

COUNTYWIDE CRIMINAL JUSTICE COORDINATION COMMITTEE

MINUTES OF THE DECEMBER 5, 2012 MEETING

Kenneth Hahn Hall of Administration

500 West Temple Street, Room 739

Los Angeles, California 90012

MEMBERS AND ALTERNATES PRESENT

Chairman: Mark Ridley-Thomas, County Supervisor for the Second District and
Chairman of the County Board of Supervisors

Dan Bower for Steve Beeuwsaert, Chief, Southern Division, California Highway Patrol

James Brandlin, Assistant Supervising Judge, Criminal, Superior Court

Ronald Brown, County Public Defender

Elvira Castillo for Cynthia Banks, Director, County Department of Community & Senior
Services

Susan Cichy for John Clarke, Superior Court Executive Officer

Xiomara Flores-Holguin for Philip Browning, Director, County Department of Children
and Family Services

*Maria Franco for Martin Hoshino, Acting Secretary, California Department of
Corrections and Rehabilitation

Janice Fukai, Alternate Public Defender

Juventino Gomez, Independent Cities Association

*Eric Harden for Steven Bogdalek, Special Agent in Charge, U.S. Bureau of Alcohol,
Tobacco, Firearms and Explosives

Christa Hohmann, Directing Attorney, Post Conviction Assistance Center

*Karen Joynt for John Krattli, Acting County Counsel

David Keetle, President, San Gabriel Valley Police Chiefs Association

Jackie Lacey, District Attorney

Georgia Mattera for William Fujioka, County Chief Executive Officer

Don Meredith, President, County Probation Commission

William Montgomery for Tom Tindall, Director, County Internal Services Department

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

Michael Nash, Supervising Judge, Juvenile, Superior Court

Charlaine Olmedo, Supervising Judge, Criminal, Superior Court

Earl Perkins for John Deasy, Superintendent, Los Angeles Unified School District

Ezekiel Perlo, Directing Attorney, Indigent Criminal Defense Appointments Program

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

Jerry Powers, County Chief Probation Officer

Jeffrey Prang, California Contract Cities Association

Richard Propster, Peace Officers Association of Los Angeles County

Cecil Rhambo for Lee Baca, Sheriff and Vice Chair of CCJCC

Lakshmanan Sathyavagiswaran, County Coroner – Medical Examiner

*Peter Shutan for Carmen Trutanich, Los Angeles City Attorney

David Singer, United States Marshal

Lance Winters for Kamala Harris, California Attorney General

***Not a designated alternate**

MEMBERS NOT PRESENT OR REPRESENTED

Bruce Barrows, California League of Cities
Andre Birotte, U.S. Attorney
Michelle Carey, Chief U.S. Probation Officer
Jorge Cisneros, President, Southeast Police Chiefs Association
Arturo Delgado, Superintendent, County Office of Education
Lee Smalley Edmon, Presiding Judge, Superior Court
Mitchell Englander, Los Angeles City Council, 12th District
Jonathan Fielding, Director, County Department of Public Health
Sean Kennedy, Federal Public Defender
Tim Landrum, Special Agent in Charge, U.S. Drug Enforcement Administration
Steve Martinez, Assistant Director in Charge, Los Angeles Division, Federal Bureau of Investigation
Edward Medrano, President, Los Angeles County Police Chiefs Association
Timothy Robbins, Field Office Director, U.S. Immigration and Customs Enforcement
Richard Sanchez, County Chief Information Officer
Miguel Santana, Los Angeles City Chief Administrative Officer
Marvin Southard, Director, County Department of Mental Health
William Sullivan, Chair, County Quality & Productivity Commission
Paul Tanaka, Undersheriff
Mitch Tavera, President, South Bay Police Chiefs Association
Robin Toma, Executive Director, County Human Relations Commission
Antonio Villaraigosa, Mayor, City of Los Angeles
Mike Webb, County Prosecutors Association
David Wesley, Assistant Presiding Judge, Superior Court

CCJCC STAFF

Mark Delgado, Executive Director
Cynthia Machen
Craig Marin
Michelle Pangborn
Ana Silva
Erika Williams

I. CONVENE/INTRODUCTIONS

Mark Ridley-Thomas, County Supervisor, Second District

The meeting was called to order at 12:00 noon by Los Angeles County Supervisor Mark Ridley-Thomas, Chairman of CCJCC.

Supervisor Ridley-Thomas introduced Jackie Lacey. Ms. Lacey was recently elected Los Angeles County District Attorney.

Self-introductions followed.

II. APPROVAL OF THE MINUTES

Mark Ridley-Thomas, County Supervisor, Second District

There were no requests for revisions to the minutes of the November 14, 2012 meeting. A motion was made to approve the minutes.

