

Memorandum 2001-69

Criminal Sentencing Statutes (Comments on Tentative Recommendation)

In March, the Commission approved a tentative recommendation relating to *Criminal Sentencing: Weapon and Injury Enhancements*. The proposed law would reorganize weapon and injury enhancement provisions, without making any substantive changes to sentencing law. The purpose of the reorganization is to make it easier to find enhancement provisions and provide a logical structure for better organization of sentencing provisions in the future.

The Commission received a number of letters commenting on the tentative recommendation. These letters are attached in the exhibit, as follows:

	<i>Exhibit p.</i>
1. California District Attorneys Association (July 27, 2001)	1
2. Steve Cooley, District Attorney, Los Angeles County (July 27, 2001)	7
3. Tony Rackauckas, District Attorney, Orange County (July 27, 2001)	9
4. Terry R. Farmer, District Attorney, Humboldt County (July 27, 2001)	10
5. J. Michael Mullins, District Attorney, Sonoma County (July 27, 2001)	11
6. McGregor W. Scott, District Attorney, Shasta County (July 27, 2001)	12
7. Gary T. Yancey, District Attorney, Contra Costa County (July 30, 2001)	13
8. Steve Cooley, District Attorney, Los Angeles County (July 30, 2001)	14
9. Paul J. Pfingst, District Attorney, San Diego County (July 30, 2001)	15
10. Phillip J. Cline, District Attorney, Tulare County (July 30, 2001)	16
11. George W. Kennedy, District Attorney, Santa Clara County (July 31, 2001)	18
12. John Lovell, California Peace Officers Association, California Police Chiefs Association (July 31, 2001)	20
13. Michael D. Bradbury, District Attorney, Ventura County (July 31, 2001)	21
14. Jan Scully, District Attorney, Sacramento County (July 31, 2001)	23

This memorandum discusses the issues raised in the comment letters. After considering these issues, the Commission should decide whether to proceed with the criminal sentencing project.

GENERAL RESPONSE

The California District Attorneys Association (CDAA), district attorneys from 11 counties, the California Peace Officers Association, and the California Police Chiefs Association all oppose or strongly oppose the proposed law. The CDAA letter provides the most detailed commentary. Many of the other letters simply indicate approval of the position taken by CDAA. Three general concerns were raised in the letters: (1) nonsubstantive reorganization would not be helpful, (2) section renumbering would result in substantial costs, and (3) the proposed law would inadvertently create new problems. These general concerns are discussed more fully below.

No comments were received supporting the proposed law.

NONSUBSTANTIVE REORGANIZATION UNHELPFUL

The commentators do not believe that a nonsubstantive reorganization of sentence enhancement provisions would be helpful. Exhibit p. 24:

Sentencing law will remain as complex as it already is. The practical difficulties for attorneys and the courts arise not from the organization and numbering of the enhancements, but rather out of the application and interaction of these enhancements with the substantive crimes, and the sentencing considerations and procedures as to the crimes themselves. This proposal will not affect any of these.

See also Exhibit pp. 2 (“This proposal to reorganize and renumber various weapon and injury enhancements without substantive change does nothing to simplify the law.”), 7 (“simply consolidating and renumbering various weapon and injury sentence enhancements does nothing to simplify California’s sentencing law.... Any effort to truly simplify California’s sentencing laws should involve eliminating unnecessary and obsolete sentence enhancements and combining sentence enhancements involving similar activities or injuries.”), 11 (“the proposal simply does not go far enough and will not solve the problem”), 15 (“it serves almost no purpose to reorganize and renumber certain enhancements with no substantive improvement and no simplification of the

law”), 18-19 (“Cases are reversed for sentencing error for a variety of reasons, including improper reasons for the imposition of an aggravated term, failure to state reasons for consecutive sentences, and failure to state reasons for the denial of probation. None of these errors is avoided by the proposal.”).

The staff agrees that a more ambitious reform effort, involving elimination of obsolete and redundant provisions, would be desirable. However, the history of such reform efforts suggests that a more substantive project would likely fail — from 1988 to 1995, Senator Lockyer introduced seven different sentencing reform bills, none of which were enacted into law; two bills that would reform sentence enhancement provisions along the lines proposed by commentators failed to clear committees in 1999. While the benefits of a nonsubstantive reorganization might be modest, the staff hoped that they might be *achievable*.

In addition to those who maintain that the proposed law does too little, some commentators suggest that a nonsubstantive reorganization would make the law more complex. For example, CDAA maintains that the organization of existing law is “far more intuitive” than the proposed law, noting that enhancements that apply to all felonies are found within two narrow areas of the Penal Code, and that crime-specific enhancements are almost all located near the crime that they enhance. See Exhibit p. 3. The staff disagrees with CDAA’s assessment. Under existing law both weapon and injury enhancements are combined in an article entitled “Unlawful Carrying and Possession of Weapons” despite the fact that many of the weapon enhancements relate to “use” of a weapon (rather than “carrying” or “possession”) and none of the injury enhancements relate to weapons. Of the 43 sections in that article, only 17 relate to enhancements. By contrast, the proposed law would group all weapon and injury enhancements in a title entitled “Sentence Enhancements,” with separate chapters for “Weapon Enhancements” and “Injury Enhancements.” Weapon enhancements would be further divided into articles for “possession or provision” of a weapon and for “use” of a weapon. Crime-specific enhancements would be moved to the new title, but replaced with specific statutory cross-references to the new location. To the uninitiated, the proposed organization should be much more accessible and intuitive than existing law.

RENUMBERING COSTS

The most significant objections to the proposed law relate to the costs resulting from section renumbering. In the tentative recommendation, the Commission specifically asked for input as to whether the costs relating to section renumbering would outweigh the benefits of reorganization. The commentators clearly believe that they would. The various types of costs cited are discussed below.

Programming

Due to the complexity of sentencing laws, many counties rely on computer software to generate complaints for prosecutors and to track cases. See Exhibit pp. 3-4:

There is no widely used program in California common to District Attorney's offices. Indeed most of the 58 counties have unique proprietary software that has to be reprogrammed with every change in the pleading statutes. That process involves highly-paid programmers, often on contract to counties, as well as District Attorney staff that must update tables and sunset dates. The cost of reprogramming hits small and medium counties especially hard. The amount of programming is the same for each county and that makes the relative cost higher for offices with smaller budgets. Money for programmers must be found in budgets that are now straining to provide basic prosecution services.

See also Exhibit p. 21:

For the past several years, my office has been engaged in a massive joint effort to consolidate our computer systems with those of our local court and police agencies. When the DUI provisions of the Vehicle Code were renumbered, it took a great deal of time and effort to re-program the various systems to recognize the new statute numbers. As noted by CDAA, the current proposal involves a much grander renumbering scheme that would surely require even more time and effort for reprogramming.

