

COUNTYWIDE CRIMINAL JUSTICE COORDINATION COMMITTEE

MINUTES OF THE **March 15, 2017** MEETING

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

MEMBERS AND ALTERNATES PRESENT

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

- *Jim Anderson for Debra Duardo, Superintendent, County Office of Education
- Kevin Brazile, Assistant Presiding Judge, Superior Court
- Daniel Calleros for Bob Guthrie, President, Los Angeles County Police Chiefs Association
- *Stephen Carmona for Charlie Beck, Chief, Los Angeles Police Department
- *Robert Cha for Mike Feuer, Los Angeles City Attorney
- *John Connolly for Barbara Ferrer, Director, County Department of Public Health
- David Cons for Sandra Brown, U.S. Attorney
- *Megan Cottier for Richard Llewellyn, Interim Los Angeles City Administrative Officer
- Kelly Emling, Acting County Public Defender
- Ed Eng for Isaac Barcelona, Chair, County Economy and Efficiency Commission
- Peter Espinoza, Director, Office of Diversion and Reentry
- Janice Fukai, County Alternate Public Defender
- Scott Gordon, Supervising Judge, Criminal Division, Superior Court
- Donna Groman for Michael Levanas, Presiding Judge, Juvenile Superior Court
- Kelly Harrington for Jim McDonnell, Sheriff
- Christa Hohmann, Directing Attorney, Post Conviction Assistance Center
- *Kelly Jones for Eric Garcetti, Mayor, City of Los Angeles
- Karen Loquet for Scott Minnix, Director, County Internal Services Department
- David Marin, Field Office Director, U.S. Immigration and Customs Enforcement
- Jonathan McCaverty for Mary Wickham, County Counsel
- Terri McDonald, County Chief Probation Officer
- Edward McIntyre for Rodney Gibson, Chair, County Quality & Productivity Commission
- Don Meredith for Joe Gardner, President, County Probation Commission
- Sam Ohta, Assistant Supervising Judge, Criminal Division, Superior Court
- Chris O'Quinn, Chief, Southern Division, California Highway Patrol
- Earl Perkins for Michelle King, Superintendent, Los Angeles Unified School District
- Christopher Rogers, Acting County Coroner – Chief Medical Examiner
- Devallis Rutledge for Jackie Lacey, District Attorney and Vice Chair of CCJCC
- Robin Toma, Executive Director, County Human Relations Commission
- Robin Toma for Cynthia Banks, Director, County Department of Workforce Development, Aging and Community Services
- *David Turla for Sachi Hamai, County Chief Executive Officer
- Lance Winters for Xavier Becerra, California Attorney General
- *Jack Yeh for Doug Haubert, County Prosecutors Association

***Not a designated alternate**

I. CALL TO ORDER / INTRODUCTIONS

Chairman 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.

Self-introductions followed.

II. APPROVAL OF THE MINUTES

Chairman Mark Ridley-Thomas, County Supervisor, Second District

There were no requests for revisions to the minutes of the February 15, 2017 meeting. A motion was made to approve the minutes.

ACTION: The motion to approve the minutes of the February 15, 2017 meeting was seconded and approved without objection.

III. EXECUTIVE DIRECTOR'S REPORT

Mark Delgado, Executive Director, Countywide Criminal Justice Coordination Committee

Mark Delgado, Executive Director of the Countywide Criminal Justice Coordination Committee (CCJCC), provided the Executive Director's Report to the committee. This is intended to provide a brief summary of recent CCJCC-related activities and efforts.

This report highlights work in three areas:

- Youth Diversion Subcommittee
- Criminal Justice Research and Evaluation Master Agreement
- Collection of Victim Restitution

Youth Diversion Subcommittee

As directed by the Board of Supervisors, CCJCC established a Youth Diversion Subcommittee to develop a coordinated approach to youth diversion across the County of Los Angeles, with an objective of minimizing youth contact with the juvenile or criminal justice system (<https://goo.gl/TKWPI7>).

The subcommittee had its first meeting on March 2, 2017, and has set an aggressive schedule of meetings for the next few months to conduct its work. In addition, a contract is being finalized with an agency to serve as a consultant on this effort.

