

October 14, 2020

Memorandum 2020-14 (corrected)

**Written Materials Submitted by Panelists**

The Committee on Revision of the Penal Code will hear from a number of invited panelists at its meeting on October 21, 2020.

Some panelists have submitted written materials as background for their intended remarks at the meeting. Those materials are attached in an Exhibit as follows:

	<i>Exhibit</i>
• Neil Flood, Vice-President, California Correctional Peace Officers Association (10/9/20) .....	1
• Sheriff Dean Growdon (Lassen County), First Vice-President, California State Sheriffs' Association (10/5/20) .....	2
• Deputy District Attorney Paul M. Nuñez, Los Angeles County District Attorney's Office (10/9/20) .....	3
• District Attorney Stephen M. Wagstaffe (San Mateo County), California District Attorneys Association (10/14/20) .....	4

If other participants provide written materials before the meeting, they will be attached to one or more supplements to this memorandum.

Respectfully submitted,

Brian Hebert  
Executive Director



Exhibit 1

Written Materials from

Neil Flood

Vice-President, California Correctional Peace  
Officers Association



**One of CCPOA's primary goals is to help establish the most efficient and effective correctional system possible, a system that works for all who are impacted by California's criminal justice system.**

California has continued to exercise a monumental paradigm shift in the state's approach to dealing with crime and punishment. Gradually, over the years, we have seen our correctional system alter its practice of essentially warehousing inmates to now adopting treatment and rehabilitative measures in an effort to better prepare inmates for reintegration into society. The California Correctional Peace Officers Association wholeheartedly supports rehabilitative programming and effective re-entry services. However, we do believe that the efficacy of many of the programs offered can be challenged and there needs to be a greater degree of accountability on behalf of the inmates who participate in these programs.

The association also supports re-entry programs that give offenders the best chance at transitioning back into society in the safest manner possible. These re-entry facilities should meet statewide standards and offer wrap-around services including: mental health support, job training, family reunification, substance abuse treatment, conflict resolution, as well as life skills classes. Having statewide standards for these facilities allow for greater consistency and positive outcomes that ultimately lead to reductions in recidivism.

If properly incentivized, we believe that we can create programming that has balance and requires offenders to earn every milestone credit that they receive. This allows the state to achieve its public safety goals and awards those who truly strive towards meaningful rehabilitation.

California has made changes in an attempt to solve its correctional crisis in the past few years, and we need to continue that effort in a responsible manner. CCPOA and its members have been on the front lines for many years and we have a unique perspective that could benefit the state in addressing some of these issues. We know lawmakers are committed to making California's correctional system better and we are willing partners in this effort.

## Exhibit 2

Written Materials from

Sheriff Dean Growdon (Lassen County)  
First Vice-President, California State  
Sheriffs' Association

**Committee on Revision of the Penal Code**  
**October 21, 2020**  
**Sheriff Dean Growdon, Lassen County**

**Public Safety Reform**

- In less than a decade, we've had major reforms:
  - Public Safety Realignment
  - Prop 36 on limiting Three Strikes
  - Prop 47 on drug and property crimes
  - AB 953 on racial profiling
  - Prop 57 on juvenile justice and parole eligibility
  - Prop 64 on marijuana
  - SB 54 on law enforcement communication
  - Various other sentencing and system changes, to name a few
- These have all been implemented over a relatively compact time period.
- It is hard to know what is working and what is not. Knowing the impacts of these discrete reforms would certainly inform the ongoing conversation about what additional reforms may be appropriate.
- How does one make the case for additional reforms when those currently in place really haven't been allowed to breathe?
- Even in the last 10 years, jails have changed. Rehabilitative programming is commonly available, as are educational opportunities and medical and mental health care.
- As additional reforms are considered, we should also consider how those reforms may mask the outcomes of prior reforms and how those prior reforms may need to be further altered.

## Exhibit 3

Written Materials from  
Deputy District Attorney Paul M. Nuñez  
Los Angeles County District Attorney's Office

## Submission of Paul Nuñez, Deputy District Attorney<sup>1</sup>

On behalf of the Los Angeles District Attorney's Office ("Office"), I would like to thank the Committee on Revision of the Penal Code ("Committee") for giving me the opportunity to speak about criminal justice reform that promotes crime reduction and the safeguarding of victims. Throughout my career in the Office, I have dedicated my efforts to the protection of disadvantaged communities through the fair and ethical pursuit of justice. Public safety, including the safety of our crime victims and witnesses, and seeking justice on every case, remain our primary objectives.

My personal beliefs are that violent crime victims are one of the most disenfranchised groups in this state. Each year, multiple thousands of people are the victims of violence in this state, yet they have no unified, collective voice. The overwhelming majority of violent crime victims are from disadvantaged communities and oftentimes poor. The majority of victims are also people of color.