Inter-Agency Communications

Not only would renumbering require reprogramming of computer systems as discussed above, it would also require changes to the methods used to communicate between district attorneys' offices and other agencies. See Exhibit p. 4:

Prosecutorial offices at every level are in constant communication with a wide variety of investigative agencies, including local sheriff, police, Consumer Affairs, Department of Insurance, Bureau of Narcotic Enforcement, Highway Patrol, Department of Motor Vehicles, State University and College Police, Contractors State Licensing Board, all Federal Investigators, especially Border Patrol, Naval and Army and Air Force Criminal Investigative Services.

The common language between and among these agencies includes the use of the California Penal Code sections dealing with firearms and injury enhancements. The use of multiple major data systems that have these sections encoded is essential to effective communications and the effective and timely investigation and prosecution of violent crimes. These systems include California Law Enforcement Tracking System, Automated Regional Justice Information System, Justice Reporting Information System, Regional Juvenile Information System, Inmate Booking Information System, Jail Information Management System, and too many others to cite within all 58 counties. The Commission's proposal would have an instant negative effect on the effectiveness of those and other systems by introduction of a duplicative numbering system with no apparent benefit to regional and state law enforcement communications. The present systems include many legacy applications that were written in very old computer languages, like COBOL, which are very expensive to modify because of the lack of current available training and the shortage of experienced programmers.

See also Exhibit p. 16:

We also agree, in particular with the [CDAA] reasoning concerning the complication to interagency communications. We have several small police departments in [Tulare] County. A change such as recommended would require the complete retraining of each of these police departments. This would be an almost impossible burden to place on a small rural county such as ours.

Training and Replacement of Reference Materials

Many of the commentators object that changes in section numbering will require substantial retraining of experienced personnel. What's more, new personnel will need to learn both the old and new numbering systems. See Exhibit p. 4:

CLRC's proposal would not simply create a short-term need to train prosecutors about the new system. District Attorney

personnel (as well as other professionals within the criminal justice system) would always need to be familiar with both the new and old numbering systems in order to analyze and apply case law, understand the nature of prior convictions, and file cases where the charged crime took place before the enactment of this proposal.

See also Exhibit p. 18:

Adding to the complexity, my attorneys (as well as judges, defense attorneys, probation officers, police officers, and booking officers) will need to operate within both systems for many years to come. My lawyers, for instance will need to recognize the code sections as presently numbered and translate to the new system, to analyze priors to add to charging documents on new offenses, to structure sentencing exposure and to interpret case law articulated under the old numbers as it applies to the same concepts but with new numbers attached. The opportunity for human error, including sentencing error, is compounded with the change.

See also Exhibit pp. 7-9, 15, 21, 23-24.

Section renumbering will also require revision or replacement of reference materials, including treatises and manuals. See Exhibit p. 4:

Indeed, many new offenses will require a knowledge of the old and new numbering schemes just to get the initial pleading correctly charged. That means writing and producing new manuals, new training courses, new crime summaries, and dealing with new prosecutors and law enforcement officers who will need new dual training. Manuals, summaries, and training all cost dearly to cash-strapped local prosecutors.

UNINTENDED CONSEQUENCES

Due to the complexity of sentencing law, many commentators are concerned that any effort to reform the sentencing statutes will necessarily lead to unintended negative consequences. See Exhibit p. 5:

The massive drafting requirements imposed by the proposed sentencing reform will inevitably result in countless drafting errors that will create unintended consequences in the criminal law system similar to past reform efforts. It is difficult, if not impossible, to locate past legislation that substantially impacted sentencing laws without creating unintended error. Even a modest proposal to reorganize driving under the influence (DUI) sentencing provisions in a “nonsubstantive” manner resulted in a loophole for recidivists that had to be addressed by the Court of Appeal....

... The DUI sentencing reorganization, which was on a much smaller scale, took many years and required many hours of meetings from representatives of various law enforcement agencies, the State Department of Motor Vehicles, State Department of Alcohol and Drug programs and drinking driver programs to redraft a sentencing scheme. The group worked from 1991 through 1997 in order to introduce a legislative proposal ... which required two working legislative sessions to pass through the Legislature in 1998. Thereafter, it required two years of legislative clean-up and an appellate court decision to fix a whole host of problems including chaptering conflicts and technical errors with the DUI sentencing renumbering. Even considering the amount of work and effort dedicated to the current sentencing proposal, renumbering the enhancement provisions will undoubtedly create unanticipated problems for years to come.

CDAAs provides four examples of errors in the proposed law. See Exhibit p. 5. Two of the examples involve cases where the staff was unsure whether a proposed change was problematic and specifically asked for feedback from the public (i.e., changes to Sections 1170.2 and 12022.53(j)). If the Commission decides to proceed with this project, the staff will ask CDAAs for detail as to the nature of these errors and will draft any necessary corrections for the Commission's review.

The other two errors apparently involve problems with existing law that were not addressed in the proposed law (i.e., the Commission only proposed relocating Section 1170.1(f)-(g), but CDAAs suggests that we should also have amended subdivisions (a) and (h) to correct existing substantive defects). In keeping with the nonsubstantive nature of this project, the staff did not attempt to identify and correct substantive defects in existing law. If the Commission decides to proceed with this project, the staff could investigate the issues pointed out by CDAAs and present draft revisions for the Commission's review.

CONCLUSION

On first considering the criminal sentencing project, the Commission's consultants advised that a nonsubstantive reorganization would likely prove unpopular, primarily due to the cost and inconvenience associated with section renumbering. The Commission accepted that this might well be the result, but thought it worthwhile to prepare a tentative recommendation reorganizing a small part of the sentencing laws, in order to get a broader commentary on the

merits of a nonsubstantive reorganization. As it turns out, the consultants' initial impressions have been strongly confirmed. Opposition to the proposed law is universal amongst those who commented, and that opposition seems to be primarily based on objections to the cost and inconvenience of section renumbering.

In addition to the expected resistance to learning a new numbering system, commentators have pointed out other significant problems that the proposed law would create, including: (1) the cost of reprogramming computing and inter-agency communication systems, some of which are antiquated, and (2) the need to retain familiarity with the old numbering system for a considerable time, in order to correctly charge crimes occurring before the change in the law and to correctly determine the nature of prior offenses.

The risk of inadvertent negative results is probably manageable, considering the Commission's careful process and the assistance that we would receive from our consultants and from the many interested persons. However, given the history of sentencing reform efforts, and the views expressed in the comment letters, it seems unlikely that the commentators would share the staff's optimism on this point.

Considering that the proposed law is strongly opposed by those who are intended to benefit from it, it also seems likely that the proposed law would face substantial difficulties in the Legislature.