Criminal Justice Research and Evaluation Master Agreement

In 2014, CCJCC established a Master Agreement with pre-qualified organizations to provide criminal justice research and evaluation services. All county departments can access the Master Agreement to solicit for applicable services.

The Probation Department recently initiated an effort to evaluate and develop recommendations for Juvenile Justice Crime Prevention Act (JJCPA) Programming in the county. After releasing a solicitation to Master Agreement vendors and reviewing the proposals received in response, Probation selected Research Development Associates (RDA) to conduct the evaluation. The Board authorized execution of a Work Order with RDA for the evaluation on March 14, 2017, and the project will launch in the coming weeks (<https://goo.gl/LhNBph>).

Collection of Victim Restitution

CCJCC's Restitution Collection Task Force – chaired by the District Attorney's Office – was established by the Board of Supervisors to develop and implement processes for the collection of victim restitution from individuals under county jurisdiction due to Public Safety Realignment (AB 109). The Task Force has worked diligently in recent years on this issue, and the Probation Department is now collecting restitution owed to victims from the following AB 109 populations:

- Individuals on Mandatory Supervision pursuant to a Split-Sentence (P.C. 1170 (h) (5))
- Individuals on Post-Release Community Supervision (PRCS)

In addition, the Board directed the Task Force to explore options related to the collection of restitution in misdemeanor cases. The Task Force submitted a report to the Board on February 24, 2017, that discusses options and challenges to collection. One of the existing challenges is that misdemeanor restitution data is not readily available. An additional issue is that misdemeanants are not subject to supervision (<https://goo.gl/iTyYzq>).

The Task Force is currently focusing on developing a pilot data collection effort to estimate the scope of the misdemeanor restitution issue. The Task Force has also had productive discussions with the Department of Consumer and Business Affairs about the possibility of partnering with non-profit legal aid providers that can offer assistance to victims pursuing civil enforcement collection actions.

ACTION: For information only.

IV. PROPOSITION 64 – MARIJUANA LEGALIZATION INITIATIVE

Joseph Nicchitta, Countywide Coordinator, Office of Marijuana Management,
County Chief Executive Office

Ashley Rosen, Medical Marijuana Unit Coordinator, Major Narcotics Division,
District Attorney's Office

Ruben Marquez, Assistant Public Defender

Bruce Brodie, Chief Deputy, Alternate Public Defender's Office

Captain James Wolak, Sheriff's Department – Narcotics Bureau

Deputy District Attorney Elizabeth Padilla, DTAPS/Training Division,
District Attorney's Office

Joseph Nicchitta, Countywide Coordinator of the Office of Marijuana Management in the County Chief Executive Office, appeared before CCJCC to provide an overview of Proposition 64, the Marijuana Legalization Initiative.

Mr. Nicchitta was joined in this presentation by the following individuals: Ashley Rosen, Medical Marijuana Unit Coordinator, Major Narcotics Division of the District Attorney's Office; Ruben Marquez, Assistant Public Defender; Bruce Brodie, Chief Deputy, Alternate Public Defender's Office; Captain James Wolak, Sheriff's Department – Narcotics Bureau; and Deputy District Attorney Elizabeth Padilla, DTAPS/Training Division of the District Attorney's Office.

Summary of State Cannabis Laws

Mr. Nicchitta noted that there is one set of laws that govern medical cannabis (marijuana) and another set that governs recreational or non-medical cannabis.

Medical cannabis laws are governed under the Medical Cannabis Regulation and Safety Act (MCRSA) (Bus. & Prof. Code Section 19300 et seq.), which was created by state legislation in 2015 and 2016. MCRSA (previously known as MMRSA) established California's first state regulatory framework for the medical cannabis industry.

The Adult Use of Marijuana Act (AUMA) governs recreational or non-medical cannabis. This was enacted by voter initiative with the passage of Proposition 64 on November 8, 2016. Proposition 64 legalized the cultivation, possession, and use of cannabis by adults aged 21 years and older for non-medical purposes.

Proposition 64 also establishes a state regulatory framework for the non-medical, commercial cannabis industry. State licensing authorities are scheduled to begin issuing licenses on January 1, 2018.

Mr. Nicchitta stated that there are some differences in the laws governing medical and recreational cannabis. There may be future clean-up legislation so that there is a unified approach, with some variations for the medical side.