As the Committee embarks on the challenges of reforming the Penal Code, I have watched each of the public meetings with great interest. I have had the opportunity to hold a number of positions in the Office that deal with subject matters this Committee has discussed. The issues reviewed last month involving the gang and gun enhancements are particularly important to the Office's operations, and I believe the Committee should consider the input of Los Angeles County prosecutors when discussing enhancements and potential revisions to the Penal Code.

These enhancements, as well as the majority of the Committee's monthly subject matters, are directly related to the theme of this month's meeting – victims. The challenge of reducing the number of violent crime victims continues to be a problem that legislators and criminal justice professionals should carefully consider. While efforts in the past five years have focused on reducing the prison population, rightly so, a question that must be asked is if

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<sup>1</sup> I have been a Deputy District Attorney in the Los Angeles District Attorney's Office for 25 years. I have handled misdemeanors, felonies, juvenile matters, been a Deputy-in-Charge (supervisor) of one of the busiest area offices (East Los Angeles), and have been a trial deputy and Assistant Head Deputy (supervisor of a larger division vs. area office) in the Hardcore Gang Division (the busiest trial unit in the entire Office).



it has come at the expense of exposing California's residents to violent crime. If further efforts to reduce the prison terms of violent criminals are enacted, the additional question of how much crime, both violent and non-violent, is acceptable must be asked as well.

My Office's positions on a number of topics that affect victims are outlined below so that the Committee can consider the safety of victims and their rights when charting the course of possible revisions to the Penal Code. First, a review of violent crime statistics, including who comprises the victims of violent crime, is necessary. Second, various topics that address the treatment of victims are reviewed as well. Lastly, I offer my conclusion that crimes and enhancements in the Penal Code do *not* need to be eliminated or reduced as broad judicial discretion, the necessary tools and mechanisms to dismiss or reduce these crimes and enhancements, and substantial reductions in prison sentences, already exist and are utilized daily.

### ***Violent Crime Statistics***

As reported in the California Attorney General's ("AG") 2019 reports on Homicide in California and Crime in California, there were **173,205** violent crimes committed in California.<sup>2</sup> Aggravated assaults briefly fell below 100,000 cases in the middle of the last decade and have since risen above that number for the last four years.<sup>3</sup> The number of homicides fell from a high of 2503 in 2005 but has stubbornly remained above 1600 every year since that highpoint.<sup>4</sup> There were **1,679** homicides in California in 2019, an average of 4.6 per day, or one every 5.2 hours.<sup>5</sup> In Los Angeles County, homicides have

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<sup>2</sup> California Department of Justice, Criminal Justice Statistics Center, 2019 Report: Homicide in California, Table 1, <https://data-openjustice.doj.ca.gov/sites/default/files/2020-06/Homicide%20In%20CA%202019.pdf> and California Department of Justice, Criminal Justice Statistics Center, 2019 Report: Crime in California, Table 1, <https://data-openjustice.doj.ca.gov/sites/default/files/2020-06/Crime%20In%20CA%202019.pdf>.

<sup>3</sup> California Department of Justice, Criminal Justice Statistics Center, 2019 Report: Crime in California, Table 1.

<sup>4</sup> California Department of Justice, Criminal Justice Statistics Center, 2019 Report: Homicide in California, Table 1.

<sup>5</sup> *Id.*

remained over 500 per year.<sup>6</sup> Homicides in other counties such as Kern, San Bernardino, Ventura, and San Diego have risen steadily since 2010.<sup>7</sup>

These statistical trends have continued through 2020. This past month, Los Angeles Police Department Chief Michel Moore stated that South Los Angeles suffered 39 more homicides and 101 more shooting victims than the same period last year, “a pace of shooting and violence that we’ve not seen in years.”<sup>8</sup> In 2020, 40 South Los Angeles shooting victims have been under the age of 18, and nine were under 10 years old.<sup>9</sup> This area accounts for 45% of the shootings in Los Angeles.<sup>10</sup> This disturbing trend has continued over the past weekend from Friday (October 2, 2020) to Monday (October 5, 2020), when three people were killed and 10 people were shot and wounded across Los Angeles.<sup>11</sup>

As of October 6, 2020, in the City of Los Angeles, murders are up over 21% compared to last year. The number of shooting victims is up over 18% from last year. In one particularly violent crime, “a gunman drove by a gathering, leaned out of a car window with an AK-47 style rifle, and sprayed bullets at the crowd.”<sup>12</sup>

The increase in violent crimes has spread across Los Angeles County and is not confined to the City of Los Angeles. The Los Angeles Sheriff’s Department has reported a 12.77% increase in murders in the county and the

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<sup>6</sup> California Department of Justice, Criminal Justice Statistics Center, 2019 Report: Homicide in California, Table 14.

<sup>7</sup> *Id.* Note: Each of the highlighted counties experienced various highpoints during the last decade, and each county had *more* homicides in 2019 compared to 2010.

