

**COUNTYWIDE CRIMINAL JUSTICE COORDINATION COMMITTEE**  
**MINUTES OF THE SEPTEMBER 17, 2014 MEETING**  
Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 739  
Los Angeles, California 90012

**MEMBERS AND ALTERNATES PRESENT**

Chairman: Don Knabe, County Supervisor for the Fourth District and  
Chairman of the County Board of Supervisors

Jackie Lacey, District Attorney and Vice Chair of CCJCC

Ronald Brown, County Public Defender

\*Dardy Chen for William Fujioka, County Chief Executive Officer

Paul Cooper, President, Los Angeles County Police Chiefs Association

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

Peter Espinoza, Judge, Los Angeles Superior Court

Mark Fajardo, County Coroner – Medical Examiner

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

Janice Fukai, County Alternate Public Defender

\*Victor Greenberg for Charlaime Olmedo, Supervising Judge, Criminal Division, Superior  
Court

\*Victor Greenberg for James Brandlin, Assistant Supervising Judge, Criminal Division,  
Superior Court

Christa Hohmann, Directing Attorney, Post Conviction Assistance Center

\*Dan Jeffries for Mike Feuer, Los Angeles City Attorney

Jonathan McCaverty for Richard Weiss, Acting County Counsel

\*Holly McCravey for Cynthia Harding, Acting Director, County Department of Public  
Health

Terri McDonald for John Scott, Sheriff

Edward McIntyre, Chair, County Quality & Productivity Commission

Emilio Mendoza for Philip Browning, Director, County Department of Children and  
Family Services

Don Meredith for Cyn Yamashiro, President, County Probation Commission

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

Michel Moore for Charlie Beck, Chief, Los Angeles Police Department

Fred Nazarbegian for Richard Sanchez, County Chief Information Officer

Margarita Perez for Jerry Powers, County Chief Probation Officer

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

\*Susan Pithey for Kamala Harris, California Attorney General

\*Rolando Reyes for Eric Garcetti, Mayor, City of Los Angeles

Joseph Santoro, Independent Cities Association

Robin Toma, Executive Director, County Human Relations Commission

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

Anthony Williams, Special Agent in Charge, U.S. Drug Enforcement Administration  
\*Janice Yu for Miguel Santana, Los Angeles City Chief Administrative Officer  
Erin Zapata for Carlos Canino, Special Agent in Charge, U.S. Bureau of Alcohol,  
Tobacco, Firearms and Explosives

**\*Not a designated alternate**

**MEMBERS NOT PRESENT OR REPRESENTED**

Jeffrey Beard, Secretary, California Department of Corrections and Rehabilitation  
Daniel Calleros, President, Southeast Police Chiefs Association  
Michelle Carey, Chief U.S. Probation Officer  
Sherri Carter, Superior Court Executive Officer  
Arturo Delgado, Superintendent, County Office of Education  
Mitchell Englander, Los Angeles City Council, 12<sup>th</sup> District  
Eve Irvine, President, South Bay Police Chiefs Association  
David Jennings, Field Office Director, U.S. Immigration and Customs Enforcement  
Sean Kennedy, Federal Public Defender  
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  
Ezekiel Perlo, Directing Attorney, Indigent Criminal Defense Appointments Program  
Jeffrey Prang, California Contract Cities Association  
Richard Propster, Peace Officers Association of Los Angeles County  
Phillip Sanchez, President, San Gabriel Valley Police Chiefs Association  
David Singer, United States Marshal  
Marvin Southard, Director, County Department of Mental Health  
Mike Webb, County Prosecutors Association  
David Wesley, Presiding Judge, Superior Court  
Stephanie Yonekura, U.S. Attorney

**I. CALL TO ORDER / INTRODUCTIONS**

Don Knabe, County Supervisor, Fourth District

The meeting was called to order at 12:00 p.m. by Los Angeles County Supervisor Don Knabe, Chairman of CCJCC.

Self-introductions followed.

**II. APPROVAL OF THE MINUTES**

Don Knabe, County Supervisor, Fourth District

There were no requests for revisions to the minutes of the August 20, 2014 meeting. A motion was made to approve the minutes.

**ACTION: The motion to approve the minutes of the August 20, 2014 meeting was seconded and approved without objection.**

**III. OVERVIEW OF PROPOSITION 47**

Lieutenant Wayne Bilowit, Sheriff's Department

Lieutenant Wayne Bilowit of the Sheriff's Department Legislative Unit appeared before CCJCC to provide an overview of Proposition 47, the Safe Neighborhoods and Schools Act, which is a November 2014 ballot initiative related to criminal sentences and misdemeanor penalties.