ACTION: The motion to approve the minutes of the November 14, 2012 meeting was seconded and approved without objection.

III. POST-CONVICTION CAPITAL LITIGATION

Lance Winters, Senior Assistant Attorney General

Keith Borjon, Supervising Deputy Attorney General

Lance Winters, Senior Assistant Attorney General for the California Attorney General's Office, appeared before CCJCC to provide a status report on post-conviction capital litigation for Los Angeles County.

On November 6, 2012, the voters of California voted down Proposition 34 (52% No, 48% Yes), which would have eliminated capital punishment in the State of California.

The Criminal Appeals, Writs, and Trials section of the California Attorney General's Office handles most of the post conviction litigation for death penalty cases throughout the state. Mr. Winters is in charge of the office that covers the counties of Los Angeles, Ventura, Santa Barbara, and San Luis Obispo.

Mr. Winters introduced Keith Borjon, Supervising Deputy Attorney General, who serves as the capital case coordinator.

Mr. Borjon stated that California currently has 727 inmates on death row. Of this, 227 (31%) are from Los Angeles County, which is far higher than the number from any other county. The second highest number of inmates comes from Riverside County, from which there are 74 (10%) inmates on death row.

Thus far in 2012, there have been ten death penalty sentences imposed throughout the state. Of these ten cases, eight were in the County of Los Angeles.

The oldest death penalty case out of this county (in which the defendant is still living and on death row) is from 1978. The defendant in that case has exhausted all of his state and federal appeals, and is awaiting an execution date.

The last execution of a death row inmate in California occurred in January 2006. The last execution of a death row inmate from Los Angeles County was in December 2005.

There are currently 14 death row inmates that have exhausted all of their appeals. Four of these, including the 1978 case, are from Los Angeles County.

The execution dates for all of these cases are on hold pending ongoing litigation concerning the legality of lethal injections. The legality of the three drug protocol is being litigated in a Federal District Court in Northern California and this case has been ongoing since February 2006. In addition, there is a California Superior Court case in Marin County that is concerned with the process by which the state approves lethal injections and whether there has been a proper period for public comment.

In the Marin County case, the judge has enjoined any executions from being carried out in the state until a proper public comment period has been adhered to. That case is now on appeal.

The California Department of Corrections and Rehabilitation (CDCR) is considering a one drug protocol as a possible means for addressing the federal litigation. It is anticipated that this new protocol may be presented next year, at which time it would be subject to a public comment period.

Mr. Borjon noted that the results of the vote on Proposition 34 have allowed both proponents and opponents of the measure to state that reform is needed. Though Proposition 34 failed to pass, its proponents argue that the results demonstrate that capital punishment no longer garners the support that it once did. Opponents of the measure argue that voters wish to see capital punishment carried out in a more expedited manner. Mr. Borjon surmised that there may be future ballot measures pertaining to reform of capital punishment.

Supervisor Ridley-Thomas requested demographic data (i.e., gender, ethnicity, age, etc.) for those individuals that are currently on death row. Mr. Borjon stated that he will provide the Supervisor with that information.

ACTION: For information only.

IV. IMPACT OF ELECTION DAY RESULTS OF CALIFORNIA'S JUSTICE-RELATED INITIATIVES

Jerry Powers, Chief Probation Officer

Victor Rodriguez, Assistant Head Deputy, District Attorney's Office

Tracey Lopez, Special Assistant, District Attorney's Office

In addition to Proposition 34, discussed above, there were three other measures on the November 6, 2012 ballot that impact upon the criminal justice system. These are Proposition 30, Proposition 35, and Proposition 36.

Proposition 30

Los Angeles County Chief Probation Officer Jerry Powers provided CCJCC with a review of the potential impact of the passage of Proposition 30.

The primary effect of Proposition 30, which was passed by voters (55% Yes, 45% No), is to raise revenue through temporary state income and sales tax increases, thereby preventing budget cuts to local schools. However, this initiative also affects the local criminal justice system in that it guarantees funding for public safety services realigned from state to local governments.

The combination of income and sales taxes is projected to raise between \$6.8 billion and \$9 billion. Of this total, 89% of the revenue will go to K-12 schools and 11% will go to community colleges.

The part of Proposition 30 that pertains to public safety was not widely discussed during the campaign, but it will have an important impact on the implementation of public safety realignment at the local level. As a result of this measure's passage, there is now a constitutional guarantee to provide state funding to counties for the shift of the state prison population back to counties for custodial supervision and treatment. Previously, this funding was subject to the fluctuations of state budgets and deliberations.

Chief Powers noted that the constitutional guarantee is third in line on the state's hierarchy of guarantees, behind payment on the state's debt and funding for schools. He cautioned that while this change is a major improvement, it does not guarantee funding for all related public safety costs that may impact on realignment. Therefore, local governments will need to be watchful to ensure that there is no corresponding decrease in non-guaranteed funding for public safety.