Under Proposition 64, adults (aged 21+) can grow up to six plants per residence for personal, non-medical use. This applies to each residence, not to each occupant in the residence.

Cities and counties can adopt “reasonable regulations” on personal-use cultivation, but they cannot ban indoor personal cultivation.

Adults can possess up to one ounce of dried marijuana and up to eight grams of concentrated marijuana.

While Proposition 64 applies to state law, marijuana is still an illegal Schedule 1 drug under the Federal Controlled Substances Act, which places it in the same category as heroin, LSD, and a number of other drugs.

There is therefore potential criminal liability under federal law for individuals that cultivate, manufacture, and sell marijuana, even though the activity may be licensed by California and local governments.

Additionally, as a result of the federal law, certain standard banking and financial services are not available to cannabis retailers. For example, credit and debit card transactions are, for the most part, not accessible. Therefore, a lot of the business transactions involve cash, which in turn creates more opportunities for crime as well as difficulties for local tax collectors.

Commercial Marijuana

Mr. Nicchitta reported that one ounce of dried marijuana flower retails between \$100 to \$400, depending on the quality. A pound of dried marijuana flower can sell from \$1,000 to \$3,000, depending on the quality.

One marijuana plant grown indoors under professional conditions can yield two to three pounds of dried flower. The time from seedling to harvest can be as fast as 63 days.

Professionally grown marijuana can yield 2 to 3 pounds of dried flower per plant.

Marijuana can be consumed by smoking it, which could involve the use of a pipe or a vape, or by ingesting edibles. The edibles can come in a variety of forms, including as drinks.

The strength of the edible products has increased over time and it is not clear what the long-term effects may be.

Resentencing under Proposition 64

District Attorney's Office

Ashley Rosen, Medical Marijuana Unit Coordinator of the Major Narcotics Division within the District Attorney's Office, addressed CCJCC on the subject of resentencing under Proposition 64.

Only individuals sentenced under Health and Safety Code (HSC) Sections 11357, 11358, 11359, and/or 11360 can be resentenced under Proposition 64, and only if certain eligibility requirements are met.

The following charges relating to marijuana remain unchanged under the law:

- HSC Section 11361 – Using minor to sell
- HSC Section 11366 – Maintaining a location
- HSC Section 11366.5 – Renting, leasing a location
- HSC Section 11379.6 – Manufacturing (some changes to be made to manufacturing)

With respect to closed cases, an individual may file a Petition for resentencing if the person is still serving the sentence, or may file an Application for resentencing if the person has already served the sentence. There is a 10-day turnaround period for Petitions and a 31-day turnaround period for Applications.

The resentencing process begins when an individual files a Superior Court form for a Petition or Application in the Court of origin. If there is an overflow, a designated Court may be used. A copy is forwarded to the District Attorney's Office (or City Attorney's Office, if applicable).

The District Attorney's Office reviews the case file and current rap sheet to determine the person's eligibility for resentencing. If there is no objection to the resentencing, the form is signed and filed back with the Court. If there is an objection, then there will be a contested hearing in Court. This may result in either no change to the sentence, the sentence being redesignated, or the case may be dismissed and sealed.

The District Attorney's Office also has procedures in place for amending open cases and filing new cases that are affected by Proposition 64.

Public Defender's Office

Assistant Public Defender Ruben Marquez addressed CCJCC on how the Public Defender's Office is handling the resentencing of cases affected by Proposition 64.

The Public Defender's Office created training materials and took a number of steps prior to the passage of Proposition 64 to ensure that they were prepared.

Attention was given to individuals in state prison or on parole who could benefit immediately from resentencing efforts.

Of a total of 312 cases, 288 have been reviewed. Individuals have been found to be eligible for resentencing in 229 of the cases. Individuals have been found to not be eligible in 48 cases.

Of the cases where the individuals are eligible for resentencing, 17 have had the Petition granted and 51 have Petitions pending. An additional 141 Petitions have not been filed.

The Public Defender's Office has received numerous inquiries from individuals concerning their rights under Proposition 64. A total of 208 inquiries have resulted in 49 Petitions being filed.