Overview

The following features of Proposition 47 were noted:

- It would reduce penalties for: Commercial burglary, forgery, writing bad checks, petty theft, and receiving stolen property, when the value is under \$950; and for certain drug possession offenses; generally from felonies or wobblers to misdemeanors.
- It would allow for resentencing to misdemeanors among those persons serving felony sentences for the above.
- Beginning in Fiscal Year 2016, it would redirect anticipated state savings into grants for K-12 truancy prevention programs, victim services, and local programs aimed at reducing recidivism.
- It can only be modified by a two-thirds vote of the State Legislature, but only if the changes will enhance Proposition 47, not repeal it.

Proposition 47 would make the following changes to California code sections, which would serve to reclassify certain crimes from felonies or wobblers to misdemeanors:

- Creates Penal Code Section 459(a) or 459.5 – Shoplifting where the value is under \$950. This creates a shoplifting commercial burglary section.
- Amends Penal Code Section 473 – Forgery where the value is under \$950.
- Amends Penal Code Section 476a – Writing checks with insufficient funds where the value is under \$950.
- Adds Penal Code Section 490.2 – Petty theft where the value is under \$950.
- Amends Penal Code Section 496 – Possession of Stolen Property where the value is under \$950.

- Amends Penal Code Section 666 – Petty Theft with a prior.
- Amends Health and Safety Code Section 11350 – Possession of Controlled Substances.
- Amends Health and Safety Code Section 11357 – Possession of concentrated cannabis.
- Amends Health and Safety Code Section 11377 – Possession of a controlled substance (Methamphetamine, Schedule III, IV, or V drugs). Lieutenant Bilowit noted that the most common N3 charge (P.C. 1170(h), or AB 109 charge) among those N3s currently incarcerated in County Jail is P.C. 11377.

Proposition 47 allows for a felony charge (N3) only when the person has a specified serious or violent felony. Under current law, a person can be sent to state prison for any of the crimes referenced above if the person has a serious or violent prior. Proposition 47 would change that so that the person would have to have a serious or violent prior that is specified in Penal Code Section 667 (e)(2)(c)(iv), which involves:

- Sexually violent offenses;
- Child molestation;
- Homicide or attempted homicide;
- Solicitation to commit murder;
- Assault on a peace officer with a machine gun;
- Possession of a weapon of mass destruction; or
- Any serious or violent crime punishable by life imprisonment or death.

### Funding

The initiative would also create the “Safe Neighborhoods and School Fund”, which would be funded by the monetary savings accrued due to the implementation of the measure.

The California Legislative Analyst’s Office (LAO) estimates that the measure could save between \$150 million and \$250 million a year statewide, but this is subject to revision.

Lieutenant Bilowit noted that the money transferred into the fund may be considered General Fund revenues for the purpose of the Proposition 98 calculation, which states that 40% of any savings would go first to education. However, there is dispute over this interpretation and it is an issue that would need to be resolved if Proposition 47 were to pass.

The initiative prohibits the State Legislature from appropriating the funds to any purpose other than the following:

- 25% of the funds are to go to the Department of Education to administer grant programs aimed at reducing truancy, supporting students who are at risk of dropping out, or who are crime victims.
- 10% of the funds are to go to the Victim Compensation and Government Claims Board to administer grants to trauma recovery centers.
- 65% of the funds are to go to the Board of State and Community Corrections (BSCC) to administer a grant program aimed at mental health treatment, substance abuse treatment, and diversion programs for people in the criminal justice system.

### Impact on Trial Courts

The measure would allow a person serving a felony sentence for any of the previously mentioned crimes to petition for resentencing under the more beneficial sentencing provisions. It would also require a court to grant a qualifying petition for resentencing unless the court finds that resentencing would pose an unreasonable risk that the petitioner will commit one of a limited set of specified violent felonies.

In addition, Proposition 47 would allow a person who has already completed a sentence for a felony to apply to the sentencing court to have the felony designated as a misdemeanor.

The measure would require that the petition or application for resentencing be filed within three years, or a later date upon a showing of good cause.

### Impact on County Jails

Proposition 47 states that persons resentenced under the measure shall be given credit for time served and shall be subject to parole for one year, but it also gives the court discretion to release a person from state prison without parole.

Revocations of parole would be served in county jails.

Certain current state felony sentenced inmates would be sentenced to the county jails as misdemeanors.

Other current P.C. 1170(h) crimes would become misdemeanors and thereby potentially reduce the jail population through less time served.

