

COUNTYWIDE CRIMINAL JUSTICE COORDINATION COMMITTEE

MINUTES OF THE December 17, 2014 MEETING

Kenneth Hahn Hall of Administration

500 West Temple Street, Room 739

Los Angeles, California 90012

MEMBERS AND ALTERNATES PRESENT

Chair: Michael Antonovich, Mayor, County of Los Angeles

James Brandlin, Supervising Judge, Criminal Division, Superior Court

*Michael Brooks for Cynthia Harding, Acting Director, County Department of Public Health

Ronald Brown, County Public Defender

Daniel Buckley, Assistant Presiding Judge – Elect, Superior Court

Bill Dance for Dan Bower, Chief, Southern Division, California Highway Patrol

Walter Flores for John Deasy, Superintendent, Los Angeles Unified School District

Janice Fukai, County Alternate Public Defender

Scott Gordon, Assistant Supervising Judge, Criminal Division, Superior Court

Christa Hohmann, Directing Attorney, Post Conviction Assistance Center

Eve Irvine, President, South Bay Police Chiefs Association

*Dan Jeffries for Mike Feuer, Los Angeles City Attorney

Carolyn Kuhl, Presiding Judge – Elect, Superior Court, for David Wesley, Presiding Judge, Superior Court

David Marin for David Jennings, Field Office Director, U.S. Immigration and Customs Enforcement

Mary Marx for Marvin Southard, Director, County Department of Mental Health

Jonathan McCaverty for Mark Saladino, County Counsel

Terri McDonald for Jim McDonnell, Sheriff

*James McGlynn for Sherri Carter, Superior Court Executive Officer

Edward McIntyre, Chair, County Quality & Productivity Commission

Don Meredith for Cyn Yamashiro, President, County Probation Commission

*Alex Mishkin for Eric Garcetti, Mayor, City of Los Angeles

William Montgomery for James Jones, Director, County Internal Services Department

Sam Olivito, Executive Director, California Contract Cities Association

Margarita Perez for Jerry Powers, County Chief Probation Officer

Ezekiel Perlo, Directing Attorney, Indigent Criminal Defense Appointments Program

Robert Philibosian for Isaac Barcelona, Chair, County Economy and Efficiency Commission

*Ben Rice for Jeffrey Beard, Secretary, California Department of Corrections and Rehabilitation

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

Joseph Santoro, Independent Cities Association

*John Sherman for Charlie Beck, Chief, Los Angeles Police Department

*Susan Sullivan Pithey for Kamala Harris, California Attorney General

Robin Toma, Executive Director, County Human Relations Commission

Robin Toma for Cynthia Banks, Director, County Department of Community & Senior Services

Mike Webb, County Prosecutors Association

*Ed Winter for Mark Fajardo, County Coroner – Medical Examiner

***Not a designated alternate**

MEMBERS NOT PRESENT OR REPRESENTED

Philip Browning, Director, County Department of Children and Family Services

Daniel Calleros, President, Southeast Police Chiefs Association

Carlos Canino, Special Agent in Charge, U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives

Michelle Carey, Chief U.S. Probation Officer

Paul Cooper, President, Los Angeles County Police Chiefs Association

Arturo Delgado, Superintendent, County Office of Education

Mitchell Englander, Los Angeles City Council, 12th District

Peter Espinoza, Judge, Los Angeles Superior Court

Sachi Hamai, Interim County Chief Executive Officer

William Lewis, Assistant Director in Charge, Los Angeles Division, Federal Bureau of Investigation

Steven Ly, California League of Cities

Michael Nash, Supervising Judge, Juvenile, Superior Court

Hilary Potashner, Federal Public Defender

Richard Propster, Peace Officers Association of Los Angeles County

Phillip Sanchez, President, San Gabriel Valley Police Chiefs Association

Richard Sanchez, County Chief Information Officer

Miguel Santana, Los Angeles City Chief Administrative Officer

David Singer, United States Marshal

Anthony Williams, Special Agent in Charge, U.S. Drug Enforcement Administration

Stephanie Yonekura, U.S. Attorney

I. CALL TO ORDER / INTRODUCTIONS

Mayor Michael Antonovich, County Supervisor, Fifth District

The meeting was called to order at 12:15 p.m. by Mayor Michael Antonovich, Chair of CCJCC.

