

# **LITTLE HOOVER COMMISSION -- STATE SENTENCING POLICY STUDY**

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## **IMPACT ON CRIME VICTIMS/SURVIVORS ISSUES**

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### **Introduction:**

The California justice system is offender centered, not victim centered. When a crime is committed, the attention is focused on the victim or the victim's survivor. Soon after however, the focus shifts from the victim to the offender. The victim is reduced to a witness and as the case progresses, rights and services become reduced also. If there is a conviction and incarceration, the victim's role is less and less, with the final phase of parole having no role at all for those hurt by the crime originally.

There are two issues I will address related to this study and I will offer five Recommendations.

### **Victim Rights:**

California has a host of "rights" on the book either by legislation or case law for offenders. California also has a set of "rights" for crime victims and survivors but those are seldom enforced. Scores of groups eagerly advocate for protection of offender rights, few advocate for victim rights.

In 1982, the voters overwhelmingly approved Proposition 8, entitled the Victims Bill of Rights. Prop. 8 provided for basic rights like notification, impact statements, safety, and restitution if there were financial losses. Since 1982, a number of laws and policies have been enacted to further provide "rights" to crime victims. **See the attachment.**

However, these "rights" are often overlooked or ignored. For example, few victims know they can be notified of an offender's release; few offenders have a victim impact statement in their probation or other court reports; and few victims have restitution ordered. One reason is the workload of probation officers and the staff in district attorney's, including victim witnesses, who no longer have the time to do the victim impact statement. The statement is the court vehicle to document fiscal losses.

When committed to state prison, judges often stay the restitution orders, wrongly assuming that Corrections does not collect from inmates. The truth is, CDCR does have a system that deducts fines and penalties from Trust Account deposits and millions are collected each year.

If we were as diligent about enforcing and protecting victim rights as we are offender rights, we would have true justice system. Today, we do not.

Whether the sentences are lenient or harsh, victim rights remain like a pendulum, swinging back and forth, always there.

### **Sentencing:**

#### **Determinate sentencing is dangerous because it demands nothing of the offender.**

Right now, offenders merely need to be **COMPLIANT**, they do not have to **CHANGE**, they do not have to offer proof that they have non-criminal values; they do not even have to have a **PLAN** for re-entry. They merely have to be compliant. And, if they make any effort at all, they can have their time reduced.

But, here they come, **READY OR NOT!**

The Commission has been concerned about recidivism, about the revocation rate. The re-offending should not be looked at solely in terms of more **OPTIONS** or additional **LESSER SANCTIONS**. The failure on parole should be looked at instead from **WHY** they were released when they clearly were not ready, were not safe to unleash on the public. The recidivism rate is high because they did not **CHANGE**, they have the same values. And, for most, they did not have a realistic **PLAN**. \

Having served on the parole board for juveniles (juvenile system is indeterminate) the young offenders at least have to sell themselves as having learned something, having changed. They are supposed to have a parole plan even though most sound like dreams or wishes. Having your aunt tell you she saw a Help Wanted sign at Home Depot does not mean you “have a job.”

**Determinate sentencing is dangerous because it treats everyone (137,000 inmates) the SAME**—(that is the number of inmates minus the 652 Death Row inmates, the 29,000 Lifers, and the 3400 Life Without Parole offenders) Not SAME in the term years but SAME in that they all get out regardless of performance. They go in with criminal values and lifestyles, and they come out the SAME. No wonder there is a high recidivism rate!

#### **Determinate sentencing is dangerous because there is little reward for programming.**

Offenders receive time off credit for working but not for schooling or for other “character based” efforts like parenting and the victim impact classes. Learning a skill without changing values means we will have a heartless welder; going to school without changing character means we will have a literate rapist instead of an illiterate one.

**Determinate sentencing is dangerous because it treats property crimes like child molestations.** In other words, neither have to prove they have changed. Crimes against people should not be lumped with crimes against property. Sex offenses, family violence, crimes with weapons should be reviewed by a different standard.