A review of past cases has been conducted, much like what was done with Proposition 47, to identify individuals that may benefit from the new law. In looking through a period of ten years, over 198,000 cases were identified as potentially requiring review to determine if they are eligible for resentencing. While the final total will likely be much less than that, it does reflect that there are grey areas in the law that have not been clarified yet by case law.

Mr. Marquez noted that the level of analysis required for reviewing potential Proposition 64 closed cases will not be as intensive as that required for Proposition 47 cases. Therefore, attorneys should be able to review potential Proposition 64 cases more quickly.

The Public Defender's Office has added Proposition 64 to its outreach efforts along with Proposition 47. Attorneys and paralegals have been trained to spot Proposition 64 issues.

Alternate Public Defender's Office

Bruce Brodie, Chief Deputy with the Alternate Public Defender's (APD) Office, reported that the management of Proposition 64 cases in the APD's Office will be included within the protocol that is already in place for Proposition 47 cases. As with the Public Defender's Office, the APD's Office is also reviewing past cases to ascertain the number of potential cases impacted by Proposition 64.

The Sheriff's Department provided the APD with a list of 194 cases that were potentially eligible for reduction. It was determined that about 116 are not eligible due to additional charges attached to the cases. The remaining 78 cases were sorted based on whether the cases belonged to the APD. Non-APD cases were referred to the Public Defender's Office or other appropriate agency.

A review of pending or open cases found about 175 cases that may be eligible for resentencing.

A review of APD clients that had been in Court during 2016 and had at least one eligible charge filed against them found about 875 potential individuals.

When a request for assistance with Proposition 64 resentencing is received by the APD's Office, the information is entered into a database. Once this is reviewed, it is assigned to the appropriate branch, and the Head Deputy at that branch assigns the case to an attorney.

Just as with the Public Defender's Office, the APD has also provided training for its attorneys in the nuances of Proposition 64.

Thus far, 55 cases have had sentences reduced and another 10 cases are pending. No requests for resentencing have yet been denied. About 100 cases are still being reviewed for filing.

Law Enforcement Concerns

Captain James Wolak of the Sheriff's Department Narcotics Bureau addressed law enforcement concerns.

Stronger Potency

Captain Wolak noted that marijuana is more potent now than in previous decades. Whereas marijuana had previously contained 3% or 4% tetrahydrocannabinol (THC) – the chemical in marijuana that is associated with the high – today that can be up to 17% to 20%.

Butane Honey Oil (BHO) labs may extract THC in such a way that it is called Wax-Dab and can contain up to 90% THC, which would make the drug similar to LSD or heroin or PCP.

Another issue is that concentrated marijuana with 70% to 90% THC can be injected into edibles and may be packaged in ways that are appealing to young people.

While a person smoking marijuana may feel the effects immediately, a person that eats an edible that has been injected with concentrated THC may not feel the effect until an hour or more later. They may therefore continue to consume edibles without realizing how much THC they are ingesting because of the delayed effect.

In Colorado, where marijuana has been legal for several years, the number of emergency room visits due to marijuana poisoning has increased.

Illegal Markets

In addition to the strengthened potency of marijuana, another problem is that of drug trafficking. Despite the legalization of marijuana in Colorado, it has been estimated that 40% of the marijuana that is consumed there is sold in the black and grey markets.

Because the legal marijuana is taxed, the price can be up to 27% higher than marijuana bought illegally on the black market.

The grey market refers to situations where the marijuana is grown legally, but sold illegally. This can create confusion for law enforcement patrol officers in determining whether a given situation that they encounter is part of legal or illegal activity.

Cash Business

Marijuana businesses must engage in mostly cash transactions. The result has been a proliferation of robberies and burglaries associated with these businesses, and sometimes accompanying violent crime.

Traffic-Related Concerns

Law enforcement agencies also have traffic-related concerns resulting from the passage of Proposition 64. Captain Wolak reported that traffic-related deaths in Colorado have increased over 100% since marijuana was legalized in that state. There is a danger that there may be an increase in the number of impaired drivers in this state due to driving under the influence of drugs (DUID).

An adult aged 21 years or older may be arrested for a DUI in California if their blood-alcohol concentration (BAC) content is .08% or higher. It is more difficult to determine what the standard should be for marijuana.