Proposition 35

Victor Rodriguez, Assistant Head Deputy of the District Attorney's Office Sex Crimes Division, provided CCJCC with a review of the impact of the passage of Proposition 35.

Proposition 35, which was passed by voters (81% Yes, 19% No), enhances penalties for human trafficking convictions. Human trafficking refers to both forced labor and sex, and the new statute distinguishes between the two with respect to punishment.

Mr. Rodriguez listed the following changes that will result from the passage of this measure:

1. Increases sentences and fines for human trafficking;
2. Requires sex registration for human trafficking;
3. Makes it easier to prove sex trafficking of minors;
4. Eliminates common defenses;
5. Prohibits use of evidence of commercial sex acts against victims; and

6. Makes law enforcement training mandatory.

Penal Code Section (P.C.) 236.1 is now modified to require the following increased sentences for human trafficking:

- 5-8-12 years prison time for forced labor or services when personal liberty is deprived/violated;
- 8-14-20 years prison for sex trafficking when personal liberty is deprived/violated.
- 5-8-12 years prison for sex trafficking of minors if the offender causes, induces, or persuades (or attempts) a minor to engage in a commercial sex act;
- 15 years to Life in prison for sex trafficking of minors if done by force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or another person;
- Adds 5-7-10 years for Great Bodily Injury (GBI); and
- Adds 5 years for each prior P.C. 236.1 conviction.

These sentences add several years to the previous penalties. Also, by imposing mandatory state prison sentences, Proposition 35 has removed human trafficking as a realignment (AB 109) offense.

Fines are increased up to \$500,000, in addition to the prison sentence, and the Court may impose up to \$1 million more. 70% of the fines go to victim services organizations and 30% goes to law enforcement and prosecution. Previous fines had been up to \$100,000.

In addition to mandatory registration as a sex offender under P.C. 236.1(b) and 236.1(c), individuals convicted under those statutes must also provide information on all of their internet identifiers and internet service providers. This portion of the law is being challenged in Federal District Court.

Consent by minors is no longer a defense to a sex trafficking charge, nor is mistake of fact as to the age of a minor. This will make it easier for prosecutors to prove a case of sex trafficking of minors because it will not be necessary to prove force or fear elements, just that the trafficker caused, induced, or persuaded the victim to engage in commercial sex acts.

The old standard – proof of a substantial or sustained restriction of another’s liberty by force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or another person – now carries the heightened sentence of 15 years to Life.

Mr. Rodriguez noted that Evidence Code Section (E.C.) 1161 is now changed to prohibit the admission of evidence that a victim is engaged in a commercial sexual act to prove criminal liability for any conduct related to that activity. It also prohibits admission of a victim’s past sexual history or history of any commercial sexual act to attack the victim’s credibility or impeach character in any criminal or civil proceeding.

While these changes to E.C. 1161 are intended to protect victims, they may also potentially make it more difficult to prosecute certain individuals that are collaborating with the sex trafficker/pimp to further the criminal enterprise.

The law enforcement training mandated in Proposition 35 used to be voluntary for law enforcement agencies. The training is for a minimum of two hours for officers assigned in the field or investigative duties.

Robert Philibosian of the County Economy and Efficiency Commission inquired as to what impact Proposition 35 may have on the size of jail and prison populations. Mr. Rodriguez replied that there are no projections at this time.

Proposition 36

Tracey Lopez, Special Assistant in the District Attorney's Office, provided CCJCC with a review of the impact of the passage of Proposition 36.

Proposition 36, which was passed by voters (69% Yes, 31% No), modifies elements of the Three Strikes law in California. Ms. Lopez cautioned that this is not to be confused with the previous Proposition 36 that was passed in November 2000 and involved probation and treatment for individuals with substance abuse disorders.

Former Los Angeles County District Attorney Steve Cooley had stated that "Proposition 36 is consistent with public safety. It achieves statewide evenhanded and proportional sentencing consistent with the determinant sentencing law. Proposition 36 reflects the policy of this office, which was implemented in 2000."

Proposition 36 does the following:

- Amends P.C. 1170.12 and P.C. 667 to allow an indeterminate life sentence (commonly referred to as 25 years to Life) only if the current crime is serious or violent, unless an exception applies.
- Exceptions are based either on the nature of the current crime or the priors.
 - For example, the law continues to impose a life sentence penalty if the third strike conviction was for certain non-serious, non-violent sex or drug offenses or involved firearm possession.

In addition, for individuals currently serving a third strike sentence, the measure does the following:

- Authorizes re-sentencing for offenders currently serving life sentences if their third strike conviction was not serious or violent and if the judge determines that the re-sentence does not pose an unreasonable risk to public safety.
- Maintains the life sentence penalty for felons with non-serious, non-violent third strike sentences if prior convictions were for rape, murder, or child molestation.