The staff finds many of the commentators' objections persuasive. The costs associated with the proposed law may well outweigh the benefit to be derived from a purely nonsubstantive reorganization. Some commentators indicate that a more substantive reform might justify the costs associated with section renumbering, and the Commission may wish to consider working with CDAA and the defense bar to see if there are any points of consensus on useful substantive reforms. However, the prospects of political success for a more substantive project are not promising. Moreover, such a project would involve the Commission in a highly politicized area of the law. Historically, the Commission has been reluctant to work on such politically charged issues.

Respectfully submitted,

Brian Hebert
Staff Counsel



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July 27, 2001

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**RE: CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION'S
OPPOSITION TO THE CALIFORNIA LAW REVISION
COMMISSION'S TENTATIVE RECOMMENDATION
ON WEAPON AND INJURY ENHANCEMENTS PROPOSAL**

Dear California Law Revision Commission:

The California District Attorneys Association (CDA), an association representing the elected District Attorneys, City Prosecutors, and 2,600 deputy prosecutors, has been actively involved in the area of sentencing reform for many years. Our goal has always been to enact beneficial reform with substantive changes that would improve and simplify the sentencing law. We have reviewed the California Law Revision Commission's Tentative Recommendation to revise the weapons and injury enhancement law provisions. CDA must oppose the recommendations based upon the following main areas of disagreement: (1) the proposal will not solve the alleged problem; (2) the proposal will increase complexity of the law; (3) the proposal will create format problems; (4) the proposal will impose a tremendous financial burden; (5) the proposal will create an ongoing training burden; (6) the proposal will complicate interagency communications, and, (7) the proposal will create unintended consequences in the law.

1. The Proposal will not Solve the Alleged Problem

The California Law Revision (CLRC) cites in support of its proposal a 1983 Judicial Council report indicating that sentencing error is the primary cause for reversal of criminal cases on appeal. (Introduction to Staff Draft Tentative Recommendation, at p. 2, fn. 10.) That report, however, was based on appellate opinions issued during the two-month period of January and February, 1981. Assuming those decisions were issued about a year after sentences were imposed, the Judicial Council report is an antiquated document that analyzes sentences imposed more than 21 years ago. Significantly, this period was shortly after the enactment of the Determinate Sentencing Act (operative July 1, 1977). Sentencing error may well have been more frequent at that time, when judges and attorneys were becoming familiar with the new law and there was little case law to guide them.

Moreover, it appears that *none* of the errors studied in that report had anything to do with the placement or numbering of conduct enhancements in the Penal Code. Specifically, the precise types of sentencing errors in the reversed cases involved: (1) sentencing defendants to terms beyond that justified by the record; (2)

improper selection of the upper base term; (3) unlawful dual use of facts in making discretionary sentencing decisions; (4) failure to state reasons on the record for

selection of upper term, imposition of consecutive sentencing, and denial of probation; and (5) miscellaneous errors including failure to allow defendants to withdraw pleas, and improper consideration of suppressed evidence during sentencing. It should also be noted that many of these errors involved discretionary sentencing decisions (e.g., the denial of probation) that would not now serve as a legitimate basis of appeal without a prior defense objection. (See *People v. Welch* (1993) 5 Cal.4th 228; *People v. Scott* (1994) 9 Cal. 4th 331; *People v. Tillman* (2000) 22 Cal 4th 300)

The complexity of California's sentencing laws relates to issues that would be unaddressed by the proposal. Those issues include how to calculate the minimum portion of indeterminate sentences, how to calculate subordinate terms, the relationship between sentencing laws such as three-strikes and one-strike, determining when a defendant must receive a consecutive vs. concurrent sentence, and questions relating to the validity of prior convictions.

CLRC also claims that "If, as a result of the complexity of sentencing laws, a prosecuting attorney fails to properly plead an applicable sentence enhancement at trial, the error cannot be corrected on appeal - the defendant's sentence will be shorter than is mandated by law." (Introduction to Staff Draft Tentative Recommendation, at p. 2.) While this is true as a general proposition, CLRC provides no evidence to suggest that this is currently taking place to any significant extent, let alone with the type of frequency that would justify the renumbering of enhancements. Moreover, CDAA believes that renumbering could cause a greater number of enhancements not to be pled due to prosecutors' lack of familiarity with the new organization of the applicable statutes.

2. The Proposal Will Increase the Complexity of the Law

This proposal to reorganize and renumber various weapon and injury enhancements without substantive change does nothing to simplify the sentencing law. In fact, this proposal does just the opposite: it will make the law more complex.

Simplification would involve dramatically reducing the number of enhancements by combining similar ones and eliminating duplicative and obsolete ones. Moreover, the enhancements that remain should be substantively improved to provide clear, concise, and appropriate punishment. To the maximum extent possible, the basic section numbers should remain unchanged to facilitate the ease of education, research, and reference.

The current proposal accomplishes none of these goals. The entire body of weapon and injury enhancement law, with all of its multiplicity and complexity, would simply be reorganized and renumbered into an entirely new section of the code with no substantive change, no improvement, and no simplification. This proposal would not replace the existing enhancement scheme with a better one. Instead, it would re-enact an even more complicated version of the existing scheme in a different place.

Renumbering alone accomplishes very little, but carries with it a heavy price. This proposal will immediately render all legal materials on weapon and injury enhancements obsolete, and it will require massive training and education of attorneys, judges, and others in the criminal justice system to learn the new scheme. It will also enormously complicate legal research because the entire body of case law built up over many decades will refer to these enhancements by their original numbers. New cases, of course, will use the new numbers. This will create a difficult dual track for research, filled with the potential for errors and

confusion. Unfortunately, this problem will continue indefinitely. It would perpetuate obsolete and useless provisions in separate sections as part of the new scheme. It would greatly increase (instead of reduce) the number of weapon and injury enhancement sections which not only complicates the scheme, but is also sure to cause more problems, confusion, and errors in pleading, proving, and imposing these provisions. Furthermore, it will greatly increase the problems with the numerous cross-references to these enhancements in other sections. It will inevitably produce many drafting and cross-reference errors which will further complicate the law.

3. Format Problems

Currently, existing weapon and injury enhancements applicable to all felonies are found within two narrow areas of the Penal Code: sections 12021.5-12022.9 [weapons] and 12022.7-12022.95 [injuries]. Enhancements applicable only to specific crimes are found either within the statutes or nearby (e.g., PC 273.4 applies to PC 273a; H&S 11379.7(b) applies to H&S 11379.6 and H&S 11383; H&S 11379.9 applies to H&S 11379.6 and H&S 11383; PC 451.1 applies to PC 451; PC 452.1 applies to PC 452). Only VC 23558 is far from the crimes to which it applies (VC 23153, PC 191.5, and PC 192(c)(3)).

