

# COUNTYWIDE CRIMINAL JUSTICE COORDINATION COMMITTEE

## MINUTES OF THE **October 17, 2018** MEETING

Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 140  
Los Angeles, California 90012

### **MEMBERS AND ALTERNATES PRESENT**

Chair: Sheila Kuehl, Supervisor, Third District and Chair of the County Board of Supervisors

Cynthia Banks, Director, County Department of Workforce Development, Aging and Community Services

Reaver Bingham for Terri McDonald, County Chief Probation Officer

Liliana Campos for Mary Wickham, County Counsel

\*Patricia Carbajal for Sachi Hamai, County Chief Executive Officer

Beatriz Dieringer, California League of Cities

\*Mark Diorio for Scott Minnix, Director, County Internal Services Department

Peter Espinoza, Director, Office of Diversion and Reentry

\*Xiomara Flores Holguin for Bobby Cagle, Director, County Department of Children and Family Services

Janice Fukai, County Alternate Public Defender

Michael Garcia, Assistant Supervising Judge, Criminal Division, Superior Court

Ricardo Garcia, County Public Defender

Scott Gordon, Supervising Judge, Criminal Division, Superior Court

Doug Haubert, Long Beach City Prosecutor, County Prosecutors Association

Christa Hohmann, Directing Attorney, Post Conviction Assistance Center

\*T. Warren Jackson for Ed Eng, County Economy and Efficiency Commission

Dan Jeffries for Mike Feuer, Los Angeles City Attorney

Stephen Johnson for Jim McDonnell, Sheriff

Shawn Landres, Chair, County Quality & Productivity Commission

\*Kevin McCarthy for Michel Moore, Chief, Los Angeles Police Department

Sam Ohta, Assistant Supervising Judge, Criminal Division, Superior Court

Paul Parker for Jonathan Lucas, County Coroner – Chief Medical Examiner

Robert Philibosian, Peace Officers Association of Los Angeles County

Devallis Rutledge for Jackie Lacey, District Attorney and Vice Chair of CCJCC

Jim Smith for John Incontro, President, San Gabriel Valley Police Chiefs Association

\*Susan Sullivan Pithey for Xavier Becerra, California Attorney General

\*Felipe Vasquez for Debra Duardo, Superintendent, County Office of Education

Darneika Watson-Davis for Austin Beutner, Superintendent, Los Angeles Unified School District

Andrea Welsing for Barbara Ferrer, Director, County Department of Public Health

**\*Not a designated alternate**

**I. CALL TO ORDER / INTRODUCTIONS**

Chair Sheila Kuehl, County Supervisor, Third District

The meeting was called to order at 12:00 p.m. by Los Angeles County Supervisor Sheila Kuehl, Chair of CCJCC.

Self-introductions followed.

Supervisor Kuehl introduced Ricardo Garcia. Mr. Garcia was recently appointed as the new Public Defender of Los Angeles County.

**II. APPROVAL OF THE MINUTES**

Chair Sheila Kuehl, County Supervisor, Third District

There were no requests for revisions to the minutes of the September 19, 2018 meeting. A motion was made to approve the minutes.

**ACTION: The motion to approve the minutes of the September 19, 2018 meeting was seconded and approved without objection.**

**III. STATE LEGISLATIVE UPDATE & DISCUSSION**

Chair Sheila Kuehl, County Supervisor, Third District

Supervisor Kuehl stated that today's meeting focuses on some of the recent state legislation that pertains to criminal justice-related matters. She noted that this is not intended to serve as a detailed overview of each bill, and not all criminal justice bills will be discussed, but the presenters will highlight key points with a number of the notable bills.

Juvenile Justice/Juvenile Court Jurisdiction

Supervisor Kuehl called upon Rourke Stacy of the Public Defender's Office to make a presentation on recent legislation concerning Juvenile Justice and Juvenile Court jurisdiction.

Ms. Stacy discussed two bills that were passed.

*SB 1391*

California State Senate Bill 1391 (SB 1391) repeals the authority of prosecutors to seek transfer of minor from juvenile court to criminal court if the offense was committed at 14 or 15 years of age. Youth aged 14 or 15 that commit an offense, including a felony, must stay in the juvenile system and can no longer be transferred for adult court prosecution.

While there is no retrospective language in the statute, Ms. Stacy stated that case law suggests that it may apply to any youth whose case is not final on appeal.

Most of the youth impacted by this will likely be committed to the Division of Juvenile Facilities. They will then be supervised by the Probation Department upon release.