In Colorado, an agreement was reached to use 5 nanograms of THC per milliliter of blood as the basis for a DUID conviction (a nanogram is one-billionth of a gram). However, this measure is being challenged in Court.

One of the difficulties in deciding upon a measurement is that a chronic marijuana smoker could have up to 13 nanograms of THC per milliliter in their bloodstream at almost all times, regardless of whether the person is high or not. In contrast, someone who rarely smokes marijuana may be significantly impaired for an hour while not having as many nanograms of THC per milliliter. A blood test may not accurately indicate which individual is more impaired while driving.

Proposition 64 will provide \$3 million to the California Highway Patrol (CHP) over the next five years to develop a standard measurement for DUID.

An additional challenge that the CHP will have in setting a standard is that some individuals mix alcohol with marijuana, which has a combined impact on the person. A second standard may be needed for these situations.

Driving Under The Influence Training And Prosecution Section (DTAPS)

Elizabeth Padilla of the Driving Under The Influence Training And Prosecution Section (DTAPS) of the District Attorney's Office provided more information about DUID concerns.

DTAPS was created to be proactive with the prosecution of DUID cases. The mission of DTAPS includes the following:

- Train Deputy District Attorneys and law enforcement partners on how to overcome challenges involving DUID prosecutions;
- Increase the number of Drug Recognition Experts (DREs) in Los Angeles County; and
- Deter DUIs and DUIDs through successful investigations and prosecutions.

Ms. Padilla reported that the number of nighttime weekend drivers in the U.S. with marijuana in their system has increased 48% (from 8.6% in 2007 to 12.6% in 2013-2014)¹.

As noted in Captain Wolak's presentation, correlating a specific number to the level of impairment is much more difficult with marijuana than with alcohol. With alcohol, all people are considered to be impaired with a .08% BAC for the purposes of driving. With marijuana, driving impairment can be dependent on a person's level of tolerance, metabolism, or the method of intake (i.e., smoking versus edible).

This is one of the reasons why it is important for law enforcement agencies to have access to DREs who can help assess if a person is DUID. In addition, DREs can also determine whether the person has a medical condition or mental illness as opposed to being impaired by drugs.

Ms. Padilla advised that the general public needs to be educated about the potential impact of various marijuana products on driving impairment. The same is also true for prescription medication and the danger of mixing either with alcohol.

In 2016, there were 1,784 certified DREs in California and 300 in Los Angeles County. Included among those in this county were 106 with the LAPD, 87 with the CHP, 19 with the Glendale Police Department, and 16 with the Sheriff's Department. In 2017 the number of DREs with the Sheriff's Department is down to 10.

¹ National Highway Traffic Safety Administration (NHTSA), "Traffic Safety Facts: Results of the 2013-2014 National Roadside Survey of Alcohol and Drug Use by Drivers." (Feb. 2015). DOT HS 812 118 pp. 1-5.

The lack of available DREs in the county has negatively impacted upon the ability to investigate and prosecute DUID cases. Drug cases need DREs to articulate the objective symptoms of impairment.

Relying solely on toxicology poses the following challenges: (1) Quick metabolization of the drug; (2) Limitations of toxicology results and interpretation; and (3) Quick evolution of synthetic drugs.

Butane Honey Oil (BHO)

Ashley Rosen provided CCJCC members with an overview of how Butane Honey Oil (BHO) is made. An extraction tube filled with “shake” marijuana (ground up marijuana leaves, sticks, and stems) is usually used. A push rod is used to pack the marijuana tightly. A filter is at the bottom and a hole at the top where the butane canister is inserted.

The butane travels through the dense marijuana and extracts the THC from the plant material. The butane laden THC passes through the filter into a collection dish and the plant material stays above the filter in the tube. The butane laden THC is put in a freezer, heated, or hooked up to a vacuum pump to allow the butane to evaporate out, leaving just the THC. Names for the end product include wax, dabs, hash, hash oil, 710, and erri.

The process of making the BHO has led to explosions that pose a threat to lives and property.

Ms. Rosen reported that there has been an increase in the number of BHO labs, and they are often co-located with marijuana grows. She surmised that the increase may be due to lax marijuana laws in the state, the fact that it can be very profitable, the increasing prevalence of vapor pens, and the Internet.