#### **Determinate sentencing diminishes and often violates victim rights:**

With determinate sentencing, **notification is iffy** due to the shifting dates and can be alarming due to little advance notice and no ability to prepare for the victim’s safety.

There is no hearing about suitability for release so there **is no impact statement** opportunity. Many victims do not object to release but they would like to let the reviewing body know of long-term harm and to request special conditions (eg. no contact). Finally, restitution as a Condition of Parole is often overlooked since many of the forms (including those from the court) **do not record the restitution** amount, there is no “box to check off” for a Condition of Release, and there is no commitment by the administration or labor union to enforce the court orders. There has been decades of talk about this issue but to date it is spotty and not consistent. Other states are far ahead of California on victim rights enforcement and services.

There are thousands of inmates and parolees but there are even more victims. We don't have time to talk today about dismissals, plea bargains, Harvey waivers, all of which leave victims without rights, recourse, or justice.

### **Specific Responses to Staff Questions:**

#### **The strengths and weaknesses of the current sentencing structure.**

Strength--There is supposedly some semblance of consistency and equality with determinate sentencing. That is questionable however since the judges and counties still fluctuate wildly in practices and policies.

Weakness—Determinate sentencing is dangerous since it expects nothing from the offenders. Only compliance is considered, not change. This is a public and victim safety issue. There should be a thoughtful discussion about the crime, the harm caused, the appropriate punishment, and some expectation/measure of change.

#### **The key issues for victims regarding sentencing policy.**

The protection and enforcement of established rights regardless of the imposed sentence is first. Second, offenders are not leaving prison changed, hence putting the public and prior victims at risk. Third, the determinate sentencing law needs to be revised so victims have a voice and an opportunity to be safe.

#### **The opportunities to improve public safety through sentencing reform.**

Offenders need to earn their way back to the community and programs need to be developed/offered that address the harm caused not just the “needs” of inmates.

#### **The potential role sentencing reform could play in addressing identified problems in California's correctional system, including overcrowding, escalating costs, and high recidivism.**

The first two problems noted above shows the bias of the writer---sentencing reform should focus on JUSTICE and RESPONSIBILITY and ACCOUNTABILITY, not on MONEY. This question smacks of lighter sentences. Public safety might demand longer sentences, not shorter ones. Mandatory minimums might actually need to be

revised to add a range of maximums since judges are bound by the minimum in a “deal” even though more time might be warranted.

The third problem of recidivism is due to offenders not being ready to reenter society. Therefore, we continue to be preyed upon. Recidivism would be reduced if released prisoners were changed and if they had serious plans for success.

True reform would actually result in MORE inmates, not fewer as the transition takes place. The Commissioners would probably be appalled and frightened if they ever reviewed files and met with offenders.

**The role of sentencing reforms as an element of overall correctional system reform, including parole and prison reforms, and how important a “holistic” approach is to improvement.**

“Holistic” to me means, victim involvement, offender accountability for the harm caused, and opportunities for change for those wanting to change. Holistic must include crime victim issues for there to be a true justice system, not just a criminal justice system.

#### **RECOMMENDATIONS:**

- 1. The Commission should go on record as supporting victim rights and services regardless of any sentencing reform recommendations.**
- 2. The Commission should support the development of a “hybrid” determinate sentencing system that separates out crimes against people from property crime. Crimes against people should be “indeterminate” where offenders must earn their way out.**
- 3. The Commission should look to Rand and the Bureau of Justice Assistance for examples of hybrid systems.**
- 4. The Commission should encourage the administration to develop programs that stress character building and values change. They should also support changes that hold offenders accountable for the harm they have caused like the victim awareness efforts and restitution as a Condition of Parole**
- 5. The Commission should commemorate the 25<sup>th</sup> Anniversary of the Prop. 8 Constitutional Amendment in 1982 by issuing a study report on victim rights and services in California.**