Self-introductions followed.

Opening Remarks

Mayor Antonovich introduced Los Angeles Superior Court Presiding Judge - Elect Carolyn Kuhl and invited her to make remarks to the committee. She will be assuming the position of Presiding Judge on January 1, 2015.

Judge Kuhl introduced the following additional judicial leaders of the Court: Judge Daniel Buckley, Assistant Presiding Judge – Elect; Judge James Brandlin, Supervising Judge of Criminal; Judge Scott Gordon, Assistant Supervising Judge of Criminal; and Judge David Herriford, Assistant Supervising Judge of Criminal.

She also introduced James McGlynn, Operations Deputy for Criminal, Traffic, & Juvenile.

Judge Kuhl stated that the Superior Court is pleased to have a collaborative relationship with the County of Los Angeles and local justice partners in addressing criminal justice matters. She stated that this will continue to be a priority for the Court and for her as Presiding Judge. She invited the members of this committee to reach out to both her and Judge Brandlin to address issues impacting upon the justice system.

One current issue that requires coordination among the Court and criminal justice agencies is the implementation of Proposition 47. The implementation of this law has placed an enormous strain on the resources of the Superior Court. As noted in previous meetings, the passage of this initiative in November 2014 did not include any accompanying provision to fund trial courts or other agencies tasked with implementing the law. As a result, the Court is using existing resources to handle an enormous caseload.

Judge Brandlin and Judge Gordon have held several meetings with justice partners to determine the best approaches for processing Proposition 47 cases. Potentially, there may be as many as 300,000 petitions and applications filed with the Superior Court. Judge Kuhl noted that the Court is currently receiving about 1,000 resentencing requests each week.

In the coming year, the Court will continue to work with justice partners on this and other matters.

Mayor Antonovich stated that the local justice system faces a number of challenges in the coming year due to responsibilities being placed on it from the state level. In particular, the ongoing implementation of AB 109 (public safety realignment) will continue to raise public safety issues and place demands on law enforcement, probation, and other agencies. Next month, a three-year report on the local impact of this law will be submitted to the Board of Supervisors.

Since October 2011, 25,475 AB 109 offenders have been sentenced to county jail. As of November 28th, there were around 5,000 inmates serving time in the county jail due to AB 109. Further, 530 individuals are serving five years or more in the county jail, and one person has a 42-year jail sentence. Mayor Antonovich noted that the county jail system was not designed to hold individuals serving long sentences that are intended for state prison.

Among those individuals that have been shifted from state parole to probation under AB 109, 26,067 have been placed under the county's supervision. Within this population, there have been 35,456 rearrests (some have been rearrested multiple times).

Two-thirds of the AB 109 individuals have been classified as either high risk or very high risk, which is a higher risk level of offenders than the counties had been led to believe that they would receive under this law.

Mayor Antonovich stated that Proposition 47 will have a severe impact on the criminal justice system, but the full effect that it will have is not yet known.

With respect to the release of inmates into communities, the Mayor cautioned that the use of GPS devices to track out-of-custody individuals is not a guaranteed means for preventing crimes. He noted an incident in which an individual dislodged the device and proceeded to engage in violent criminal behavior.

II. APPROVAL OF THE MINUTES

Mayor Michael Antonovich, County Supervisor, Fifth District

There were no requests for revisions to the minutes of the November 19, 2014 meeting. A motion was made to approve the minutes.

ACTION: The motion to approve the minutes of the November 19, 2014 meeting was seconded and approved without objection.

III. STATE PRISON POPULATION MANAGEMENT PLAN

Ben Rice, Assistant Secretary/General Counsel of the California Department of Corrections and Rehabilitation

Ben Rice, Assistant Secretary/General Counsel of the California Department of Corrections and Rehabilitation (CDCR), appeared before CCJCC to provide an update on the implementation of population management measures by CDCR to meet Federal Court order requirements.

As a background, the efforts by the state to reduce its prison population began in late 2006/early 2007 in response to three Federal Court cases. At that time, the state had a total prisoner population of about 174,000, of which 165,000 were actually housed within the 33 state prison facilities.

