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November 13, 2012

Stuart Drown
Executive Director, Little Hoover Commission
925 L Street, Suite 805
Sacramento, CA 95814

Re: Bail and Sentencing

Dear Mr. Drown:

Thank you for contacting the California District Attorneys Association (CDAA) regarding the Commission's upcoming work on the issues of bail and sentencing reform.

Prosecutors agree with current law that permits superior court judges in each county to set their own bail schedule. This statute recognizes that bail amounts, like other aspects of our criminal justice system such as policing policies, charging decisions, and sentencing determinations, can vary based on community characteristics and standards. Additionally, because the ways in which law enforcement protects public safety and guarantees defendant appearance (the key notions underlying bail) are not the same in every jurisdiction, the virtue of a statewide uniform criminal bail schedule is illusory. We would have serious concerns with the Commission or stakeholders recommending any sort of statewide action to either equalize bail schedules or mandate that counties alter their bail schedules.

On the issue of SB 210, CDAA opposed that bill (and its predecessor, SB 1180) for a number of still valid reasons. Over the several iterations of both bills, one thing was clear: the proponents had developed solutions for problems different from what they had identified. For example, codifying conditions that a court could impose when allowing an own recognizance release is not only unnecessary, but it fails to address the issue underlying the proponents' reason for bringing the bill, that is, many criminal defendants cannot afford to post bail. Further, prosecutors are wary of encouraging courts to expand the list of factors to be considered when setting, reducing, or denying bail to include things that are not directly related to protecting public safety and/or ensuring appearance. Perhaps most compelling in all of this was that the proponents claimed they were trying to help sheriffs and judges, but both groups generally opposed the bill.

You also asked for our views on the creation of a sentencing commission and the need for additional sentencing reform. As we have previously said in opposing legislative efforts to create a sentencing commission, the crafting of sentencing policy is a crucial legislative function that should not be delegated to an unelected, unaccountable body. The Legislature's passage of public safety realignment (AB 109 and its progeny) settles the argument that sentencing decisions are too politically charged to leave to a body concerned about being labeled soft on crime. With the stated intent of these efforts being to move away from incarceration as a consequence for crime, we remain concerned about a return to the unsuccessful Indeterminate Sentencing Law and undermining the substantial improvements to sentencing law made over the last 35 years that allow victims to have meaningful input into the sentencing process and provide a measure of truthfulness and accountability to felony sentencing.

Additionally, because the state has undertaken the most drastic sentencing changes in a generation in the form of realignment, there is even less of a need now to create a sentencing commission or attempt sentencing reform. The ink is not yet dry on a policy that has shifted tens of thousands of so-called low-level criminals to local responsibility and dramatically reduced state prison population, some of the primary goals of a sentencing commission and sentencing reform. Now is not the time to consider exacerbating this problem with policies that will put more offenders under local supervision or unmonitored on our streets.

To the extent any sentencing changes need to be made in the wake of realignment, the Legislature must examine certain offenses like drug trafficking, which can and already has resulted in sentences of 20 or more years in county jail in several jurisdictions. County jails are simply not equipped to handle inmates serving this length of sentence and the realignment of these offenses and others must be reconsidered.

Thank you for your consideration of our thoughts on these matters. If I may be of assistance to you on this request, please do not hesitate to contact me.

Very truly yours,

Carl V. Adams
CDAA President

CVA:lkh

bbc: The Hon. Carl Adams
The Hon. Dean Flippo
Cory Salzillo