For those youth that are deemed to be too dangerous to be released, there is a mechanism to extend their stay in the Division of Juvenile Facilities. This is known as a Welfare and Institutions Code (WIC) Section 1800 petition.

### *SB 439*

California State Senate Bill 439 (SB 439) establishes 12 years of age as the minimum age for Juvenile Court jurisdiction. There are specified exceptions, such as for youth that commit murder or forcible sex crimes.

The law mandates that counties create a program to address those youth that are under the age of 12 that commit an offense and have contact with law enforcement. Many stakeholders will be involved in developing plans for these youth where releasing the minor to the family is not an option.

SB 439 will impact jurisdictional statutes of the Juvenile Courts, most notably WIC Sections 601 and 602, and also creates WIC Section 602.1. However, this new statute is not operative until January 1, 2020, while the amendments to Sections 601 and 602 will take effect January 1, 2019. This may cause a great deal of confusion beginning in January of next year, which is a full year before the County is required to have created a plan for addressing youth under the age of 12.

Ms. Stacy surmised that this conflict in the law may be addressed in the Court of Appeals, or there may be emergency legislation.

Other implementation issues include determining which departments/agencies will be dealing with the youth, how law enforcement agencies will be notified, what directives law enforcement officers will be given for when they have contact with youth under the age of 12, what liabilities there may be in light of the difference in operative statutes, and what referral mechanisms will be in place.

### Firearm Possession Legislation

Supervisor Kuehl called upon Chief Stephen Johnson of the Sheriff's Department to discuss firearm possession legislation.

Chief Johnson introduced Captain Eddie Hernandez to present on four bills that have been signed into law.

### *SB 1346*

California Senate Bill 1346 (SB 1346) bans devices such as bump stocks and burst triggers by including them in the definition of prohibited mutiburst trigger activators. The law amends Penal Code Section 16930.

### *SB 1100*

California Senate Bill 1100 (SB 1100) prohibits the sale or transfer of shotguns or rifles to people under the age of 21. Existing law already prohibits the sale or transfer of a handgun, except as specifically exempted, to any person under 21 years of age.

There are some exceptions to SB 1100. For example, the following persons that are authorized to carry a firearm are exempt from this law: (1) Anyone aged 18 or older who possesses a valid, unexpired hunting license; (2) Active peace officers; (3) Active federal officers or law enforcement agents; (4) Reserve police officers as defined in P.C. Section 832.6; (5) Properly identified active members of the U.S. Armed Forces; and (6) Properly identified persons honorably discharged from the U.S. Armed Forces.

### *AB 1968*

California Assembly Bill 1968 (AB 1968) prohibits anyone committed to a mental health facility more than once in a year, and found to be a danger to self or others, from possessing firearms.

This is a lifetime prohibition for someone admitted to a designated mental health facility for more than one time in one year. Prior to AB 1968, the ban was for five years.

### *AB 3129*

California Assembly Bill 3129 (AB 3129) prohibits a person convicted of a misdemeanor domestic violence offense from possessing a firearm for life. Previous to AB 3129, the result was a 10-year prohibition against possessing a firearm. As with AB 1968, this extends the prohibition to a lifetime ban.

The Sheriff's Department has partnered with the State Department of Justice to track individuals listed on the Armed Prohibited Persons system and confiscate any illegally possessed firearms.

### Public Access to Law Enforcement Records

Supervisor Kuehl called upon Chief Alicia Ault of the Sheriff's Department to present on legislation pertaining to Public Access to Law Enforcement Records.

Chief Ault discussed three bills that were enacted into law.

### *SB 978*

California Senate Bill 978 (SB 978) requires local law enforcement agencies to conspicuously post on their Internet websites all current standards, policies, practices, operating procedures, and education and training materials that would otherwise be available if a request was made pursuant to the California Public Records Act (CPRA).

Chief Ault noted that this will be a lot of information for an organization the size of the Los Angeles County Sheriff's Department.

### *SB 1421*

California Senate Bill 1421 (SB 1421) establishes that certain peace officer/custodial records to be made available for public inspection pursuant to CPRA. This pertains to officer involved shootings, force that resulted in death or great bodily injury, records of sustained incidents involving sexual assault against a member of the public while on duty, and records of sustained incidents of dishonesty.

### *AB 748*

California Assembly Bill 748 (AB 748) requires the release of video/audio recordings that depict officer involved shootings or other serious use of force.