<sup>8</sup> <https://ktla.com/news/local-news/officials-express-alarm-as-south-l-a-experiences-spike-in-shootings-violence-not-seen-in-years/>

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> <https://www.latimes.com/california/story/2020-10-05/homeless-man-among-three-killed-during-tragically-violent-weekend-in-l-a-10-others-shot>

<sup>12</sup> <https://www.nbclosangeles.com/news/local/murders-shootings-continue-to-rise-in-los-angeles/2439834/>

unincorporated communities they serve.<sup>13</sup> Through seven months in 2020, the City of Long Beach has already suffered more murders in 2020 than in each of the previous five years.<sup>14</sup>

### ***The Victims***

The focus of the Committee's attention has thus far been on those offenders incarcerated for their crimes. The focus should equally be on those who are the victims of violent crime and gang crime. For every violent crime, there is a direct victim, and many collateral victims, some of whom will never fully heal. Some victims remain physically and emotionally traumatized for life. Thousands have been murdered. Families have been destroyed. The very fabric that holds families and communities together is being slowly torn.

People of color, particularly Latinos and African Americans, are often the victims of violent crime. In 2019 in California, the number of Latino homicide victims was 740 or 44.1% of the total number of homicide victims, yet they account for 33.8% of the total population.<sup>15</sup> The number of African American victims was 479 or 28.5% of the total number of homicide victims, yet they account for only 6% of the total population.<sup>16</sup> Combined, this disproportionate victimization rate of these two victim groups is a staggering 72.6%. Moreover, over 41% of all homicide victims were under the age of 30 and 7.7% were even younger than 18.<sup>17</sup>

In 2019, the disturbing victimization rates against Latino and African American victims in the City of Los Angeles were equally striking: 46% of violent crime victims were Latinos and 24% were African Americans. African Americans were 40% of the homicide victims, yet represented only 9% of the

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<sup>13</sup> 2020 Year to Date Executive Summary as of 9/28/2020, [LASD Murders - as of 9-27-2020.pdf](#)

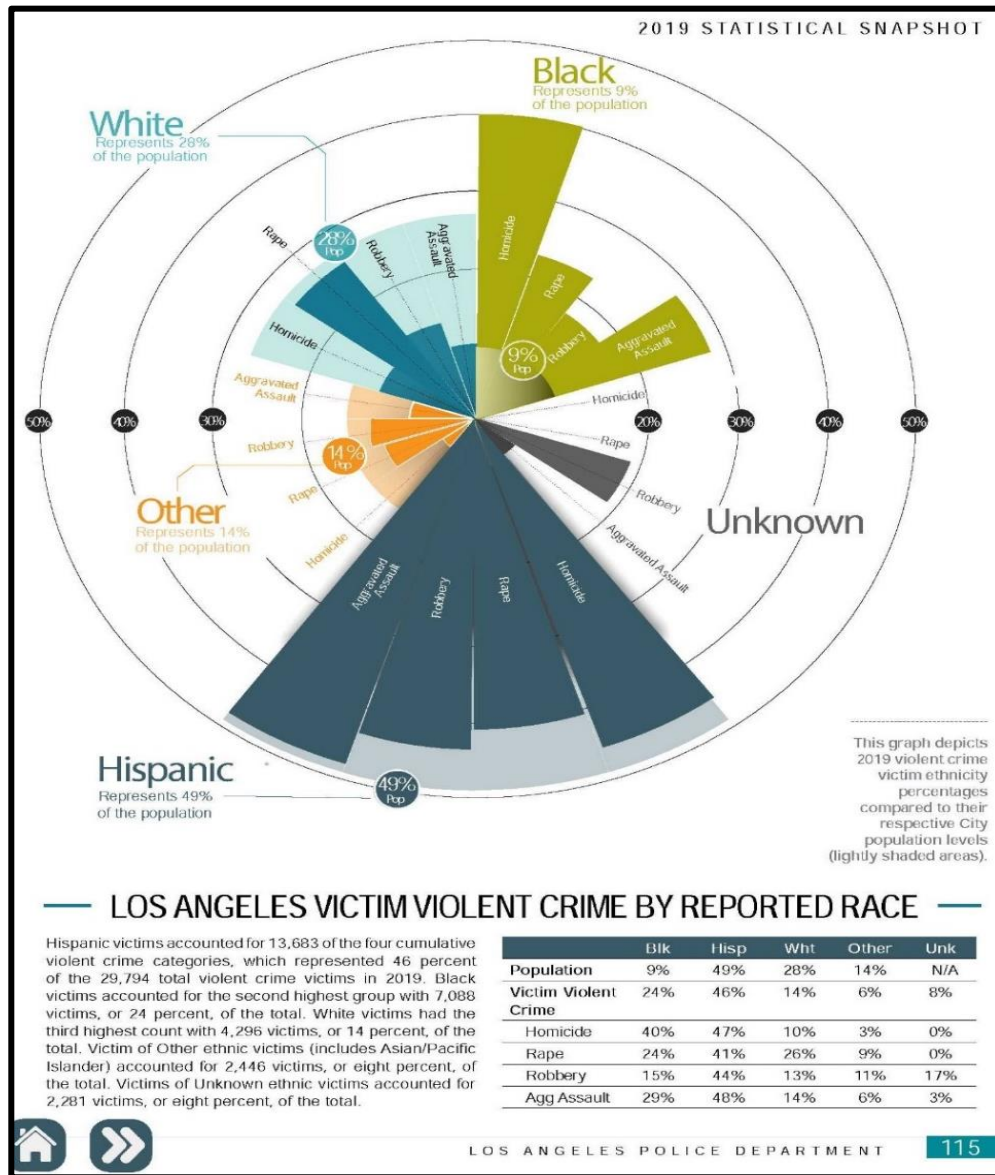
<sup>14</sup> <http://www.longbeach.gov/police/crime-info/crime-statistics/>