In August 2009, the Federal Three-Judge Court that was convened ordered the state to reduce its prison population to 137.5% of design capacity. This meant that the state needed to reduce its number of inmates by about 40,000.

An appeal by the state to the U.S. Supreme Court failed, and an order in June 2011 gave the state two years with which to be in compliance.

Over the years, the state has gradually reduced its prison population. Mr. Rice suggested the following reasons for this: (1) Senate Bill 18 (SB 18) offered good time credits for inmates; (2) Senate Bill 678 (SB 678) provided incentives to probation departments to not return probationers to prison; (3) Non-Revocable Parole (NRP) also helped to bring down the number of individuals returning to prison; and (4) Assembly Bill 109 (AB 109) transferred responsibility for certain offenders from the state to the counties.

The current extension authorized by the Three-Judge Court requires that the state meet the population target of 137.5% (approximately 113,720 inmates) by February 28, 2016. This includes two intermediary targets of 143% (approximately 118,270 inmates) by August 31, 2014, and 141.5% (approximately 117,030 inmates) by February 28, 2015.

The state met the August 2014 goal of 143% and it has already met the February 2015 objective of 141.5%. The state is currently at about 140.8% of capacity.

In granting the extension to February 28, 2016, the Three-Judge Court issued a number of requirements that the state must comply with. These include the following:

- The state must expand medical parole. This is a process in which an inmate that is incapacitated may appeal to the Board of Parole Hearings for release. The expansion involves an increase in the eligible medical criteria that qualifies one to make the appeal. Thus far, 21 individuals have since had a hearing and 9 have been released.
- Another requirement involves facilitating the release of inmates that have been found to be suitable for release (not a current risk to public safety) by the Board of Parole Hearings. Some individuals may have served their minimum time and be found suitable for release, but a matrix used by the Board may suggest that the person should serve more years. This order from the Court would allow for the release of those individuals. There have been 33 releases under this portion of the order.
- Elderly parole consideration is to be given for individuals over 60 years of age that have served at least 25 years in prison. A total of 115 people have met these criteria, but it is likely that some of them would have been considered for parole without this order.

Mr. Rice acknowledged that the numbers involved in these aforementioned aspects of the order are not large. Other actions being taken by CDCR to comply with the Court order include:

- A total of 13 reentry hubs have been established in the prisons.
- In response to a Court-ordered expansion of alternative custody for women, CDCR opened an 80-bed facility in San Diego that serves as a reentry/alternative custody placement for women.

- CDCR has \$20 million in this fiscal year to be used for community reentry programs. A total of 29 bids have been received.
- In compliance with the Court order, a change in good time credits was imposed for non-violent, non-sex offense second strike inmates. This population would normally earn 20% off their sentence for good time credits, but this was changed so that they are now capped at 33^{1/3}%. This program began in April of this year and about 500 individuals per month are being released prior to when they otherwise would have been. Currently, the average change in incarceration for those released is about 60 days.
- Also in compliance with the Court's order: (1) CDCR will give 2 for 1 credits to all minimum custody inmates; and (2) Beginning in January 2015, a parole determination process will be established for evaluating non-violent, non-sex offense second strikers that have served at least half of their sentences.

In exchange for these concessions, the plaintiffs dropped their requests for sex offenders to be included in the increase in good time credits and in the parole determination process for second strikers that have served half of their sentence. In addition, the 2 for 1 credit for minimum custody inmates will only apply for those who are day-for-day earners and only for those prospectively in minimum custody. On average, this may result in one to two months off of their sentence.

The state is about 2,700 inmates away from meeting the final population target of 137.5% of design capacity. New capacity space that is expected to be available around February of 2016 will change the number of actual inmates that need to be decreased given that the capacity will have expanded.

In addition to the measures taken that have been discussed in this presentation, other factors that have impacted and will continue to impact upon the prison population include the passage of Proposition 36 in 2012 and the passage of Proposition 47 in 2014.

Proposition 36 has provided a mechanism for certain qualifying three-strikes offenders to either reduce their prison sentences or obtain a release. Proposition 47 allows some inmates to petition to have certain felony sentences changed to misdemeanors, in addition to prospectively reducing the number of individuals sentenced to state prison for certain drug and property offenses.

Under Proposition 36, there have so far been close to 1,950 inmates resentenced by the courts. This is out of a total of approximately 2,800 inmates that were found to be eligible.