Lieutenant Bilowit noted that local questions will need to be resolved concerning whether defendants sentenced under Proposition 47 would be handled as N3 inmates (since their crimes would previously have been treated as felonies), traditional misdemeanants, or as a new category specific to Proposition 47.

N3 inmates are currently serving 100% of their time. However, traditional misdemeanants may serve as little as 20% of their time. This could mean a difference between serving as much as 1.3 years or as little as 36 days.

An additional issue is that re-hearing and re-sentencing challenges will require the Sheriff's Department to review complex cases and develop a mechanism to alert the Probation Department when needed.

The changing inmate population resulting from Proposition 47 may also potentially require jail design changes.

### Other Potential Impacts

State AB 109 funding to the counties is based in part on the number of N3 inmates that are being incarcerated in the county. If a large number of N3 individuals are reclassified as misdemeanants under Proposition 47, this could potentially impact upon AB 109 funding.

The Governor's Office has indicated that they would not change the current AB 109 funding formula, even with the passage of Proposition 47. However, a future Administration would not be bound by that and could potentially change the funding allocation.

The California State Association of Counties (CSAC) has concerns about the additional layer of responsibilities that would be placed on Probation Departments and the public safety system, and how the new sentencing changes will affect counties' ongoing efforts to implement AB 109.

### Unknowns

Lieutenant Bilowit summarized the current unknown impacts of Proposition 47:

- True Jail Population Changes – It is not known if the changes in sentencing would result in more overcrowding and forced releases, or a reduction in the number of inmates. As noted, a determination will need to be made regarding how the Proposition 47 population will be handled.
- Impact on Courts – It is expected that this measure would result in an increased workload for the trial courts, at least initially, due to resentencing petitions.
- State Savings – As noted, the LAO estimates a net state criminal justice savings of \$150 million to \$250 million, but there are a number of factors that could potentially change this.
- Realignment Funding – It is not known how this measure could affect AB 109 funding allocations to counties in future years.
- Impacts on Public Safety Realignment – As public safety realignment is still relatively new, it is not known what overall impact Proposition 47 would have on the implementation of AB 109.

## Comments

Judge Peter Espinoza of the Los Angeles Superior Court expressed his concern that the Court will need to allocate resources to the resentencing process without receiving any additional funding to do so. While emphasizing that he does not speak on behalf of the Superior Court, he did note that Proposition 36 of 2012 (modification of Three-Strikes) can be looked upon as a model in estimating the potential impact of the resentencing process on the Court.

He observed that resentencing proceedings involve a lot of paperwork and research by support staff. Additionally, if passed, the Proposition 47 resentencing petitions will be coming at a time when the Court has had to close courtrooms and reduce its staff by 10% due to budget cutbacks. He surmised that, without additional funding, the resentencing proceedings will impose a significant burden on the Superior Court.

Supervisor Knabe added that the potential impacts on AB 109 implementation could be dramatic, particularly with respect to funding. As referenced in Lieutenant Bilowit's presentation, the reclassification of many AB 109 felonies as misdemeanors could be used by the state to justify a reduction in AB 109 funding given that these charges would not result in a state prison sentence even without AB 109.

Judge Espinoza noted that his comments are not intended to be critical of the Proposition itself, just the lack of a funding provision that takes account of the added Court workload.

Joseph Santoro of the Independent Cities Association observed that, in addition to the state trial courts, the Proposition also does not include a funding provision for law enforcement agencies, Probation Departments, or other criminal justice agencies.

Robert Philibosian of the County Economy and Efficiency Commission asked if there has been an analysis of the impact this Proposition may have on public safety. He observed that there is a potential cost to individual victims of crime that should be considered. Lieutenant Bilowit stated that the LAO began visiting counties after they released their initial report on the costs. Discussions with courts and counties may result in a revision to their analysis.

Dan Jeffries of the Los Angeles City Attorney's Office stated that his office estimates that they will be handling up to 13,500 additional misdemeanor cases a year if Proposition 47 were to pass. Of this total, they anticipate filing on about 8,800 cases, which would be an increase of 17% of their current workload.

Los Angeles County District Attorney Jackie Lacey stated that her office has not taken an official position on Proposition 47, but that her office is studying it. In referencing Judge Espinoza's comments regarding Proposition 36 petitions, she concurred that the petition proceedings are very time consuming and resource intensive.

Ms. Lacey observed that few of the types of cases that are the subject of this Proposition involve just one charge. Often there may be several charges against the individual, so it is not necessarily true that a case will no longer be a felony if one charge, such as P.C. 11377, is reduced to a misdemeanor.