Development of a Cannabis Regulatory Program for Los Angeles County

Mr. Nicchitta addressed the committee on the development of a Cannabis Regulatory Program for Los Angeles County.

On February 7, 2017, the Board of Supervisors directed the CEO’s Office of Marijuana Management to coordinate with 14 other county departments to develop a regulatory program for commercial cannabis.

Among other things, regulations must ensure no one county neighborhood or area experiences an over-concentration of businesses or over-exposure to cannabis.

Many factors will need to be considered for the cumulative effect on neighborhoods.

Robust stakeholder outreach is tentatively scheduled to begin in late Spring 2017. This includes town halls/listening sessions in each Supervisorial District.

There will also be education campaigns for consumers, minors, parents, and constituents. This will include covering topics such as what is legal and what is not under the new law.

There will also be close cooperation with local cities to achieve regional coherence. Each city may adopt its own set of regulations, so efforts will be made to avoid a patchwork of regulations across contiguous boundaries.

The Office of Marijuana Management expects to go before the Board of Supervisors at the end of the year with a proposed regulatory program.

The following are the Los Angeles County departments that will be involved in regulation and enforcement: CEO Office of Marijuana Management (Coordinator); Regional Planning; Public Works; Fire Department; Sheriff's Department; District Attorney's Office; County Counsel; Public Health; Public Defender's Office; Treasurer and Tax Collector; Agricultural Commissioner/Weights and Measures; Consumer and Business Affairs; Assessor; Human Resources and Risk Management; and Alternate Public Defender's Office.

Questions and Comments

Supervisor Ridley-Thomas thanked the presenters and requested that there be further discussion of this subject at the next CCJCC meeting on April 19th. He noted that there are many issues to work through and address with respect to this topic. Proposition 64 has significant policy implications and raises quality of life issues. In addition, local law enforcement entities will be challenged in seeking to comply with the new law.

The Supervisor observed that even with laws that are passed through the legislative process, where there is debate, compromise, and opportunities to make amendments to address problems that are raised, there may be unforeseen issues that arise after their passage. This applies even more so for laws that are passed through voter initiatives where there may be less vetting. He expressed concern that this may be the case with Proposition 64 in that not all outcomes and consequences have been anticipated.

For the next CCJCC meeting, there should be a presentation about the regional planning process and a comprehensive, multidimensional review of the potential impacts of the implementation of this law.

Earl Perkins, Associate Superintendent with the Los Angeles Unified School District (LAUSD), inquired as to how the schools will be included in educational outreach efforts. He noted that the LAUSD has about 650,000 students enrolled in its schools.

Ms. Padilla stated that representatives from DTAPS are available to go to schools and speak with students about THC and marijuana.

Mr. Nicchitta added that his office has met with representatives from the Department of Public Health (DPH) about how to engage with schools on this matter. There will also likely be discussions with the County Office of Education to develop messaging to schools.

Mr. Perkins noted that LAUSD is much larger than other school districts and therefore should be included as a direct participant in educational outreach efforts focused on students.

Dr. John Connolly, Acting Deputy Director of DPH Substance Abuse Prevention and Control (DPH-SAPC), stated that his office does have education providers in a range of schools throughout the county. They also hope to start an educational media campaign related to marijuana.

Supervisor Ridley-Thomas remarked that the land-use implications of Proposition 64 are significant. He noted that the overconcentration of marijuana stores, particularly in areas where there may be many liquor stores as well, can affect the quality of life in communities. This also creates difficulties for law enforcement that may be criticized for either too little or too much enforcement activity in the area.

The Supervisor requested that the information about marijuana that DPH had made available prior to the passage of Proposition 64 be made available to CCJCC members.

As part of the next meeting's discussion, there should be information presented on what actions can be expected on the federal and state level that will impact upon the implementation of Proposition 64 locally. The fact that marijuana is still illegal on the federal level will likely lead to further confusion.

ACTION: For information only.

V. OTHER MATTERS / PUBLIC COMMENT

Public comments were made by Eunisses Hernandez and Cat Packer.

VI. ADJOURNMENT

The meeting was adjourned at 1:05 p.m.