With Proposition 47, while the law is still new, it is anticipated that about 5,000 inmates may be eligible for resentencing. However, about 250 to 300 of these individuals would be released each month through the normal process, so the actual impact upon the prison population is unknown.

As of December 10, 2014, 270 inmates have been resentenced under Proposition 47 and released. Of these, 245 were released onto parole. There is currently a legal disagreement over whether any of these individuals can be released onto Post Release Community Supervision (PRCS) under AB 109. CDCR will continue to abide by the orders of the courts on this matter.

With regard to elderly parole, Mayor Antonovich observed that some elderly inmates remain dangerous and continue to pose a threat to public safety. He cited the example of an inmate in his 90s who is still capable of planning serious crimes.

Mr. Rice agreed with the Mayor that being elderly does not necessarily mean that the individual is suitable for release. The Board of Parole Hearings takes account of many factors and will not automatically release an individual that is 60 years of age or older.

Mayor Antonovich reported that the county has received a mentally ill sex offender from the state, which is not supposed to occur under the terms of AB 109. He stated that the promises from the state have not always corresponded to actions with respect to this law.

Robert Philibosian of the County Economy and Efficiency Commission inquired why the age of 60 is the time at which elderly parole is given consideration. He observed that many people in their 60s are in very good mental and physical condition.

Mr. Rice stated that the age limit is based in part on studies that indicate stages in life during which a person is less likely to exhibit criminal behavior. Additionally, if the minimum age requirement were raised to 70, there would not be enough eligible inmates to make the program worthwhile.

In response to a query from Mr. Philibosian as to whether CDCR is tracking the individuals they release to determine recidivism rates, Mr. Rice confirmed that CDCR does monitor recidivism among those who are released.

Assistant Sheriff Terri McDonald stated that she has previously worked with Mr. Rice at the state level and she attested that, as Chief Counsel at CDCR, Mr. Rice has worked hard in opposing the early release order from the Three-Judge Court and has defended the interests of the counties and public safety as the state has sought to comply with the order.

ACTION: For information only.

IV. EXECUTIVE ORDER ON IMMIGRATION

Philip McNamara, Assistant Secretary for Intergovernmental Affairs, Department of Homeland Security

Tim Robbins, Deputy Executive Assistant Director, Enforcement and Removal Operations, Immigration and Customs Enforcement

Philip McNamara, Assistant Secretary for Intergovernmental Affairs with the United States Department of Homeland Security (DHS), appeared before CCJCC to provide a briefing on the President's Executive Order on immigration as it relates to federal priorities and local law enforcement processes. He introduced Tim Robbins, Deputy Executive Assistant Director for Enforcement and Removal Operations with United States Immigration and Customs Enforcement (ICE), to assist with the briefing. Mr. Robbins is a previous member of CCJCC from when he served as the local Field Office Director of ICE.

Last month, President Obama announced a series of Executive Actions affecting immigration enforcement. These steps were taken following a review by the Secretary of Homeland Security and the U.S. Attorney General, during which input was sought from federal officials involved in immigration services and enforcement, business and labor leaders, law enforcement officials, religious and community leaders, and members of both parties in Congress.

The review identified ten areas where action could be taken to increase border security, focus enforcement resources, and ensure accountability within the immigration system.

One of these areas involves the expansion of the Deferred Action for Childhood Arrivals (DACA) program. DACA eligibility had been limited to those who were under 31 years of age on June 15, 2012, who entered the U.S. before June 15, 2007, and who were under 16 years old when they entered. DACA eligibility will be expanded to cover all undocumented immigrants who entered the U.S. before the age of 16, and not just those born after June 15, 1981. The entry date will also be adjusted from June 15, 2007 to January 1, 2010. The relief (including work authorization) will now last for three years rather than two.

Another change extends Deferred Action to Parents of Americans and Lawful Permanent Residents (DAPA). DHS is extending eligibility for deferred action to individuals who: (1) Are not removal priorities; (2) Have been in the country at least five years; (3) Have children who, on the date of the announcement, are U.S. citizens or lawful permanent residents; and (4) Present no other factors that would make a grant of deferred action inappropriate.