The law took effect on November 7, 2012. The District Attorney's Office responded by amending its felony complaint charging language in order to simplify and streamline the process.

Ms. Lopez reviewed current sentencing scenarios that apply under the new law. As noted, the exceptions that apply will depend upon the nature of the current offense or the prior offenses.

Qualifying current offenses (third strike) include the following:

- Serious or violent;
- Controlled substance weight enhancement (Health and Safety Code Sections (H.S.) 11370.4 or 11379.8);
- Sex offenses requiring P.C. 290 registration and not otherwise excluded;
 - Examples of included sex crimes: Statutory rape by a person over 21 on a minor under 16 and spousal rape;
 - Examples of excluded sex crimes: Enticing a minor into prostitution or incest;
- Use of a gun, armed with a gun or deadly weapon, or the defendant intended to cause great bodily injury to another person.

Qualifying prior strikes that can result in a third strike sentence, even if the current offense is not a qualifying strike, include the following:

- Qualifying sex crime: Including sexually violent offenses under Welfare and Institutions Code Section (W.I.) 6600; and various offenses involving a child under the age of 14;
- Murder, attempted murder, and solicitation to commit murder;
- Assault with a machine gun on a peace officer or firefighter;
- Possession of a weapon of mass destruction; and
- Commission of a crime punishable in California by life imprisonment or death.

Remediation petitions must be filed within two years of the passage of Proposition 36, unless good cause is shown. Current inmates serving sentences on a third strike conviction may petition the Court to re-sentence them under a second strike sentence.

Ms. Lopez noted the following concerning this aspect of the law:

- The Court has jurisdiction to recall sentences over 180 days old that would now qualify for mandatory second strike sentencing.
- The Court is not required to grant the petition (P.C. 1170.126).
- The inmate has the burden of proof.
- Factors that will be considered: (1) Criminal history; (2) Length and remoteness of prison terms; (3) Injury to victims; (4) Prison behavior; and (5) Any other relevant evidence.

There is a two step analysis involved in evaluating the petitions. The first question is whether the petitioner is eligible for resentencing. If the inmate is eligible, the second question is whether the person is suitable for resentencing. The defense, prosecution, and the Court will need to conduct this analysis.

It has been estimated that the number of state inmates from Los Angeles County that are eligible for resentencing consideration is 1,000, but the number of petitions filed will likely far exceed that.

The cases will be centralized for hearing in Judge William Ryan's courtroom in the Clara Shortridge Foltz Criminal Justice Center. Within the District Attorney's Office, the cases will be screened and handled initially by the Office's Appellate Division.

Logistical issues that still need to be resolved include the receipt of prison records (to evaluate prison behavior), the transportation of defendants, Marsy's Law notifications, and various other legal issues that have been raised (such as the manner of the hearing, drafting issues, etc.).

Deputy Chief Michel Moore of the LAPD inquired as to whether resentencing individuals that are released from prison for time served will have any form of supervision. Ms. Lopez responded that this is another legal issue that needs to be resolved.

Mr. Philibosian of the County Economy and Efficiency Commission inquired as to whether estimates have been made as to the financial cost to the county of implementing this new law. Ms. Lopez stated that there is no specific countywide estimate at this time, although there may be internal estimates within some Departments.

Los Angeles County Alternate Public Defender Janice Fukai noted that the Post Conviction Assistance Center will offer to represent those petitioners that were not originally represented by the Public Defender's Office or the Alternate Public Defender's Office.

In response to a question about Marsy's Law, Ms. Lopez explained that this is a state law that requires that victims be notified of proceedings and be given an opportunity to be heard.

In response to another query, Ms. Lopez stated that she cannot state at this time whether an eligible petitioner would have a single hearing or multiple hearings. She did say, however, that some cases will likely be resolved quickly if there is agreement among all parties.

A suggestion was made that defendants in state prison could potentially be heard in Judge Ryan's courtroom via video. This would eliminate the need to transport individuals.

ACTION: For information only.

V. OTHER MATTERS/PUBLIC COMMENT

There were no public comments.

Supervisor Ridley-Thomas remarked that the Board of Supervisors will be collectively pursuing several goals related to issues affecting the criminal justice system, and that some of the topics were referenced at today's meeting. The goals include: (1) Addressing the problem of human trafficking; (2) Assessing the implementation of public safety realignment and determining what improvements can be made; and (3) Dealing with the matter of jail violence.

As deemed appropriate, these issues will be brought to the attention of this body for feedback, consideration, and evaluation.

VI. ADJOURNMENT

The meeting was adjourned at 1:00 p.m.