

Our survey of the criminal justice community has not produced a list of problems in the weapon use sentencing provisions. To the contrary, Mr. Rose states that there are no pressing problems in that area of the law. The staff sees two options for how the Commission might proceed: (1) Conduct its own research to identify problems. (2) Discontinue the study. In light of the results of

our survey, and the other pressing demands on the Commission's resources, the staff recommends that the Commission discontinue its study of sentencing laws.

Respectfully submitted,

Brian Hebert
Staff Counsel



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OCT 17 2001

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COUNTY OF SAN BERNARDINO

Office of the District Attorney

DENNIS L. STOUT
DISTRICT ATTORNEY

October 12, 2001

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

Re: Criminal Sentencing

Dear Ms. Cook:

Thank you for your inquiry of October 1, 2001 regarding proposed revisions to sentencing laws relating to the use of a weapon. There is a great disparity in punishment between crimes committed with a firearm and crimes committed with any other dangerous or deadly weapon, including a knife. This disparity is even greater when great bodily injury is inflicted.

The following chart of sentencing enhancements illustrates some of the disparities.

Armed with a firearm:	adds 1 year	Armed with dangerous/deadly weapon:	adds 0
Personal use of firearm	adds 3-4-10 years	Personal use of d/d weapon:	adds 1 year
Personal use of firearm, robbery or other specified crimes	adds 10 years	Personal use of d/d weapon in same crimes:	adds 1 year
Intentional discharge of firearm in specified crimes	adds 20 years		
Intentional discharge of firearm with great bodily injury in specified crimes:	adds 25 years to life	Personal use of d/d weapon with GBI in any crime	adds 4 years

This chart is hardly inclusive. There are many other examples of cases where guns are treated much more seriously than knives or other weapons. Why is a gun so much worse than a knife or any other deadly weapon? Recent headlines have demonstrated what can be done with a boxcutter, the most innocuous form of knife around. And the injuries that can be inflicted with an axe, or chainsaw, or baseball bat, need no explanation.

I think the inequities of the current law can be illustrated as follows.

1. Criminal #1 robs his victim with the use of a gun. The gun is displayed in the robber's waistband, and he never even touches the gun. Still, that's a "use," and he faces a minimum term of 12 years, maximum of 15 years.
2. Criminal #2 robs his victim with the use of a knife. He seizes the victim from behind, and holds the knife to the victim's throat. This robbery carries a minimum of 3 years (and he is even eligible for probation) with a maximum of 6 years.
3. Criminal #3 robs his victim with a gun, shoots the victim and inflicts great bodily injury. He faces a minimum of 28 years to life, maximum of 30 years to life.
4. Criminal #4 robs his victim with a gun, stabbing him and inflicting great bodily injury. He faces a minimum of 6 years, maximum of 9 years.

I suggest that the punishment for use of a dangerous or deadly weapon, *especially where great bodily injury is inflicted*, should match or at least approximate the punishment for use of a firearm.

At a minimum, the same crimes that are subject to the 10-20-25 to life gun enhancements should carry a commensurate punishment for use of a knife. To my mind, if a victim is robbed and suffers great bodily injury, the punishment should be the same regardless of the particular weapon used.

I hope that this is something that the Commission can address.

Very truly yours,



Dwight W. Moore
Supervising Deputy District Attorney

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



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October 25, 2001

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OCT 26 2001

File: _____

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

RE: Criminal Sentencing

Dear Chairperson Cook:

Thank you for your letter of October 3, 2001, soliciting input to pinpoint areas of the substantive sentencing law, especially relating to weapons enhancements, which would benefit from legislative remediation. At the current time, although the law is complex, most practitioners seem reasonably comfortable with the existing provisions. We currently hear of little confusion in the trial courts, and we see only a few reversals in the appellate courts based on issues in this area.

We are aware that the California District Attorneys' Association has an ongoing committee which seeks to formulate proposals to clarify existing law. Should that group produce a substantial proposal, we of course will attempt to weigh in in a constructive manner at that time.

Thank you again for your request, and we look forward to working constructively together in the future.

Sincerely,

A handwritten signature in dark ink that reads "D. H. Rose".

DAVID H. ROSE
Deputy Attorney General

For **BILL LOCKYER**
Attorney General

DHR/gm