

# Proposed initiative will reform determinate sentencing

By L.J. Williamson

Gov. Jerry Brown announced Wednesday an initiative for the November ballot that seeks to temper determinate sentencing and move the power to charge juveniles as adults out of the hands of prosecutors and into the hands of judges.

Stanford law professor David Sklansky called the proposal a welcome move and an admirable exercise in leadership.

"This is an issue the governor has obviously been thinking about for some time, both from a fiscal and a public safety perspective," Sklansky said. "He helped lead California and the nation into the era of determinate sentences, and I think he is trying to do what he can to help correct the worst excesses of that era, and to learn from its mistakes."

This proposal is seeking to remedy some of the harms of rigidity of sentencing, said UC Hastings Professor Hadar Aviram, and should reflect the knowledge officials gained since the time when determinate sentencing was first adopted in the 1970s.

"Now we have a far better grasp of what kind of rehabilitation schemes actually work, so if we were to do this, we would have a pretty good idea of how to craft incentives and credits."

There is also a growing awareness that treating adult and juvenile offenders as equivalent is a flawed approach, Aviram said.

The week has been a meaningful one for juvenile justice reform.

On Monday, the U.S. Supreme Court held that review of juvenile life terms should be retroactive, and on Tuesday, President Barack Obama banned juvenile solitary confinement in federal prisons.

"I think we have all lost our tastes for trying juveniles as adults," Aviram said.

"I especially like the juvenile provisions," said retired Santa Clara County Superior Court Judge Eugene M. Hyman, who presided in a delinquency court for five years. "Prop. 21 eliminated the judicial consideration part of the process, and the DA was totally in charge. I believe that the criminal justice system works best when there are checks and balances."

But Marc Debbaudt, president of the Los Angeles County Association of Deputy District Attorneys said, "I think it's a lie - it has nothing to do with 'public safety and rehabilitation.' It's all about reducing prison sentences."

Los Angeles County already permits judges to determine whether a minor is fit or unfit, he said, but to make it law divests prosecutors of discretion. "They don't consider the impact on victims, only on the defendants or the minors, which is always a bad analysis."

"It's really important and actually very elegant in many ways, and I anticipate it will pass," said Stanford Law School Professor Joan Petersilia.

"Anybody who's watched what's happened can't help but applaud that pullback away from politics and back into the expertise in the criminal justice system," she added.

Determinate sentencing had the unintended consequence of introducing a plethora of new bills and regulations - enhancements to sentencing in response to crimes - resulting in a dense and non-transparent penal code that moved power back to elected officials, Petersilia said.

Brown's proposal would move power back into the hands of parole boards, but parole is less discretionary now than it was in the 1970s - less about "looking into an offender's eyes" and more about risk assessments and parole guidelines, Petersilia said.

"It's really a shift in who's going to make decisions, back to those closest to the offender and away from the political arena. "

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