The current numbering system is far more intuitive than CLRC's proposal. Experienced practitioners are familiar with the weapon and injury enhancements that apply to all felonies. Less experienced practitioners can easily look in two narrow areas of the Penal Code when trying to find them. The more esoteric enhancements that apply only to specific crimes (e.g., tree spiking that causes great bodily injury [PC 593a(b)]) should logically remain in the section defining the applicable crimes in order to place everyone on easy notice of their potential applicability. CLRC's proposal complicates matters by placing specific-crime enhancements in a list contained in a separate part of the Penal Code. This problem is compounded by the failure to cross-reference these enhancements with appropriate descriptive language. This could easily cause applicable enhancements to go uncharged, a problem that CLRC ironically believes is a potential result of our existing system. (See Introduction to Staff Draft Tentative Recommendation, at p. 2.)

Some might argue that there is a need for comprehensive and substantive sentencing reform. Any effort to enact such a measure in the future would be hindered by this proposal, since it would lock into place a rigid enhancement list that might not fit naturally into a future substantive restructuring. This proposal will also tie the hands of future legislatures that wish to enact comprehensive sentencing reform – unless, of course, the members wished to create yet a third system.

4. The Proposal will Impose a Tremendous Financial Burden

There are a number of unjustifiable costs associated with the Commission's recommendation. While these have been calculated from the perspective of California prosecutors, it is apparent that many of these same costs would be replicated for other criminal justice agencies and related organizations, including public defender, police and sheriff, probation, parole, corrections, courts, Judicial College, California District Attorneys Association, and Department of Justice.

One immediate cost would be the necessity of reprogramming the sophisticated systems used to generate complaints for prosecutors. There is no widely used program in California common to District Attorney's offices. Indeed most of the 58 counties have unique proprietary software that has to be reprogrammed with every change in the pleading statutes. That process involves highly-paid programmers, often on contract to counties, as well as District Attorney staff that must update tables and sunset dates. The cost of reprogramming hits small and medium counties especially hard. The amount of programming is the

same for each county and that makes the relative cost higher for offices with smaller budgets. Money for programmers must be found in budgets that are now straining to provide basic prosecution services.

Additionally, most prosecutors offices have some type of case tracking program. All such programs would have to be modified to accommodate the proposed changes. The costs would be at least as expensive as those needed for complaint production systems. Indeed, many such systems were off the shelf applications, which were expensively modified to suit the needs of each county. More expensive modifications would be necessitated if these proposed changes were adopted.

Another cost necessarily associated with this recommendation is training. Prosecutors are already administering what the Commission acknowledges is a "complex and difficult to understand" felony sentencing scheme. We will have to continue to teach this precise scheme even if this recommendation is implemented. That is because prosecutors must still remain familiar with the old numbering scheme in order to properly plead any new offense that involves a charged violation of any prior offence involving use of a gun or infliction of injury. Indeed, many new offenses will require a knowledge of the old and new numbering schemes just to get the initial pleading correctly charged. That means writing and producing new manuals, new training courses, new crime summaries, and dealing with new prosecutors and law enforcement officers who will need new dual training. Manuals, summaries, and training all cost dearly to cash-strapped local prosecutors.

5. The Proposal will Create an Ongoing Training Burden

CLRC's proposal would not simply create a short-term need to train prosecutors about the new system. District attorney personnel (as well as other professionals within the criminal justice system) would always need to be familiar with both the new and old numbering systems in order to analyze and apply case law, understand the nature of prior convictions, and file cases where the charged crime took place before the enactment of this proposal. Essentially, this would require competent criminal law practitioners to become proficient at knowing two different sets of enhancements, one of which would be difficult to memorize due to its counter-intuitive organization and lengthy, eight-digit statute numbering.

Criminal law practitioners currently make extensive use of sentencing practice guides and treatises, including those published by Witkin, CDAA, California Public Defenders Association, and California Center for Judicial Education and Research. This proposal would instantly render those publications obsolete. CLRC's proposal would make it exceptionally difficult to create easily understood practice guides that address both sentencing formats.

6. The Proposal will Complicate Interagency Communications

The Commission's proposal ignores the burden it would place on law enforcement communications. Prosecutorial offices at every level are in constant communication with a wide variety of investigative agencies, including local sheriff, police, Consumer Affairs, Department of Insurance, Bureau of Narcotic Enforcement, Highway Patrol, Department of Motor Vehicles, State University and College Police, Contractors State Licensing Board, all Federal Investigators, especially Border Patrol, Naval and Army and Air Force Criminal Investigative Services.

The common language between and among these agencies includes the use of the California Penal Code sections dealing with firearms and injury enhancements. The use of multiple major data systems that have these sections encoded is essential to effective communications and the effective and timely investigation and prosecution of violent crimes. These systems include California Law Enforcement

Tracking System, Automated Regional Justice Information System, Justice Reporting Information System, Regional Juvenile Information System, Inmate Booking Information System, Jail Information Management System, and too many others to cite within all 58 counties. The Commission's proposal would have an instant negative effect on the effectiveness of those and other systems by introduction of duplicative numbering system with no apparent benefit to regional and state law enforcement communications. The present systems include many legacy applications that were written in very old computer languages, like Cobol, which are very expensive to modify because of the lack of current available training and the shortage of experienced programmers.

7. The Proposal will Create Unintended Consequences in the Law

The massive drafting requirements imposed by the proposed sentencing reform will inevitably result in countless drafting errors that will create unintended consequences in the criminal law system similar to past reforms efforts. It is difficult, if not impossible, to locate past legislation that substantially impacted sentencing laws without creating unintended error. Even a modest proposal to reorganize driving under the influence (DUI) sentencing provisions in a "nonsubstantive" manner resulted in a loophole for recidivists that had to be addressed by the Court of Appeal. (*People v. Superior Court (Blanquet)* (2000) 85 Cal.App.4th 768.) Any renumbering scheme without proper cross-referencing may cause recidivists to escape appropriate punishment for their present offense. Such a problem existed with reference to prior sex offenses, which prompted the Legislature to pass section 668.5 of the Penal Code, currently known as the Predecessor Statute, in order to close a significant loophole in sentencing sex offenders.

This proposed "nonsubstantive" renumbering effort will revise a greater number of law provisions than past "nonsubstantive" law enforcement reform efforts, which will create drafting errors surpassing unintended consequences of past reforms. Just to renumber one of the proposed sections, Penal Code 12022.7, will require numerous changes to the Penal Code. This provision is cross-referenced in roughly 40 sections of the Penal Code. The proposal splits 12022.7 into multiple sections. Many of these new sections would have to be cross-referenced in the 40 areas, geometrically increasing the complexity and potential for drafting error.