<sup>15</sup> Table 3, 2019 Homicide in California, <https://data-openjustice.doj.ca.gov/sites/default/files/2020-06/Homicide%20In%20CA%202019.pdf>

<sup>16</sup> *Id.*

<sup>17</sup> Table 4, 2019 Homicide in California, <https://data-openjustice.doj.ca.gov/sites/default/files/2020-06/Homicide%20In%20CA%202019.pdf>

population. Latinos were 47% of the homicide victims. Combined, people of color suffered 70% of the violent crimes and a sobering 87% of the homicides in the City of Los Angeles.<sup>18</sup> Society must do better.



The impact of these crimes on the Latino and African American communities is vividly documented on the Los Angeles Times website, entitled *The Homicide Report, A Story for Every Victim*.<sup>19</sup> The website attempts to

<sup>18</sup> Los Angeles Police Department Use of Force Year-End Review 2019, page 115, [http://lapd-assets.lapdonline.org/assets/pdf/2019\\_uof\\_review.pdf](http://lapd-assets.lapdonline.org/assets/pdf/2019_uof_review.pdf)

<sup>19</sup> The Los Angeles Times, *The Homicide Report*, updated daily, <https://homicide.latimes.com>.

document the circumstances of every person killed by the hand of another in Los Angeles County and typically notes the victim's ethnicity, place of residence, and manner of death.<sup>20</sup> The website documents homicides from 2000 to the present time. Since January 1, 2000, 17,489 homicides have occurred. In 2020 alone (as of October 1<sup>st</sup>), 478 homicides have occurred in Los Angeles County.<sup>21</sup> Two hundred and forty-two of the victims were Latino and 158 were African American, representing 83.6% of the total number of victims.<sup>22</sup> The website allows searches by commonly identified neighborhoods and includes pictures of the victims, when possible. The website includes a picture and articles surrounding the Jefferson Park murder of a United States Marine, 19-year-old Carlos Alfonso Segovia-Lopez, on September 19, 2016.<sup>23</sup>

Unfortunately, a substantial percentage of these crimes are gang-related and most involve firearms.<sup>24</sup> In California, firearms were used in 69% of the homicides in 2019.<sup>25</sup> The enhancements that are employed to combat these types of crimes are intended to give communities, victims, and witnesses justice, respect for their loved ones, and respite from the intimidation, harassment, and violence that often accompanies gang shootings.

These statistics are reflected in the cases I review on a daily basis. As an Assistant Head Deputy that reviews violent crimes throughout the County, I have continued to file heinous firearm murders from Antelope Valley to Pomona, Van Nuys to Glendale, Mid-City to East Los Angeles, and South Los Angeles to Norwalk.

The cases I file are horrific crimes documented with thorough investigations and evidence to prove the charges and allegations beyond a reasonable doubt. Yet, many violent crimes are unsolved and some cannot be proved beyond a

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Tables 21 & 22, 2019 Homicide in California, <https://data-openjustice.doj.ca.gov/sites/default/files/2020-06/Homicide%20In%20CA%202019.pdf>

reasonable doubt. Many witnesses and surviving victims are too fearful to come forward. It is common for witnesses to reluctantly come to court and then claim they did not see or hear anything.

### ***How are Victims Heard?***

Typically, victims or their families present victim impact statements at the time of sentencing in violent crimes, typically murders and attempted murders. Often, the families do not come to court and there is very little meaningful way for them to express their loss.

Meanwhile, incarcerated offenders have numerous avenues for communicating their plight. Mitigating circumstances or statements of rehabilitation are given to the sentencing courts, the Board of Parole Hearings, and the Governor. Since many victims or their next-of-kin were told that the offender would never be released from custody, they did not request to be notified of parole hearings or early releases. Although the Board of Parole Hearings notifies victims when able, many victims are traumatized again when recounting these violent crimes and then realizing that these offenders may be released from custody. Recently, due to COVID releases, many victims were not notified in a timely manner or were notified only *after* a release decision had already been made. Robust attempts to notify victims must be a priority for CDCR and prosecuting agencies.