She did express concern that if there is no real threat of incarceration in drug possession cases, drug-addicted individuals will have less incentive to seek treatment.

She also questioned if the process for allocating grants to treatment and diversion programs would result in the most efficient use of the funds.

Ms. Lacey advised that she would have liked to have seen an escape clause in this Proposition that would account for those cases where this law would not be appropriate.

Assistant Chief Michel Moore of the Los Angeles Police Department (LAPD) expressed concern that this initiative could create cases in which certain repeat offenders continually cycle through the criminal justice system without the prosecution having the option to file a felony charge. In addition, he concurred that the threat of a more serious charge (i.e., felony versus misdemeanor) offers more options for the criminal justice system to encourage the individual to seek treatment and thereby reduce recidivism.

In response to a question from Assistant Chief Moore, Lieutenant Bilowit stated that the Proposition does not specifically provide for post-release services, nor does it mandate it.

In agreeing with other concerns that have been expressed about this Proposition, Don Meredith of the County Probation Commission added that the changing of certain crimes from felonies to misdemeanors will reduce the deterrent effect on commercial shoplifting, which results in substantial monetary losses to companies and retail stores.

#### Reference

More information on Proposition 47 can be found at the following link to the official California Voter Information Guide:

<http://vig.cdn.sos.ca.gov/2014/general/pdf/complete-vig.pdf#page=70>

**ACTION: For information only.**

Public Comments on this item were made by Elizabeth Siggins, who is a volunteer with the Yes on Proposition 47 campaign, and Joseph Maizlish, a private citizen.



#### **IV. COUNTY JAIL SYSTEM UPDATE**

Assistant Sheriff Terri McDonald, Sheriff's Department

Assistant Sheriff Terri McDonald provided a standing update to CCJCC on jail related matters, including facilities improvement efforts and development of population management strategies.

The jail project continues to proceed and the County CEO and Department of Public Works are cooperating in the development of the Mira Loma Women's Complex and the replacement facility for the Men's Central Jail.

The county is continuing to work with the state on funding issues related construction. As a reminder, the state budget requires the Department of Finance (DOF) to work with this county to seek methods for funding a replacement jail facility. The DOF is to report its findings to the Joint Legislative Budget Committee on or before January 15, 2015. Representatives will be here on October 1<sup>st</sup> to continue this work, and a legislative tour is tentatively scheduled for November 17<sup>th</sup>.

**ACTION: For information only.**

#### **V. ATTORNEY GENERAL'S DRAFT DEFINITION OF RECIDIVISM**

Linda Denly, Associate Director of the Division of Recidivism Reduction & Re-Entry, Office of the California Attorney General

Linda Denly, Associate Director of the Division of Recidivism Reduction & Re-Entry within the Office of the California Attorney General, appeared before CCJCC to present a draft definition of recidivism intended for statewide use.

The Attorney General's Office recently surveyed law enforcement agencies throughout the state to determine how counties and cities are defining recidivism. Meetings were also held with representatives from public safety associations and organizations.

One of the findings of this research is that there is no consensus as to how recidivism is to be defined. In attempting to develop a proposed statewide definition, efforts were made to find commonality among the responses.

The following is the proposed draft definition:

The Attorney General defines the primary measure of recidivism as an arrest resulting in a charge<sup>1</sup> within three years of an individual's release from incarceration or placement on supervision for a previous criminal conviction.

The following are supplemental measures of recidivism:

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<sup>1</sup> An "arrest resulting in a charge" is a felony or misdemeanor arrest and booking by a law enforcement agency that results in the filing of a criminal charge in an accusatory pleading by a prosecutor or a grand jury, as applicable.

Conviction – A final judgment that follows a finding of guilt.

Non-Technical Violation of Supervision – Any motion or petition filed with the superior court for a violation of supervision, but only if (a) the motion or petition results in a judicial finding of a violation; and (b) the violation would constitute a felony or misdemeanor offense were the individual not otherwise under supervision.

Return to Incarceration – When an individual's conviction results in a sentence of incarceration, tracked by confinement in state prison or county jail.

Ms. Denly emphasized that the primary measure of recidivism is an arrest resulting in a charge. She also noted that flash incarceration was not included in the supplemental measures of recidivism.