As a consequence, despite many dedicated hours of work and careful planning, this proposal will create an indefinite number of unimaginable problems in the Penal Code. The DUI sentencing reorganization, which was on a much smaller scale, took many years and required many hours of meetings from representatives of various law enforcement agencies, the State Department of Motor Vehicles, the State Department of Alcohol and Drug Programs and drinking driver programs to redraft a sentencing scheme. The group worked from 1991 through 1997 in order to introduce a legislative proposal, SB 1186, which required two working legislative sessions to pass through the Legislature in 1998. Thereafter, it required two years of legislative clean-up and an appellate court decision to fix a whole host of problems including chaptering conflicts and technical errors with the DUI sentencing renumbering. Even considering the amount of work and effort dedicated to the current sentencing proposal, renumbering the enhancement provisions will undoubtedly create unanticipated problems for years to come.

Just at a glance, this proposal contains a number of potential and blatant errors. Some illustrations of such errors include: amendments to Penal Code section 1170.2 to reflect changes made to sentencing laws after the Determinate Sentencing Law was enacted; deletion of former Penal Code section 12022.53(j); antiquated reference to merger in Penal Code section 1170.1(h); and inclusion of the old ban on imposition of sentence enhancements on subordinate nonviolent felonies in Penal Code section 1170.1(a).

CONCLUSION

In sum, CDAA has actively sponsored and supported sentencing reform efforts that have resulted in a significant benefit to the criminal justice system through improvement and simplification of the law. The perceived areas of complexity explored in the CLRC's tentative recommendations would not be simplified by renumbering enhancements any more than California's freeway complexity could be simplified by renumbering each and every freeway. Therefore, CDAA strongly opposes the CLRC's proposal to renumber and reorganize weapon and injury enhancement provisions.

Very truly yours,



THOMAS J. ORLOFF
President

cc: California Judicial Council
California Judges Association
Chief Probation Officers of California
California Peace Officers' Association
California Police Chiefs Association
California State Sheriffs' Association
Peace Officers' Research Association of California
Commission on Peace Officer Standards and Training
California State Association of Counties
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July 27, 2001

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CALIFORNIA LAW REVISION COMMISSION'S TENTATIVE RECOMMENDATION ON WEAPON AND INJURY ENHANCEMENTS PROPOSAL OPPOSE

Dear California Law Revision Commission:

The Los Angeles District Attorney's Office regrets to inform you that we oppose your recommendation to reorganize California's weapon and injury sentence enhancements in the California Penal Code.

While consolidating California's weapon and injury sentence enhancements in the Penal Code may appear to be a logical way of addressing the complexity of California sentencing law, we believe that the negative unintended consequences of this proposal outweigh any potential benefits.

Our first concern is that simply consolidating and renumbering various weapon and injury sentence enhancements does nothing to simplify California's sentencing law. In fact, this proposal may have the unintended consequence of making California's sentencing law more complex.

Any effort to truly simplify California's sentencing laws, should involve eliminating unnecessary and obsolete sentence enhancements and combining sentence enhancements involving similar actions or injuries. However in order to reduce the burden on practitioners who use California's weapon and injury sentence enhancements, we would strongly encourage that to the maximum extent practicable the basic section numbers should remain unchanged.

Simply renumbering California's weapon and injury sentence enhancements will accomplish very little in terms of easing the complexity of California's sentencing law, but will cause immediate problems for prosecutors, defense attorneys, and law enforcement agencies in California. The proposal would immediately render all legal materials on weapon and injury enhancements obsolete, and would require extensive training and education of attorneys, judges, and others in the criminal justice system to learn the new scheme. It will also enormously complicate legal research because the entire body of case law built up over many decades will refer to these enhancements by their original numbers.

New cases, of course, will use the new numbers. This will create a difficult dual track for research, filled with the potential for errors and confusion. Unfortunately, this problem will continue indefinitely. It would perpetuate obsolete and useless provisions in separate sections as part of the new scheme. It would greatly increase the number of weapon and injury enhancement sections which not only complicates the scheme, but is also sure to cause more problems, confusion, and errors in pleading, proving, and imposing these provisions. Furthermore, it will greatly increase the problems with the numerous cross-references to these enhancements in other sections. It will inevitably produce many drafting and cross-reference errors which will further complicate the law.

1100 K Street, Suite 404
Sacramento, CA 95814
(916) 442-0668
Fax: (916) 444-8729

Our second concern revolves around the fact that our experienced prosecutors are familiar with the existing weapon and injury sentence enhancements. The proposal would create tremendous burdens, both short-term and long-term, on personnel throughout the criminal justice system. In the short-term if the proposal were to be enacted, all of our prosecutors (as well as all other criminal justice personnel) would have to be retrained in order to be familiar with both the new and old section numbers for California's weapon and injury sentence enhancements. In the long-term it would be necessary to become familiar with both numbering systems since knowledge of prior convictions and enhancements are essential for sentencing purposes.

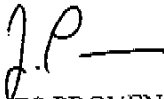
In the long-term, having dual numbering systems for the same enhancements will cause confusion for criminal justice system personnel analyzing and applying case law. The proposal would require competent criminal law practitioners to become proficient at knowing two different sets of enhancements, one of which would be difficult to memorize due to its counter-intuitive organization and lengthy, eight-digit statute numbering. Our office is also concerned that having two sets of code numbers for the same enhancements used by the criminal justice system will make it difficult to create easily understood practice guides that address both sentencing formats.

While our office applauds the time and effort that you have put in to your proposal to reduce the complexity of California's sentencing law, we are unable to support your proposal due to the negative consequences this proposal would have on our office and the criminal justice system.

Yours very truly,

STEVE COOLEY
District Attorney

By



JAMES PROVENZA
Special Assistant District Attorney

df

cc: California District Attorney's Association



OFFICE OF THE

DISTRICT ATTORNEY

ORANGE COUNTY, CALIFORNIA

TONY RACKAUCKAS, DISTRICT ATTORNEY

CHARLES MIDDLETON
CHIEF ASSISTANT D.A.

CLAUDIA SILBAR
SENIOR ASSISTANT D.A.
FELONY OPERATIONS 1

BRUCE PATTERSON
SENIOR ASSISTANT D.A.
FELONY OPERATIONS 2

JAN STURLA
SENIOR ASSISTANT D.A.
FAMILY SUPPORT

BRYAN BROWN
SENIOR ASSISTANT D.A.
MISDEMEANOR OPERATIONS

DONALD BLANKENSHIP
CHIEF
BUREAU OF INVESTIGATION

LISA BOHAN - JOHNSTON
DIRECTOR
ADMINISTRATIVE SERVICES

July 27, 2001

Law Revision Commission
RECEIVED

AUG - 2 2001

File: _____

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

RE: Renumbering of Weapon and Injury Enhancements

Dear Members of the California Law Revision Commission:

My office has been following the progress of the Commission's proposal to enact nonsubstantive sentencing reform by renumbering all weapon and injury enhancements. I have reviewed the Commission's tentative recommendation, as well the letter of opposition submitted to you by the California District Attorney's Association (CDA).

