

Laws Need Pruning But Prop. 20 Would Rip Out the Roots

Imperfect laws should be fixed, not bulldozed, says retired Judge Eugene Hyman of Santa Clara County Superior Court, of California laws that reduced certain nonviolent felonies to misdemeanors and increased parole opportunities for nonviolent criminals.

By **Eugene Hyman** | October 02, 2020 at 06:55 PM



Retired Judge Eugene M. Hyman of the Superior Court of California

California's efforts to mend its broken criminal justice system have had some unwelcome side effects, but Proposition 20 opts for the hatchet over a holistic approach.

The measure looks to lessen or reverse several of the state's recently implemented criminal justice reforms. Most notably Propositions 47 and 57, which reduced certain nonviolent felonies like personal drug possession (but not sales) to misdemeanors and increased parole opportunities for nonviolent criminals. Proponents of the new measure claim this is necessary to address critical defects in those reforms, which have caused a rise in certain crimes like shoplifting and petty theft.

It may be generally true that initiatives like Props. 47 and 57 have challenges. But imperfect laws should be fixed, not bulldozed. To address these flaws, proponents of Prop. 20 should go to the legislature to make their case and get the laws modified, rather than ask voters for a complete reversal of course on the reforms they've overwhelmingly approved.

It's not difficult to recall the motivation behind those initiatives. The U.S. Supreme Court found in 2011 that the state's overcrowded prison system was in such awful shape that it violated the Eighth Amendment ban on cruel and unusual punishment. Either prison populations had to be reduced or more prisons had to be built, and the public opted for the former in clear terms.

Given a 2019 analysis from the state's nonpartisan Legislative Analyst's Office puts the approximate yearly cost of housing an inmate in California at \$81,000, the voters' decisions in 2014 and 2016 seem a sound payoff from a fiscal perspective. Prop 20 supporters insist that approving those measures have had a disastrous effect on California's crime rate that requires immediate reversing, but the best evidence presented to support that claim has been flimsy. Correlation does not imply causation.

Opponents of these recently introduced laws must know that we cannot incarcerate our way out of criminality, yet their plan calls for a return to the failed tough-on-crime policies of the '80s and '90s, a period in which California matched any public university built with the construction of a dozen prisons.

Worse still, the money reallocated to support the proposed return to a draconian stance on crime would come at the cost of its victims. According to statistics provided by the victims' advocate group Californians for Safety and Justice, the passage of Prop. 20 could result in as many as 20,000 or more people in California prisons a year. This would cost taxpayers an additional \$400 million a year to support, on top of the billions already wasted.

This increase would come at the cost of survivor services, relocation funds, psychological services and trauma centers that are being constructed throughout the state with the money saved from crime cuts. Prop. 20, which includes not a word about victim services, would throttle this funding.

So the plan doesn't make sense from a fiscal perspective, or an emotional one. It does nothing to help victims and will likely hurt them, and there's no evidence that the plan would lead to a serious reduction in crime. Why has it gotten this far?

One need only follow the money.

The initiative has largely been bankrolled by law enforcement associations and police and prison guard unions, organizations that have long benefited from the state's stringent crime stance and the steady infusion of taxpayer money. Viewing the reforms as a kink in the hose that prevents the flow of that funding, these groups have introduced Prop. 20 as a way to preserve their own self-interests.

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As a former police officer, I'm sympathetic to the frustration voiced by pro-law enforcement groups. But as a former superior court judge, I'm unable to overlook the glaring lack of hard evidence to support their point. If this ballot measure was a case in a courtroom, it wouldn't survive pre-trial proceedings. The all-or-nothing approach of Prop. 20 reeks of a lack of data points and smacks of fearmongering.

Judge Eugene M. Hyman retired from the Superior Court of California, County of Santa Clara (San Jose) where, for 20 years, he presided over cases in the criminal, civil, probate, family and delinquency divisions of the court. He has presided over an adult domestic violence court and in 1999 presided over the first juvenile domestic violence and family violence court in the United States.