Both SB 1421 and AB 748 will create logistical challenges for the Sheriff's Department in determining how to carry out these laws, particularly if there is an ongoing investigation and redaction is required.

The Sheriff's Department will also be pressed in terms of the number of personnel needed to respond to all of the expected requests.

The law allows for certain delays in releasing information with active cases. Delays can be for up to 18 months and updates must be provided at 60-day increments to those who request the information.

Shawn Landres, Chair of the County Quality & Productivity Commission (QPC), inquired as to whether these laws are retroactive. Chief Ault stated that the law is silent on that so it is not clear. However, she did note that, with respect to AB 748, the Sheriff's Department is not yet using body-worn cameras.

Mr. Landres noted that there are bandwidth and storage issues affecting other departments. He inquired as to whether the Sheriff's Department anticipates difficulties with this as well.

Chief Ault stated that the Sheriff's Department will be conducting an internal analysis of what will be required in terms of staffing levels, equipment needs, and processing issues.

Mr. Landres stated that QPC helped to fund the effort by the Los Angeles County Fire Department to place their training materials online. That Department is also addressing the distinction between long-term archival storage and operating storage for active use. He advised Chief Ault that the Fire Department may have useful information for the Sheriff's Department with respect to these matters.

Dan Jeffries of the Los Angeles City Attorney's Office inquired if SB 978 applies to prosecution agencies as well. Chief Ault stated that this is not clear.

Devallis Rutledge of the District Attorney's Office reported that there is an Investigative Bureau in the District Attorney's Office with investigators that are peace officers, so SB 978 will likely apply in that situation.

Chief Ault noted that SB 978 will not go into effect until January 2020, so there is time to resolve these questions. SB 1421, however, will go into effect as of January 1, 2019.

### Forensic Sciences

Supervisor Kuehl called upon Commander Bill Song of the Sheriff's Department to make a presentation on legislation concerning Forensic Sciences.

Commander Song discussed four bills, three of which were signed into law.

#### *AB 1584*

California State Assembly Bill 1584 (AB 1584) allows for DNA sample collection from minors only after written consent of the minor and approval of the consent by parent, legal guardian, or attorney. Further, the DNA evidence itself can only be used for the particular offense at issue and cannot be used as a sample for other crimes.

#### *AB 3118*

California State Assembly Bill 3118 establishes audit requirements for untested sexual assault kits. The bill will require data on the total number of untested kits, date of collection, date taken into custody, date delivered to the crime lab, and the reason why testing has not yet happened.

For those kits where the victim has chosen not to prosecute or pursue, only the number of kits is required for the audit.

#### *AB 2988*

California Assembly Bill 2988 (AB 2988) establishes new requirements for the preservation of any evidence that contains biological material. If such evidence is to be destroyed, and it pertains to an incarcerated person, that person must be notified. The person may choose to contest the destruction of evidence.

## *SB 1449*

California Senate Bill 1449 (SB 1449) was vetoed by the Governor. This bill would have required sexual assault forensic evidence processing within a specific time (20 days for submission/120 days for testing).

## Sentencing/Resentencing

Supervisor Kuehl called upon Nick Stewart-Oaten of the Public Defender's Office to present on sentencing/resentencing legislation.

Mr. Stewart-Oaten discussed two bills that were signed into law.

## *AB 1793*

California Assembly Bill 1793 (AB 1793) expedites the identification, review, and processing of specified cannabis-related convictions that may be eligible to be reduced or expunged under Proposition 64 of 2016. Beginning next year, the California Department of Justice (DOJ) will provide the Courts and counties with a list of individuals who are potentially eligible for resentencing or a dismissal of charge(s).

District Attorneys' Offices in each county will receive the list and determine which of those cases they wish to oppose for resentencing or dismissal and which they do not. The Courts will then grant relief in all of the cases where the District Attorney's Office does not oppose.

For those cases where the District Attorney's Office does contest resentencing or dismissal, the prosecutors will need to prove by clear and convincing evidence that the defendant is not entitled to that relief.

Mr. Stewart-Oaten noted that one of the issues with this law will be to determine which cases qualify. The common wisdom is that AB 1793 is limited to the four offenses listed in Proposition 64 (i.e., possession, possession for sale, transportation for sale, and cultivation for sale). However, he stated that case law suggests that the number of cases that qualify may be larger.

Another issue for consideration is that defense counsel is not involved in the resentencing process unless the defendant appears and requests assistance from defense counsel.