This office joins CDA in firmly opposing the proposal. Many believe that our existing sentencing statutes should be revised to simplify or otherwise improve California's sentencing law. However, this proposal would do just the opposite. The creation of a new numbering scheme for felony enhancements would inject needless complexity into our law. For the indefinite future, prosecutors would need to be versed with a dual statutory enhancement system in order to research and apply case law, understand the nature of prior convictions, and file cases where the crimes occurred before the enactment of the proposal. The proposed law would also impose an unnecessary financial burden on this office in such areas as staff training and computer programming.

Certainly, it can be argued that all new sentencing laws impose costs and training burdens on prosecutors' offices throughout this state. But this law is unique in that it results in no positive substantive or procedural benefit to outweigh its broad, negative impacts. I respectfully urge the Commission to withdraw its proposal.

Sincerely Yours,



TONY RACKAUCKAS,
Orange County District Attorney

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

WEB PAGE: www.oc.ca.gov/da

MAIN OFFICE
401 CIVIC CENTER DR. W.
SANTA ANA, CA 92701
(714) 834-3600

NORTH OFFICE
1275 N. BERKELEY AVE.
FULLERTON, CA 92631
(714) 773-4480

WEST OFFICE
8141 13TH STREET
WESTMINSTER, CA 92683
(714) 896-7281

SOUTH OFFICE
30143 CROWN VALLEY PKWY.
LAGUNA HIGUEL, CA 92677
(949) 249-5028

HARBOR OFFICE
4801 JAMBOREE ROAD
NEWPORT BEACH, 92660
(949) 476-4650

JUVENILE OFFICE
341 CITY DRIVE SOUTH
ORANGE, CA 92668
(714) 935-7824

CENTRAL OFFICE
700 CIVIC DRIVE DR. WEST
SANTA ANA, CA 92701
(714) 568-3800



OFFICE OF THE
DISTRICT ATTORNEY
HUMBOLDT COUNTY

TERRY R. FARMER
DISTRICT ATTORNEY

July 27, 2001

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

Re: Opposition to the Commission's Tentative Recommendation
Regarding Weapon and Injury Enhancements

Dear Members of the Commission:

I wish to join my colleagues in the California District Attorney's Association in opposing the tentative recommendations on weapons and injury enhancements.

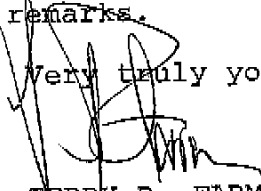
I think that the old saying of "beware of what you wish for, you may get it", applies here. Although the goal of the commission is laudable, I am fearful that the "cure" will be more painful than the current "disease".

CDAAs have long favored simplification of our criminal laws. The association and its members have actively participated and contributed to efforts in that regard. However, as we have too often seen, "reform" often creates more problems than it solves.

I ask that you seriously consider the comments as expressed in President Orloff's letter on this subject. We must continue to strive towards improvement of the criminal laws. We are all fearful that the proposed amendments will not achieve that end.

Thank you for considering my remarks.

Very truly yours,


TERRY R. FARMER
DISTRICT ATTORNEY

cc: Larry Brown, CDAAs

CRIMINAL DIVISION
825 5th Street
Eureka, CA 95501
(707) 445-7411
(707) 445-7416 Fax

CHILD SUPPORT ENFORCEMENT
2420 6th Street
Eureka, CA 95501
(707) 441-3200
(707) 441-3289 Fax

VICTIM WITNESS ASSISTANCE
714 4th Street
Eureka, CA 95501
(707) 445-7417
(707) 445-7490 Fax



OFFICE OF THE DISTRICT ATTORNEY
County of Sonoma, Hall of Justice
600 Administration Drive, Room 212-J
Santa Rosa, California 95403
(707) 565-2311

J. Michael Mullins
District Attorney

Gregory J. Jacobs
Assistant District Attorney

Kathleen D. DeLoe
Kenneth J. Gness
Larry J. Scoufos

Chief Deputies

July 27, 2001

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
FAX: (650) 494-1827

Subject: Tentative Recommendation on Weapon and Injury Enhancements Proposal

Dear California Law Revision Commission:

Please consider the comments of the California District Attorneys Association concerning the recommendation on weapon and injury enhancements. I concur that the proposal simply does not go far enough and will not solve the problem. The problem is we need a wholesale revision of the Penal Code. I join with my colleagues in the Association and request that the recommendation be withdrawn.

Sincerely,

J. Michael Mullins, District Attorney
County of Sonoma, State of California

de

lawrevision



OFFICE OF THE
DISTRICT ATTORNEY
COUNTY OF SHASTA

McGregor W. Scott
District Attorney

Gregory S. Gaul
Assistant District Attorney

Bennett P. Lambert
Criminal Program Director

July 27, 2001

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

Re: CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION'S OPPOSITION TO THE
CALIFORNIA LAW REVISION COMMISSION'S TENTATIVE
RECOMMENDATION ON WEAPON AND INJURY ENHANCEMENTS
PROPOSAL.

Dear California Law revision Committee:

I have just reviewed the CDAA's opposition to your commission's tentative recommendation to revise and renumber the weapon and injury enhancement provisions of the Penal Code. I am in complete agreement with CDAA's assertions that this proposal addresses a non-existent problem and would create far more evils than it purports to cure.

I strongly urge you to abandon this tentative recommendation.

Sincerely,

McGREGOR W. SCOTT
District Attorney

MWS/m
C:\MyFiles\wpdata\Legislation\RevisionCom.wpd

Office Of District Attorney

Court House, Fourth Floor
P.O. Box 670
Martinez, California 94553-0150
(925) 646-4500

Contra Costa County



Gary T. Yancey
District Attorney

July 30, 2001

VIA FACSIMILE

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

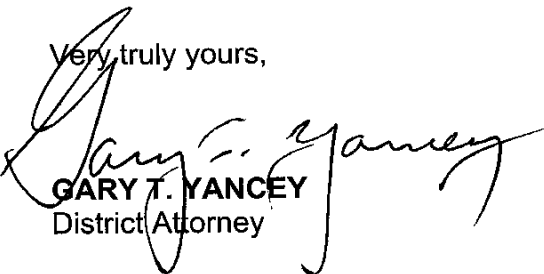
Re: Tentative Recommendation on Weapon and Injury Enhancements Proposal

Dear Commission Members:

I strongly support the California District Attorneys Association's position opposing the proposed changes in the numbering and placement of the weapons and injury enhancements in the Penal Code. Too much cost and effort for too little benefit.

Thank you for the opportunity to comment.