Another aspect of the proposed definition is that of an evaluation of the seriousness of recidivism. The Attorney General's Office evaluates the seriousness of an act of recidivism through the following three major recidivism indicators:

- Type – The type of recidivism act, categorized by the four major criminal offenses (Crimes Against Persons, Property Crimes, Drug Crimes, and All Other Crimes).
- Frequency – The number of times an individual commits an act of recidivism within the three-year period.
- Timing – The time within the three-year period in which an individual commits an act of recidivism, categorized at the six-month, one-year, two-year, and three-year intervals.

These three indicators make up the California Recidivism Index and are intended to provide counties with a uniform way to effectively analyze the recidivism acts.

Ms. Denly advised the committee that the state currently has a data gap in that it is not receiving all of the data for convictions in the state. The California Department of Justice (DOJ) is addressing this issue and will determine what improvements can be made to ensure that all needed information is received.

In addition to the data gap with convictions, some information is not submitted to DOJ because it is not state mandated. Ms. Denly cited as an example information that is contained in the supervised release files for Post Release Community Supervision (PRCS) individuals. In the case of this example, the DOJ worked with the Chief Probation Officers of California and individual Probation Departments to increase the response rate from 10% in January 2013 to 85% currently.

DOJ will be working with counties, law enforcement agencies, and others to ensure that there is no duplication of criminal justice data that is submitted to the state.

Los Angeles County Alternate Public Defender Janice Fukai observed that flash incarceration was included in the CCJCC definition of recidivism that was created last year. She inquired as to why the Attorney General's Office has kept that out of the state definition.

Ms. Denly stated that one reason for not including flash incarceration in the definition is that it is difficult to obtain this data. Another problem is that flash incarcerations are used differently in each county, so there is not enough consistency across the state to provide meaningful information from a statewide perspective.

Ms. Lacey reported that the California District Attorneys Association has a subcommittee on AB 109 that met this past Monday and agreed to support the Attorney General's recidivism definition as proposed to the AB 1050 committee, which is a subcommittee of the Board of State and Community Corrections (BSCC).

In response to a comment from Supervisor Knabe, Ms. Denly confirmed that the proposed definition of recidivism is a work in progress. The draft definition is intended to serve as a foundation and baseline from which changes can be made as needed.

John Ruegg, Director of the Information Systems Advisory Body (ISAB), inquired as to the standard being used with the evaluations. He emphasized the need for uniformity when drawing data from various sources.

Ms. Denly stated that the four categories of types of crimes used when evaluating the seriousness of recidivism have been used by other organizations that gather criminal justice statistics.

She added that DOJ is working with other criminal justice agencies to ensure that a uniform standard is used with respect to the California Charge Code Table.

Mr. Ruegg also inquired as to the methodology that will be used when evaluating recidivism data in cases where there are multiple charges associated with one arrest.

Ms. Denly stated that DOJ is considering how best to address issues such as this. One approach may be to focus on the most egregious charge at booking or at filing.

Assistant Chief Moore stated that data from parole violations indicate that over 60% of reported recidivism was for technical violations, primarily in the first year, but also to a high extent for up to three years. He questioned if it may therefore be advantageous to include technical violations of supervision in the supplemental measures of recidivism. This would provide for more flexibility in conducting an analysis of the data.

He also stated that, while there may be differences in the procedures of Probation Departments across the state, evaluating the effects of those differences would require data on the use of flash incarcerations and the punishment for technical violations.

Ms. Denly stated that there will be several ways to measure the data. From a statewide perspective, it does not appear at this time that there is a value in including flash incarcerations due to the differences among counties.

Each county may wish to analyze the data that is provided by DOJ in a manner that is best suited to local needs. For instance, DOJ is hoping to provide to the counties data on offenders moving throughout the state. Information on an offender arrested once in Los Angeles County may show that the person has been arrested three times in another county. This may assist analysts within law enforcement in determining where certain offenders are originating from and their areas of movement.

Assistant Sheriff McDonald advised that when counties are predicting jail capacity needs, flash incarcerations need to be considered. This is also an issue that may be relevant to state funding allocations concerning jail capacity needs.

Information on the Division of Recidivism Reduction and Re-Entry was distributed to members in attendance. Ms. Denly invited committee members to contact her with any questions they may have about this Division of the California Attorney General's Office.

**ACTION:** For information only.

**VI. PUBLIC SAFETY REALIGNMENT**

Deputy Chief Reaver Bingham, Probation Department

This Agenda Item is postponed until the next CCJCC meeting.

**VII. OTHER MATTERS/PUBLIC COMMENT**

A public comment on the subject of human trafficking was made by Jean Thomson of the League of Women Voters.

**VIII. ADJOURNMENT**

The meeting was adjourned at 1:01 p.m.