Mr. Jeffries raised a question regarding how determinations will be made as to whether there has been a marijuana conviction. He noted that many of the marijuana cases handled by the Los Angeles City Attorney's Office go through citations. The DOJ would not be aware of them.

Mr. Stewart-Oaten stated that abstracts are sent to the DOJ for convictions that are entered by the Court, so DOJ would be aware of those cases. But the DOJ may have difficulty determining which cases qualify in order to give the Court a list. For example, a case where the original charge was for sale of marijuana may have been pled down to a lesser offense and the conviction may be for a different charge.

Long Beach City Prosecutor Doug Haubert of the County Prosecutors Association inquired as to how the cases are brought to Court for review. The statute does not specify how the matter gets before the Court. The DOJ will provide a list of qualifying cases to prosecutors, and the prosecutors have a period of time with which to object, but it is not clear mechanically how the matter is first brought before the Court.

Judge Scott Gordon, Supervising Judge of the Criminal Division of the Superior Court, stated that the Court will work with its justice partners on the mechanics of this law.

### *SB 1437*

California Senate Bill 1437 (SB 1437) limits liability for individuals based on a theory of first or second degree felony murder; and allows qualified individuals previously sentenced on a theory of felony murder to petition for resentencing. This pertains to individuals that did not kill or intend to kill, but participated in a felony that resulted in a murder.

Mr. Stewart-Oaten noted that 72% of women in California State prison for murder are in prison due to the felony murder rule.

Under SB 1437, an individual prosecuted for or convicted of murder under the felony murder rule or the natural probable consequences murder theory may file a petition with the Court requesting that the Court grant relief.

The defendant is required to make a prima facie showing that he or she would qualify for this relief. The prosecutor is permitted to oppose this and, if the prosecutor can prove beyond a reasonable doubt that the defendant should remain subject to a murder prosecution or murder conviction, then the Court would deny relief.

A difficulty for defense counsel will be identifying convicted defendants who may qualify under SB 1437 because the defense may not know what theory the jury relied upon in convicting the defendant.

Another question is how this law will apply to defendants that pled guilty. It may be difficult to conclude if the person was convicted under the felony murder rule or natural probable consequences theory.



## Overview

Supervisor Kuehl called upon Patricia Carbajal from the County Chief Executive Office (CEO) to provide any additional comments on recent legislation.

Ms. Carbajal stated that it is difficult to know at this time what the new Governor and State Legislature will do with respect to these topics in the coming legislative session. She surmised that there potentially could be clean-up language on some items from this session, such as with SB 10 (Bail Reform) and AB 1810 (Mental Health Diversion).

She thanked the departmental representatives that she has worked with for their assistance this year and asked that members of the committee provide her with any information on upcoming bills that the county may wish to be aware of and/or advocate for.

**ACTION: For information only.**

## **IV. CHAIR'S CLOSING REMARKS**

Chair Sheila Kuehl, County Supervisor, Third District

Supervisor Kuehl announced that CCJCC will not be meeting in November due to the Thanksgiving Holiday. Therefore, this is the last meeting that she will serve as the Chair of CCJCC this year. Supervisor Janice Hahn will assume the role of Chair beginning on December 1<sup>st</sup>.<sup>1</sup>

Supervisor Kuehl thanked the members of this committee for their work and dedication. She noted that, as a Supervisor, she serves as the Chair of a number of Committees. This provides a great educational experience in learning about different topics and meeting the individuals that do the work of the County.

There is a great deal of interest in alternatives to incarceration and in opportunities to divert individuals into rehabilitative treatment. This is part of a trend toward providing individuals with chances to turn their lives around and end a cycle of imprisonment. This approach of investing in people not only serves the individuals directly, it also helps the County by saving money and helping people to attain gainful employment.

Supervisor Kuehl praised the collaboration and cooperation among members of this committee in working together to find solutions to problems. She added that her office looks forward to continuing to work together with committee members in the future.

Mr. Delgado echoed Supervisor Kuehl's comments about the importance of collaboration among organizations in addressing local issues in the criminal justice system. He noted that this has been very effective within this County.

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<sup>1</sup> The Chair of the Board of Supervisors, which rotates every year, also serves as the Chair of CCJCC. Supervisor Janice Hahn will become Chair of the Board of Supervisors in December.

Mr. Delgado also thanked the Supervisor for her leadership as Chair of CCJCC this year.

**ACTION:** For information only.

**V. OTHER MATTERS / PUBLIC COMMENT**

There were no public comments.

**VI. ADJOURNMENT**

The meeting was adjourned at 12:52 p.m.