Very truly yours,


GARY T. YANCEY
District Attorney

GTY:ped
E:\JUL01\0701090.DOC



STEVE COOLEY
LOS ANGELES COUNTY DISTRICT ATTORNEY

18000 CRIMINAL COURTS BUILDING 210 WEST TEMPLE STREET LOS ANGELES, CA 90012-3210 (213) 974-3501

July 30, 2001

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
VIA FACSIMILE (650) 494-1827

California Law Revision Commission:

Renumbering and reorganizing weapon and injury enhancements in the California Penal Code is a step backward – not forward – in efforts for sentencing reform. It will lead to complications and costs in communications and computer applications that are staggering. I strongly urge you to reconsider this recommendation.

Very truly yours,

A handwritten signature in black ink that reads "Steve Cooley". The signature is stylized and includes a large, looping flourish at the end.

STEVE COOLEY
District Attorney

TM/tmn

c: Tom McDonald, Special Assistant
District Attorney's Office

Larry Brown
CDA

GREGORY THOMPSON
ASSISTANT DISTRICT ATTORNEY

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

San Diego
330 West Broadway
San Diego, CA 92101
(619) 531-4040

PAUL J. PFINGST
DISTRICT ATTORNEY

July 30, 2001

Law Revision Commission
RECEIVED

JUL 31 2001

VIA FEDERAL EXPRESS

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

File: _____

Re: Proposal to Renumber Weapon and Injury Enhancements

Dear Mr. Huebner:

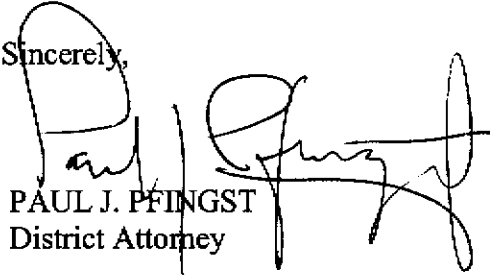
The current proposal to renumber the weapon and injury enhancements in various codes undoubtedly involves both hard work and good intentions. However, it would result in real mischief for the criminal justice system.

In my view, it serves almost no purpose to reorganize and renumber certain enhancements with no substantive improvement and no simplification of the law. Instead of replacing the complex existing enhancement scheme with a better one, this proposal would re-enact an even more complicated version of the current scheme in a new part of the code.

If enacted, this proposal would require practitioners, judges, and probation officers to learn two sentencing schemes for all weapon and injury enhancements (one for old cases, including priors, and one for new cases). It would also greatly complicate legal research, with decades of established case law under one scheme and new case law under another. Furthermore, by substantially increasing the number of enhancements (for example, the basic great bodily injury enhancement would be split into five separate sections), the proposal is certain to cause errors and confusion in charging and sentencing.

My office supports sentencing reform that improves and simplifies the law. But renumbering is not reform. If the proposal carried with it some significant benefits, it might be worth the problems it would cause. However, there are few, if any, benefits to balance the very considerable detriments. Therefore, I recommend that you not go forward with this proposal.

Sincerely,


PAUL J. PFINGST
District Attorney

PHILLIP J. CLINE
District Attorney and
Public Administrator

County of Tulare
DISTRICT ATTORNEY



Law Revision Commission
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AUG - 1 2001

County Civic Center
221 S. Mooney Blvd., Rm 224
Visalia, California 93291-4593
(559) 733-6411
FAX (599) 730-2658

File:
July 30, 2001 _____

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

Dear California Law Revision Commission:

We have received the California District Attorney's Association's Opposition to the California Law Revision Commission's Tentative Recommendation on Weapon and Injury Enhancements Proposal. We are attaching a copy of that opposition to this letter.

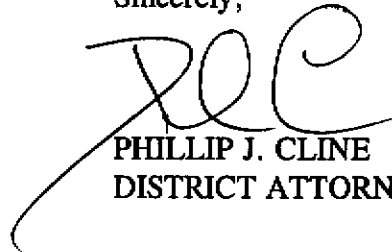
I strongly agree with the position taken by the California District Attorney's Association. The proposal will not solve the alleged problems; the proposal will increase the complexity of the law; the proposal will create format problems; the proposal will impose a tremendous financial burden; the proposal will create an ongoing training burden; the proposal will complicate interagency communications, and the proposal will create unintended consequences in the law.

The principal concern at this time would be the tremendous financial burden that this would impose upon our County. We are presently using a JALAN system for programing our complaints and misdemeanors. This is a very user unfriendly program that was imposed upon our office by the County. In order to reprogram this system would cost many thousands of dollars and completely retrain our support staff and attorneys. In a small county, such as ours, we would not be able to sustain such a financial burden.

We also agree, in particular, with the reasoning concerning the complication to interagency communications. We have several small police departments in our County. A change such as recommended would require the complete retraining of each of these police departments. This would be an almost impossible burden to place on a small rural county such as ours.

We strongly oppose the CLRC's proposal to renumber and reorganize weapon and injury enhance provisions.

Sincerely,



PHILLIP J. CLINE
DISTRICT ATTORNEY

PJC:ss

Attachment

County of Santa Clara

Office of the District Attorney

County Government Center, West Wing
70 West Hedding Street
San Jose, California 95110
(408) 299-7400
www.santaclara-da.org



George W. Kennedy
District Attorney

July 31, 2001

Sent by fax to: (650) 494-1827
2 Pages Total

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

Dear Members of the California Law Revision Commission:

I have reviewed your tentative recommendation to revise weapon and injury enhancements. I support sentence reform that improves and simplifies the law. I appreciate the work that went into this proposal and the fine motives behind it. However, I cannot support the recommendation because it does not simplify. It complicates. It will not reduce case reversal due to sentencing error. If anything, it adds to the opportunity for error.

The current format is simple: The main weapon enhancements are in Penal Code sections 12021.5 through 12022.9. The main injury enhancements are in Penal Code sections 12022.7 through 12022.95. Attorneys, judges, probation officers, police officers, and others in the criminal justice system are familiar with these enhancements.

The proposal, in contrast, is complexly refined. Renumbered enhancements split into multiple new code sections make things complicated. For example, the great bodily injury enhancement now contained in one section, Penal Code section 12022.7, is renumbered and split into five different, non-sequential, new code sections: Penal Code sections 17565, 17566, 17567, 17570, and 17571.

Adding to the complexity, my attorneys (as well as judges, defense attorneys, probation officers, police officers and booking officers) will need to operate within both systems for many years to come. My lawyers, for instance, will need to recognize the code sections as presently numbered and translate to the new system, to analyze priors to add to charging documents on new offenses, to structure sentencing exposure and to interpret case law articulated under the old numbers as it applies to the same concepts but with new numbers attached. The opportunity for human error, including sentencing error, is compounded with the change.

