Op-Ed: Sentencing Reforms Need Voices From Victims

Amid the bipartisan effort to fix a broken criminal justice system, a key perspective is missing.

Mary Leary, The National Law Journal

November 2, 2015

The Senate Judiciary Committee last month advanced, on a bipartisan basis, the historic Sentencing Reform and Corrections Act of 2015.

This act has been described as the most significant criminal justice reform in decades. It proposes to drastically alter the sentences of thousands of criminals, recalibrating the entire structure of our criminal justice system.

While the Judiciary Committee's recent move is good news for sentencing reform, the news about the process of this bill is more mixed.

It is critical that different stakeholders with distinct perspectives weigh in on this landmark legislation before it is passed. Yet, guess how many crime victims organizations were called to testify before the Senate Judiciary Committee? Zero.

To be sure, it is a positive development that some policy makers have recognized that law enforcement needs to be included in any discussion of sentencing reform. There are many stakeholders in the criminal justice system.

Previous efforts at reform which have left out law enforcement and prosecutors have failed, largely because these groups are needed to implement real reform. Without them at the table to weigh in, reform efforts will fail to realize their potential.

As evidenced by President Barack Obama's recent meetings with the Major Cities Chiefs of Police and the International Association of Chiefs of Police, some policymakers understand that, to achieve legitimacy, the reforms need to be more than "bipartisan." They must be a product of dialogue with all stakeholders, not just offenders' organizations.

Yet, apparently no one in the Senate thought it appropriate to hear what victims have to say about criminal justice reform. Last year, about 1.17 million violent crimes and nearly 8.3 million property crimes were reported to law enforcement. The victims of that criminal activity are the people who bear the direct and secondary harm. That is not all. It is not just that victims were not included as witnesses; they were barely even mentioned. A review of the written testimony
of all nine witnesses indicates that the word "victim" or any derivative thereof was used a mere nine times.

Four of those times were by one witness, Steven Cook, the president of the National Association of Assistant U.S. Attorneys.

If that were not enough, four of the witnesses did not use the word at all in their written testimony, including the representative of the NAACP and the two researchers called to testify. This is notwithstanding the fact that people of color and the poor are disproportionately victimized by crime.

Perhaps this was because there is no one who speaks for all victims? Well, the National Center for Victims of Crime, the American Bar Association Criminal Justice Section's Crime Victim Committee, and the National Crime Victim Law Institute all come to mind as possible sources of comment and input. Although the judiciary Committee saw it appropriate to include representatives from Families Against Mandatory Minimums, prison ministers, and lawyers, it did not apparently see it necessary to include the people most affected by crime through no fault of their own — victims.

Perhaps this was because most stakeholders favor this bipartisan bill and, therefore, there is no need to find other voices? Even if such were the case, if the victim community supports these reforms, just as some law enforcement organizations do, would not that make the argument for the bill that much stronger?

And if victim groups have concerns, would not the bill become stronger if they were considered and perhaps included in its drafting? Although prosecutorial figures did testify, it is a mistake to assume they speak for victims. Indeed, that is how it should be, as the prosecutor's role is to represent the entire community and do justice, not to act as a victim's personal attorney.

A functioning criminal justice system must have legitimacy and a reformed fair sentencing scheme advances that goal. But a criminal justice system loses some legitimacy if it does not hear the voice of a major stakeholder — the victims.

The president and Congress need to reach out to victims. The president has gone all the way to Oklahoma to meet with prisoners. Perhaps he should take a walk in Washington and meet with one of the victims of the over 40,000 crimes that occurred there in 2014 or speak to the families affected by a homicide rate that has increased over 47 percent since last year.

Similarly, in 2004, Congress passed the Crime Victims Rights Act. This act afforded victims the right to be "reasonably heard" at public court proceedings. This same Congress should recognize that right in this context and allow victims to be "reasonably heard" regarding this major legislation.

Not only is it reasonable to listen to crime victims, but it is necessary for any criminal justice reform to be legitimate.

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