All of these grants of deferred action are done on a case-by-case basis in which individuals have to undergo background checks from both DHS databases and FBI databases. The individuals are also required to pay a fee.

The DACA expansion will begin in February 2015 and the DAPA expansion will begin in May 2015.

Another of the ten areas identified in the review involves changes to enforcement priorities. Given the finite resources available, ICE must prioritize its enforcement actions. New enforcement priorities will promote border security, public safety, and national security.

With border security, ICE is prioritizing the removal of those apprehended at the border and those that came into the country illegally after January 1, 2014, regardless of where they are apprehended.

With regard to public safety, ICE will also prioritize the removal of individuals convicted of crimes, criminal street gang members, and national security threats.

The Secure Communities program will end and be replaced with the Priority Enforcement Program (PEP). The program will continue to rely on fingerprint-based biometric data submitted during bookings by state and local law enforcement agencies, and will identify to law enforcement agencies the specific criteria for which ICE will seek an individual in their custody.

PEP will attempt to improve upon Secure Communities while avoiding some of the criticisms with that program. This will require cooperation with state and local governments, elected officials, and law enforcement. Mr. McNamara invited Mr. Robbins to provide further details on PEP.

Mr. Robbins reported that ICE Enforcement and Removal Operations has about 6,000 law enforcement officers nationwide. These officers have much of the responsibility for enforcing immigration law within the interior of the U.S. As there are an estimated 12 million individuals that are in the United States illegally, the officers must exercise smart enforcement by targeting serious offenders that pose a threat to public safety. This is the goal of the Priority Enforcement Program.

One notable difference between PEP and Secure Communities is that PEP will not rely upon detainer requests that ask state and local law enforcement to detain an individual for up to 48 hours. Instead, ICE is requesting that law enforcement agencies notify them when an individual meets the criteria of ICE's new enforcement priorities. ICE will then come and take custody of the person.

Further, ICE is moving toward a conviction-based system in which ICE's notification requests to local law enforcement agencies will be for those individuals that have been convicted. Secure Communities had placed the focus on arrestees.

In preparation for PEP, ICE is seeking to communicate with its justice partners and receive any feedback necessary to ensure that the concerns of local law enforcement agencies are being addressed.

Mayor Antonovich inquired whether the federal government will provide financial reimbursement to counties, cities, and school districts for costs associated with aspects of the Executive Order that restrict the deportation of certain individuals. He noted that local entities must bear the expense of providing services to individuals that are in the country illegally, and that this is a significant concern for local governments.

Mr. McNamara responded that he was not aware of any formula by which the federal government would reimburse state and local entities.

Anna Pembedjian, Justice Deputy for the Fifth District of the Board of Supervisors, inquired when PEP would be fully implemented.

Mr. Robbins stated that it will likely take four to six months for the new forms and the process to be in place. The forms will likely be finalized within the next few weeks, but various computer programming changes will take longer to complete.

In the meantime, detainers are still being issued, so the interoperability piece will continue to exist. Additionally, once PEP is implemented, detainers will still be utilized in rare circumstances, such as where ICE has probable cause.

Mr. Robbins emphasized that ICE's changes in priorities are going into effect immediately. This includes the switch from arrestees to convictions.

In referencing ICE's move away from detainer requests to notifications, Ms. Pembedjian asked if local governments will have discretion to ignore requests for notification. Mr. Robbins confirmed that they may choose to ignore the requests.

Mr. Robbins stated that the concern for ICE is ensuring that their resources are used against those who pose a threat to public safety, such as individuals convicted of felonies. Law enforcement agencies are not being asked to take on additional tasks. The requests to law enforcement will simply be to notify ICE when a convicted individual falls within ICE's enforcement priorities.

Ms. Pembedjian noted that some of the individuals that are booked into the County Jail are in and out of custody very quickly. She advised that this should be taken into account in order for the notifications to be meaningful.

Mr. Robbins stated that this issue has always posed a challenge, but it is possible for ICE officials to come and take custody of an individual who is in custody for a relatively short period of time if the officials are provided notification.

Joseph Santoro of the Independent Cities Association inquired about the use of background checks from an individual's country of origin. In other words, in doing a background check on an individual, does ICE investigate the person's criminal record in their country of origin?