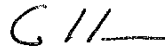
With all respect to your fine intentions, I do not think this proposal will correct the issue that has motivated its creation: the elimination of case reversal due to sentencing error. Cases are reversed for sentencing error for a variety of reasons, including improper reasons for the imposition of an aggravated term, failure to state reasons for consecutive sentences, and failure to state reasons for

California Law Review Commission
July 31, 2001
Page Two

the denial of probation. None of these errors is avoided by the proposal. I urge the Commission not to go forward with this proposal.

Thank you for considering my comments.

Very truly yours,



GEORGE W. KENNEDY
District Attorney
Santa Clara County

GWK:mg



Government Relations Oversight Committee

1455 Response Road, Suite 190, Sacramento, CA 95815

Telephone Number: (916) 263-0541 Fax: (916) 263-6090



Government Relations Manager, John Lovell

Telephone Number: (916) 447-3820 Fax: (916) 441-1974

July 31, 2001

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

Dear California Law Revision Commission:

The California Peace Officers' Association, which represents over 5,000 law enforcement professionals throughout the state, and the California Police Chiefs Association, whose members are responsible for providing front-line public safety services for over 22,000,000 Californians, joins with the California District Attorneys Association in our opposition to the commission recommendations with respect to injury and weapons enhancements.

Both organizations agree with the California District Attorneys Association position that weapons and injury enhancements are clear and require no changes. The appellate cases that the commission has relied upon to justify the suggested changes are over 20 years old. Both organizations incorporate by reference the comments made by the California District Attorneys Association.

If you have any questions about the position of the California Peace Officers' Association and the California Police Chiefs' Association, please contact me at 916-447-3820.

Sincerely,

John Lovell
Government Relations Manager
California Peace Officers' Association
California Police Chiefs Association



OFFICE OF THE DISTRICT ATTORNEY

County of Ventura, State of California

MICHAEL D. BRADBURY
District Attorney

GREGORY D. TOTTEN
Chief Assistant District Attorney

July 31, 2001

RONALD C. JANES, Chief Deputy
Major Offenses Division

I,ELA HENKE-DOBROTH, Chief Deputy
General Criminal Division

JEFFREY G. BENNETT, Chief Deputy
Admin/Child Support Operations

MICHAEL K. FRAWLEY, Chief Deputy
Special Operations

GARY G. AUER, Chief Deputy
Bureau of Investigation

Via Facsimile 650-494-1827

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

RE: OPPOSITION TO THE CALIFORNIA LAW REVISION COMMISSION'S TENTATIVE RECOMMENDATION ON WEAPON AND INJURY ENHANCEMENTS PROPOSAL

Dear California Law Revision Commission:

I agree with the California District Attorneys Association's (CDAA) position opposing the California Law Revision Commission's Tentative Recommendation to revise the weapons and injury enhancement law provisions. Though well intentioned, the proposed revisions would create unintended consequences including increased costs, and, more importantly, confusion and error in sentencing.

For the past several years, my office has been engaged in a massive joint effort to consolidate our computer systems with those of our local court and police agencies. When the DUI provisions of the Vehicle Code were renumbered, it took a great deal of time and effort to re-program the various systems to recognize the new statute numbers. As noted by CDAA, the current proposal involves a much grander renumbering scheme that would surely require even more time and effort for reprogramming.

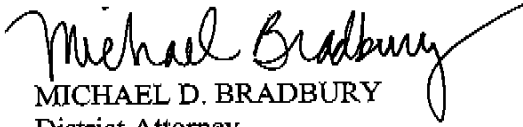
CDAA correctly points out that, no matter what changes are made, prosecutors will need to remain familiar with the "old" numbering system well into the future. This is because many of the enhancements that would be renumbered carry life long consequences to the criminals who accrue them. For example such an enhancement could elevate a crime to a serious or violent offense and thus a "strike" that could be alleged if the defendant ever committed another felony. If a prosecutor were unfamiliar with the "old" numbering system, that strike prior might be missed and a recidivist offender would get an undeserved break.



California Law Revision Commission
July 31, 2001
Page Two

For these reasons, as well as the reasons explained in the CDAA letter, I join CDAA in their opposition to the renumbering proposal.

Very truly yours,


MICHAEL D. BRADBURY
District Attorney

MDB/prw

pc: The Honorable Thomas J. Orloff, President, California District
Attorneys Association

Jul01/12califlawrevisioncomm.

OFFICE OF THE

DISTRICT ATTORNEY



SACRAMENTO COUNTY

JAN SCULLY
DISTRICT ATTORNEY

Law Revision Commission
RECEIVED
CYNTHIA G. BESEMER
CHIEF DEPUTY

AUG - 3 2001

File: _____

July 31, 2001

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

Delivered by FAX 7/31/01

RE: Law Revision Commission Tentative Recommendation to Revise Weapon and Injury Enhancement Provisions

Dear Law Revision Commission:

I am writing to express the opposition of the Sacramento District Attorney's Office to the tentative proposal, distributed last March, to revise the weapons and injury enhancement provisions of California sentencing law.

California felony sentencing law is unquestionably complex. The proposal at hand, however, only reorganizes and renumbers existing statutes on weapons and injury enhancements, without making any substantive changes. While at first blush this may seem to be helpful, in fact it will not be.

First, it is not at all clear that the proposed renumbering system will really be more simple or useful for practitioners or the courts. In particular, separating crime-specific enhancements from the sections which define those crimes seems more likely to cause those enhancements to be overlooked.

In addition, any change in the current numbering system will add substantial burdens. Those who work in the criminal justice system will still be required to understand and deal with both numbering plans, because prior convictions will be under the old numbering. Tracking and researching legal principles will be greatly complicated. In this office and statewide, extensive computer reprogramming in both pleading and case management systems will be necessary to accommodate the new provisions. The training burden throughout the criminal justice system

will be substantial. Compendiums and practice manuals used by criminal practitioners and the courts will all need extensive revision. Suffering these costs and burdens might be appropriate if the statutory revisions made substantive progress in the law, but it does not seem worthwhile to endure them simply to "reorganize the outline."

In the end, "reorganizing the outline" is the only benefit this proposed revision brings. Sentencing law will remain as complex as it already is. The practical difficulties for attorneys and the courts arise not from the organization and numbering of the enhancements, but rather out of the application and interaction of these enhancements with the substantive crimes, and the sentencing considerations and procedures as to the crimes themselves. This proposal will not affect on any of these.

While we have no doubt the proposal is well intentioned, it will do little other than add to the confusion level and training budget of all concerned. We urge you not to proceed forward with the proposal.

Very truly yours,

JAN SCULLY
DISTRICT ATTORNEY

A handwritten signature in black ink, appearing to read 'ALBERT C. LOCHER', with a long horizontal flourish extending to the right.

ALBERT C. LOCHER
Assistant Chief Deputy