Base any changes to Prop. 47 on scientific evidence

By Eugene M. Hyman

As a former police officer and retired Superior Court judge, I understand some of Morgan Hill Police Chief David Swing's frustration ("Time to admit criminal reform measure not working," Opinion, June 28) with respect to some increases in criminal activity in our community.

Correlation, however, does not imply causation.

The fact that certain crimes have increased after Proposition 47 was passed is not scientific evidence that the new laws are responsible for an increase in crime. To argue that they are is irresponsible, misleading and smacks of fearmongering.

Let's remember why voters overwhelmingly passed Proposition 47. Our prison population had been exploding for many years. The U.S. Supreme Court found California's prisons to be severely overcrowded and in violation of the Constitution. Either prison populations had to be reduced or more prisons had to be built.

The public, contrary to the urging of the criminal justice community, balked at the expense of building more prisons, where the cost per prisoner, per year, is approximately $71,000. The parole failure rate, meanwhile, continued to run consistently in the 60 percent-plus range, suggesting that the "lock 'em up" philosophy of the 1980s was not working.

Further, the public has come to realize that prisons do not offer rehabilitation services, and that not every prison offers substance abuse counseling and literacy training. Substance abuse is the true driver of crime, and a released prisoner who is not clean and sober and cannot read is destined to fail and return to prison.

Stating that Proposition 47 is responsible for a reduction in arrests and prosecutions without sound evidence for this assertion suggests to me that the police and district attorney aren't doing their jobs because they are unhappy that criminals are receiving more lenient sentences.

Judges, police, probation, prosecutors, guards and others take a constitutional oath to be faithful to the law. If the current law does a disservice to the public, then their duty includes an obligation to help fix it by lobbying the Legislature or placing another measure on the ballot. Disobedience is not an option.

Clearly, changes to current sentencing practices are needed. A misdemeanor defendant can be placed on probation for up to a year per crime. Nothing prevents consecutive sentencing where multiple crimes have occurred. Nothing prevents forcing defendants to participate in substance abuse programming with some custody consequences for failed drug tests. Misdemeanants can be placed on formal probation with monitoring and other requirements. A defendant can be sentenced to between six months to a year of custody per offense depending upon the crime; sometimes a sentence on the longer end is appropriate.

In some criminal cases, it takes more than a year to achieve consistent sobriety. Therefore a change is needed to allow for longer periods of probation and incarceration.

Yes, it is necessary to tweak some of the sentencing options changed by Proposition 47, but we should base these on scientific evidence and not just a need for "feel good" legislation or to shame legislative candidates into supporting harsher sentences that have proven ineffective just to obtain votes.

To do otherwise would be to ignore the public's demand for the reforms reflected in Proposition 47. Also, the reality is that we cannot incarcerate ourselves out of criminality even if we had all the financial resources necessary to lock up the many thousands of criminals that many would like us to do.

Legislation by initiative/proposition is rarely perfect without the legislative process of examination and compromise. There will be a proposal for modification of Proposition 47 on the November ballot. This provides an opportunity for helpful debate.

It is well past time to collaborate and offer the public proposals that encourage positive change and positive outcomes. *Eugene M. Hyman is a retired Santa Clara County Superior Court judge.*