

# Opinion: California has the tools to stop smash-and-grab robberies

Thanks to liberties taken by underzealous DAs, law enforcers and lawbreakers now perceive the system as toothless.



Bystander Khalid Chashmawala recorded cell phone video as several men ran out of Sam's Jewelers in Hayward's Southland Mall following a smash-and-grab robbery at the store on Nov. 21. (Photo courtesy of Khalid Chashmawala)

By **EUGENE M. HYMAN** |



There's working toward a fairer, better criminal justice system, and then there's giving up. The leaders of California have increasingly opted for the latter, and the plague of smash-and-grab robberies gripping the state are consequences of that surrender.

Gov. Gavin Newsom and progressive leaders in Los Angeles and San Francisco have fought to stop the prosecution of misdemeanors and lesser felonies, among other reforms that overall represent a stand-down in the war on crime. The onset of the COVID-19 pandemic even provided a convenient excuse for emptying our prisons and county jails and doing away with cash bail.

I've written extensively about my support for progressive criminal justice reforms such as Propositions 36 (promoting drug treatment as an alternative to jail), 47 (changing certain low level crimes from felonies to misdemeanors) and 57 (allowing parole considerations for nonviolent felons.) I still believe we still have a ways to go to address the injustices in the system and its prejudices against our underserved communities. But there does come a point in time where we must say "enough is enough."

And for me, that point is where the concept of "catch-and-release" is accepted as the de facto law of the land. While I supported Proposition 47's recategorizing some non-violent felonies as misdemeanors as a healthy step forward, the district attorneys of Los Angeles and San Francisco apparently felt that a few further steps were necessary. Sadly, they took these further steps without waiting for word from the electorate or Legislature.

Their offices are now declining to prosecute a range of low-level crimes such as resisting arrest, petty theft and making criminal threats. Even in cases that are borderline felonies, police are less inclined to charge the offenders, knowing that prosecutors are all the less likely to pursue the cases.

Many custody centers are using COVID-19 to justify not detaining offenders for even serious crimes and for early release from custody for others.

It is an easy and obvious decision if forced to choose between the safety of the community or that of serious criminals. Presently, the majority of those arrested receive citations for lesser crimes, and for violent aggressors reasonable bail would be set. If the DA or defense believes that the judge got it wrong, an appeal would be brought.

What I've just described isn't some theoretical creation of my own imagination — it's how the whole damn thing was designed to work over the course of two centuries-plus of U.S. judicial law.

Thanks largely to the aforementioned liberties taken by underzealous DAs, law enforcers and lawbreakers now perceive the system as toothless. And if the perception is that the likelihood of criminal prosecution is minor, the escalation we've seen in the law the past few weeks should come as no surprise.

It seems like a miracle that no one has died in these smash-and-grab armed robberies. It also seems like only a matter of time until someone does. These progressive reforms aren't going to last long if it's found that the perpetrators of these attacks have benefited from them, and I suspect the pendulum will swing back toward the zero-tolerance, hardline policies of the 90s.

The likes of Newsom and Gascon and others need to call off their crusade on cash bail and start working with police, rather than against them. They need to admit they've lost this battle or it will cost them the war for continued criminal justice reform, along with much of the ground they've gained already.

If they'd like to fix the system, they should fight for legislation or have it put to the voters. In the meantime, they should stop trying to jury-rig the justice system. The unrest we're now experiencing is the direct result of their shoddy engineering.

I'm not asking them to change the laws, I'm asking them to enforce the ones that already exist. We know what we have to do, but do we have the will to do it?

*Eugene M. Hyman is a retired Santa Clara County Superior Court judge.*