In 2009, I prosecuted the double homicide of two teenage Latino brothers that occurred in Canoga Park in 2005. Their murderer was 17 years old at the time of shooting. He filed a commutation request with little warning to our Office. When I contacted the victims' family for the first time in over 10 years, their mother was hurt, confused and questioned how her sons' murderer could be released after so few years. While her emails and the input I was able to gather may have been heard and considered this time, I am confident these attempts to reduce the sentence and allow for early release will continue. Her loss is so immense, and one that is felt every single day. It should matter to all of us.<sup>26</sup>

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<sup>26</sup> Letter submitted on behalf of the Zapata brothers. From: Maria [REDACTED]

Date: June 13<sup>th</sup>, 2020

To: Governor Gavin Newsom

Subject: Continue justice for David Zapata Jr and Miguel Rico Zapata

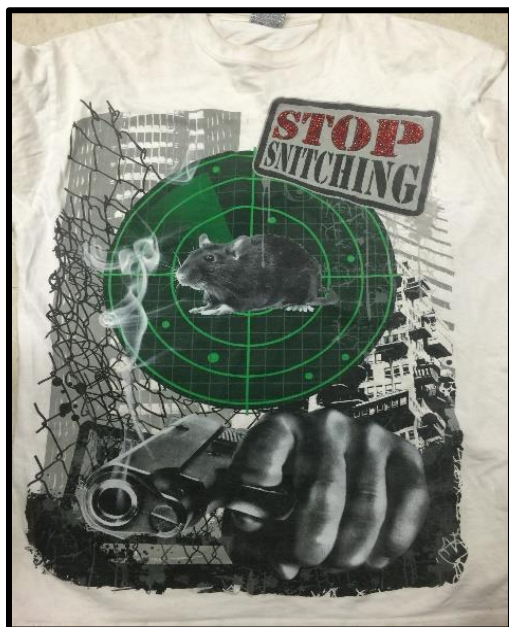
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Hello, How would you feel if you were to receive such tragic news one day that one of your family members has been shot to death? In our case, not just one family member but two!! My name is Maria [REDACTED] I am the aunt of beloved David Zapata Jr and Miguel Rico Zapata. I am here today typing you this letter to ask you to please put yourself in my family's shoes for one second. Consider answering my question, thinking carefully. What are you thinking? What are you feeling? Lost for words right? Empty, speech less, picture your heart dropping. All of a sudden the whole world is silent. Your adrenaline rushes and all you can think of at this moment is praying pleading to God this not to be true. This can't be happening!! You beg for it to be a nightmare you want to wake up from. Well that is exactly what we have been living with to this day. We have continued to suffer. It's been 15 years since the lives of David Zapata and Miguel Rico Zapata were taken that afternoon on February 2nd and February 3rd 2005. By [REDACTED], and his accomplice [REDACTED] and [REDACTED]. My family and I have not till this day learned to live or cope with this tragedy in our family. To know now that the convict, [REDACTED] is even being considered a trial for releasement has me sick to my stomach! In complete disbelief!! How is this even possible? Just thought of that there has been a considered possibility to have a murderer out free roaming the streets, ready to strike again. Risking the chance to damage another victims' family, that does not deserve to go through what we are currently going through. My family and I want justice for David Zapata and Miguel Rico Zapata!!! [REDACTED] [REDACTED] has been sentenced to life in prison with no possibility of parole along with his accomplice! If you release him, where is our justice? For the mother, Denise Zapata that lost both her two sons to this man with a cold heart or should I say no heart!! How could you consider freeing him out to the world? We don't need men like [REDACTED] in our communities, in our neighborhoods, he belongs in jail for what he has done! We want justice for my other two nephews that lost their two brothers when they were only 9 and 10 years old. Trying to cope their little minds that they will never see them again. How can you explain that to a child who is still trying to understand the world at such a young age? Needing their big brothers more than ever! Their mother Denise Zapata did not get to enjoy the life of her adolescents sons, seeing them become young men, watching them grow in to hard working men. Getting married and creating a family and to be loving fathers and allowing Denise Zapata to become a grandmother to their children. Because of [REDACTED] and his accomplice, Denise Zapata will never get to live this experience because it was taken from her. She has to live with this daily for the rest of her life! Why would [REDACTED] family even be considered to have the privilege to have him back in their home? When all these privileges, of spending our lives and creating memories with David Zapata and Miguel Zapata were taken from us! Because [REDACTED] made a choice that February 2nd 2005 he took action knowing exactly what he was doing and what the consequences were. He chose that lifestyle, he was old enough to be responsible for his own actions when he decided to commit the crime on February 2nd 2005. Shooting multiple times not just once, his intention and target were two young adolescent males, David Zapata at only 16 years of age and Miguel Rico Zapata only 15 years old. My beloved two nephews. Who were only getting food that afternoon. They were good innocent teen agers getting their school education, loved by all their family and friends. With a purpose of so much to live for. There shouldn't be any mercy for [REDACTED]! Please do not consider releasing this gangster convict who intentionally killed David Zapata and Miguel Rico Zapata. [REDACTED] is convicted for murder, serving what is only right and what the law states he deserves! His