Mr. Robbins stated that ICE has challenges obtaining the actual criminal histories, but it does have working relations with certain countries that may assist with investigations.

ACTION: For information only.

V. PROPOSITION 69

Marguerite Rizzo, District Attorney's Office and Chair of the Forensic Science Task Force

Marguerite Rizzo, Deputy in charge of the District Attorney's Forensic Science section and Chair of the CCJCC Forensic Science Task Force, appeared before the committee to provide an update on a recent California Appellate Court ruling on DNA sample collections from felony arrestees.

As background, Proposition 69 (DNA Fingerprint, Unsolved Crime and Innocence Protection Act) was passed by California voters in November 2004. The law significantly expanded the legal provisions for the collection and use of criminal offender DNA samples. For example, prior to the passage of the law, the DNA database only included samples collected from violent offenders. After the passage of the law in 2004, all offenders convicted of felonies were required to submit a DNA sample to be placed in the statewide database.

Proposition 69 also had some additional provisions that took effect in subsequent years. On January 1, 2009, the final provision of the act broadened DNA sample collection to require that DNA samples be collected from all felony arrestees.

On December 3, 2014, the California Court of Appeal of the First District issued its decision in the case of *People v. Buza*. The Court ruled that DNA collection from felony arrestees is unconstitutional based on California Constitutional protections against unreasonable searches and seizures.

As a result of this decision, the California Department of Justice (DOJ) directed law enforcement agencies in California to immediately cease collection of DNA samples from felony arrestees. The DOJ, in turn, stopped analyzing arrestee samples.

The facts of the *Buza* case involve a January 2009 arrest and April 2009 conviction for arson, possession of an incendiary device, vandalism, and a misdemeanor refusal to provide a DNA sample upon arrest. Mr. Buza appealed and the California Court of Appeals for the First District reversed his misdemeanor conviction for refusal to provide a DNA sample.

The California Supreme Court granted the People's petition to review the Appellate Court ruling. The California Supreme Court then remanded the case back to the Appellate Court for consideration in light of the U.S. Supreme Court's 2013 decision in *Maryland v. King*.

In *Maryland v. King*, the U.S. Supreme Court extended authorization of DNA collections to arrestees and found that DNA samples were critical to the identification and background of suspects when they are arrested. The Court found that Fourth Amendment intrusion was minimal given that the samples were tested for identity and not genetic traits.

In upholding its earlier decision, the December 3, 2014 decision by the California Appellate Court relied upon Article I of the California Constitution in finding that, without independent suspicion, a warrant, or a judicial or grand jury determination of probable cause, DNA sample collection of arrestees unreasonably intrudes on the expectation of privacy.

The decision becomes final thirty days after it was issued. If the California Attorney General decides to challenge the decision, the petition for review would be submitted to the California Supreme Court within ten days after the decision is final. If the Court accepts the petition for review, then the Appellate decision is no longer legally binding. The Attorney General has not yet made a decision to submit the case to the Supreme Court for review.

From the standpoint of the Los Angeles County District Attorney's Office, there are two potential options that can be taken if the Attorney General does not file an appeal with the Supreme Court. First, the District Attorney's Office may petition the Supreme Court directly requesting that the Court grant review. Alternatively, the District Attorney's Office may submit a letter to the Supreme Court requesting that the Appellate Court's opinion be depublished, and thereby no longer serve as binding authority. This would need to be submitted within thirty days of the decision becoming final.

Mayor Antonovich suggested that an ad hoc committee be formed consisting of representatives from the District Attorney's Office, Public Defender's Office, Alternate Public Defender's Office, County Counsel, Police Chiefs Association, Sheriff's Department, and LAPD. This group will coordinate an appropriate response within the county to the *Buza* decision and report back to CCJCC in January 2015.

A motion was made to form an ad hoc committee to develop a recommended plan for proceeding given the recent decision in *People v. Buza*.

ACTION: The motion to form an ad hoc committee to develop a recommended plan for proceeding given the recent Appellate Court decision in *People v. Buza* was seconded and approved without objection.

VI. OTHER MATTERS / PUBLIC COMMENT

Public comments were made by Mr. Tut Hayes and Mr. Joseph Maizlish.

VII. ADJOURNMENT

The meeting was adjourned at 1:30 p.m.