What also should not be lost is the fact that only 64.6% of homicides are cleared. Victims, their families, and communities are often left frustrated by the injustice of the killer never being brought before the criminal justice system.<sup>27</sup>

### ***A Culture that Supports Continued Victimization***

The prevailing street culture against cooperating with police (a practice derogatorily referred to as “snitching”) has real world consequences and is a constant pressure on victims and witnesses. A t-shirt worn by a charged defendant’s friend in court as the crime victim was testifying in a preliminary hearing in a Los Angeles County case is representative of this serious issue in many gang cases:



life sentence!! Before you consider releasing him, keep in mind that David Zapata and Miguel Rico Zapata whose lives were taking away being only teens with no opportunity to continue living, the chance to experience life, the way we all innocent people deserve. They were intentionally killed by [REDACTED]. It is so hard for me to type this letter, and try to express what my family and I have been put through. Simply going back and reliving what happened to my nephews is tormenting and is a serious trauma for all of us. It has affected me in so many ways. I can sit here and tell you many personal stories but I will never finish telling how much I have suffered. I suffer a pain that I wish upon no one. Because truly no one has the right to come and take someone’s else’s life away. No one deserves to die the way David Zapata and Miguel Rico Zapata did. February 2nd 2005 will be marked as the biggest heart break and most horrific day of our lives forever!

<sup>27</sup> Table 28, 2019 Homicide in California, <https://data-openjustice.doj.ca.gov/sites/default/files/2020-06/Homicide%20In%20CA%202019.pdf>



The immorality of this attitude causes victims and witnesses to live in a state of fear and intimidation. Many crimes are unreported, and if police do respond, witnesses are fearful their cooperation will be reported to bad actors. Unfortunately, this vile attitude disproportionately impacts minority victims and witnesses, as they represent the largest percentages of victims and witnesses in Los Angeles County.

Witnesses and surviving victims typically have few options to move away from troubled neighborhoods – they simply do not have the economic resources. Gangs, criminal drug operations, and offender’s families and associates often attempt to suppress cooperation with law enforcement. In Los Angeles County, law enforcement and prosecutors must often utilize the California Witness Relocation and Assistance Program (Penal Code § 14022 *et seq.*) to support witness safety and relocation when credible evidence exists that a witness may suffer intimidation or retaliation due to their cooperation. Statewide, not surprisingly, 71% of the cases were gang-related and 69.8% involved murder or attempted murder charges.<sup>28</sup> Los Angeles County had the highest requested funding and matching of all the counties.<sup>29</sup>

### ***Sentencing and Parole Options That Undervalue Minority Victims***

A disproportionate number of Latino and African American offenders are under 26 years old.<sup>30</sup> However, as “youthful offenders,” Penal Code § 3051 provides these offenders the real opportunity for earlier parole and release from prison:

- 80% of 15 years (12 years) if sentenced to a determinate term of more than 15 years,
- 80% of 20 years (16 years) if sentenced to an indeterminate term of less than 25 years to life), and

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<sup>28</sup> <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/fy-18-19-calwrap-ar.pdf>

<sup>29</sup> *Id.*

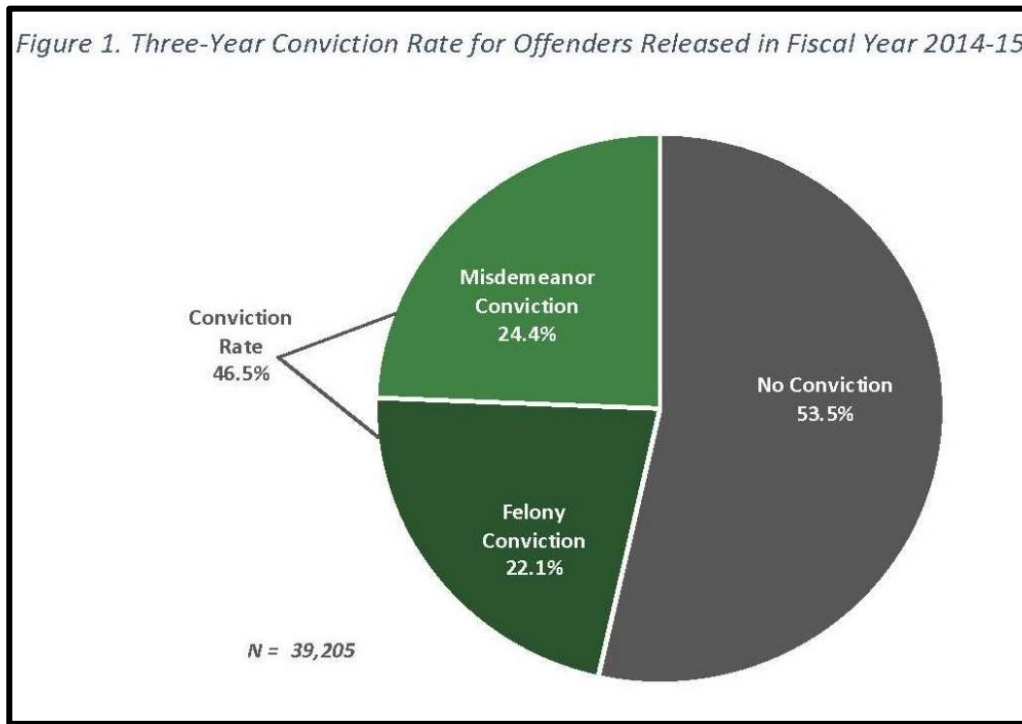
<sup>30</sup> Table 34, 2019 Homicide in California, <https://data-openjustice.doj.ca.gov/sites/default/files/2020-06/Homicide%20In%20CA%202019.pdf>

- 80% of 25 years (20 years) if sentenced to an indeterminate term of 25 years to life.<sup>31</sup>

While rehabilitative programming and earning an earlier parole date are admirable, the overwhelmingly Latino and African American victims of these violent crimes are not receiving justice as those who have significantly harmed or murdered them are released from prison much earlier than sentenced.

***Recidivism = More Victims***

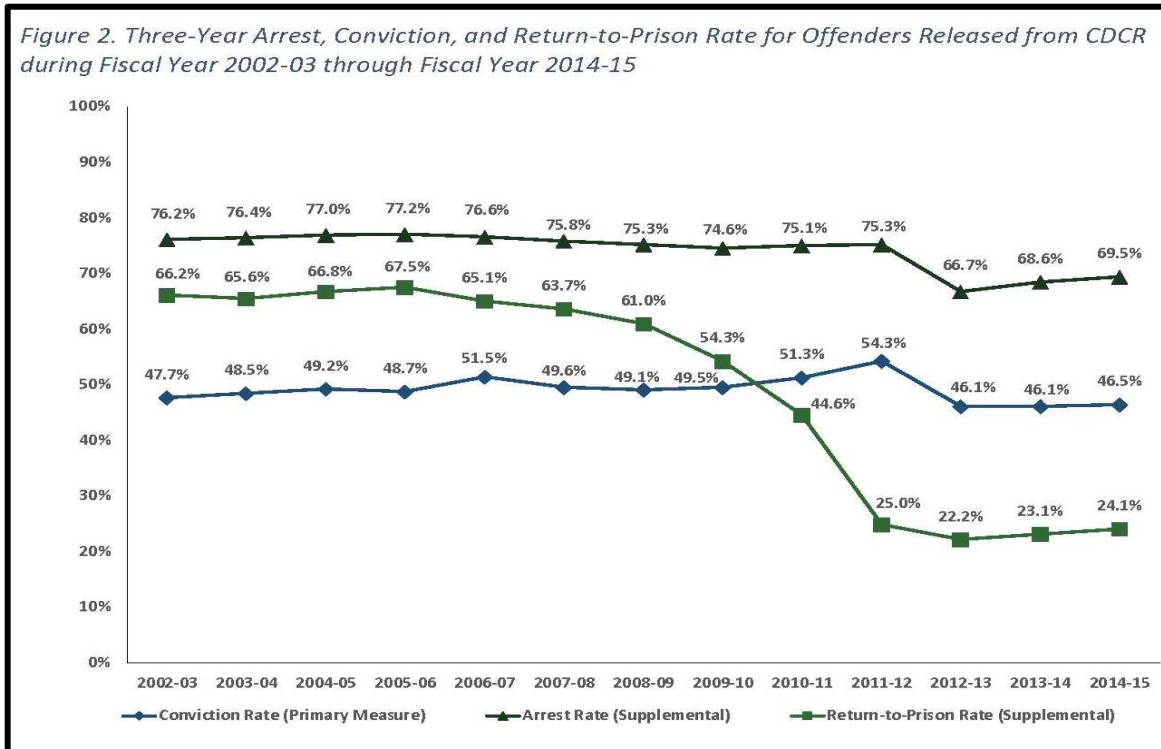
Recidivism rates remain stubbornly high in California. The California Department of Corrections and Rehabilitation’s Recidivism Report<sup>32</sup> tracked offenders released from state prison between July 1, 2014, and June 30, 2015 (Fiscal Year 2014-15) and found the three-year *conviction* rate to be 46.5%.



<sup>31</sup> Penal Code § 3051(b)(1), (b)(2), (b)(3), and (j) [*Prop. 57* credits apply pursuant to AB 965, effective January 1, 2020.]

<sup>32</sup> <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/01/Recidivism-Report-for-Offenders-Released-in-Fiscal-Year-2014-15.pdf>

When *arrests* are tracked, the rate was a staggering 69.5%.<sup>33</sup>



One should not forget that many of those new offenses involve direct victims, including victims of violent crimes. There are countless indirect and collateral victims. In Los Angeles County, it is not uncommon for violent offenders to have significant criminal histories. Recently, an offender on parole for murder committed another murder within 2 ½ years of his release from prison. The victim, Editha Cruz de Leon, was a 76-year-old retired doctor.<sup>34</sup>

### ***Broad Discretion***

In a violent crime context, allegations and enhancements are designed to deter criminal conduct and increase the punishment for those who continue to prey upon victims, especially with deadly weapons. Robbing a victim by physical force is substantially different than actually using a gun or shooting

<sup>33</sup> *Id.*

<sup>34</sup> <https://www.latimes.com/california/story/2020-06-22/three-decades-after-his-first-murder-conviction-pasadena-man-pleads-guilty-to-another>

the victim. Treating these crimes in the same way leads to absurd results and an injustice to the victim of a more serious crime. Similarly, treating a career criminal like a first-time offender makes little sense. In Los Angeles County, some of the most effective sentencing tools to combat violent crime and recidivism are firearm enhancements, gang enhancements, and prior conviction enhancements.

Although prosecutors have the authority to charge specific crimes and enhancements based on the facts and evidence, the current criminal justice system already allows for broad judicial discretion and the necessary tools and mechanisms to dismiss or reduce these allegations and enhancements when appropriate.<sup>35</sup>

In Los Angeles County, judges are not shy in terms of reducing or dismissing allegations and enhancements if not supported by the evidence or if a reduction or dismissal is in furtherance of justice. In fact, there are multiple opportunities for judges to exercise their discretion based on the unique facts and circumstances of each case and offender. Judges have the authority to dismiss or reduce charges and enhancements at a preliminary hearing. A different judge can dismiss or reduce charges and enhancements during a Penal Code § 995 motion post-preliminary hearing. The same or different judge can dismiss or reduce charges and enhancements or strike prior convictions pre-trial or post-trial during Penal Code § 1385(a) & (b) motions. Judges can dismiss or reduce firearm allegations, gang allegations, and prior convictions during post-trial motions. During sentencing, judges can dismiss or reduce firearm allegations, gang allegations, and prior convictions. Numerous and detailed Rules of Court help guide judge's sentencing decisions. Factors in aggravation and mitigation must be considered. If sentenced to state prison, a judge can recall the sentence and commitment previously ordered within 120 days and resentence the defendant. *At any time*, a district attorney or prison official can recommend that the court recall the sentence and commitment previously ordered, and the court can resentence accordingly. Beginning on January 1, 2019, courts may even consider post-conviction factors including:

- disciplinary records
- rehabilitation efforts

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<sup>35</sup> See the separate "DISCRETION" chart with specific Penal Code sections and *Prop. 57*.


- evidence that age, time served, and diminished physical condition have reduced the risk of future violence
- any other evidence that circumstances have changed so that continued incarceration is no longer in the interests of justice.

Penal Code § 1170(d)(2)(A)(i) even allows 16 and 17-year-old juveniles sentenced to life without parole for 1<sup>st</sup> degree, *special-circumstance murder* to submit to the court petitions for recall and resentencing at (1) 15 years, (2) 20 years, (3) 24 years, and (4) 25 years of incarceration.

As “youthful offenders,” Penal Code § 3051 already grants these same offenders the opportunity for earlier parole and release from prison if suitable as detailed above on pages 10-11.

*Prop. 57* allows substantial conduct credits, rehabilitation credits, educational credits, and Milestone credits for *all* inmates, including violent offenders, 2<sup>nd</sup> and 3<sup>rd</sup> strike inmates, and those serving indeterminate (life) terms. The only excluded inmates are those adults serving a life without parole (LWOP) sentence or condemned inmates.

The following chart from CDCR highlights the substantial good conduct credits (and does *not* even include the other credits) inmates can earn:



California Department of Corrections and Rehabilitation

What are Good Conduct Credits under Proposition 57?  
 Good Conduct Credits are awarded to eligible inmates who comply with all the rules within a prison and perform the duties as assigned on a regular basis. Effective May 1, 2017, Good Conduct Credits were amplified according to the following table:

**Good Conduct Credits Table (GCC):**

Inmates Eligible	Prior to Prop. 57 GCC Credits	Prop. 57 GCC Credits
<ul style="list-style-type: none"> <li>• Violent offenders serving determinate sentences or indeterminate life sentences</li> </ul>	Zero to 15%	20%
<ul style="list-style-type: none"> <li>• Nonviolent second- and third-strikers</li> </ul>	Zero to 33.3%	33.3%
<ul style="list-style-type: none"> <li>• Day-for-day offenders</li> </ul>	50%	50%
<ul style="list-style-type: none"> <li>• Offenders with violent offenses completed fire fighter (FF) training for assignment to Camp or a Firehouse and inmates assigned to Fire Camp in support positions (non-FF positions).</li> </ul>	15%	50%
<ul style="list-style-type: none"> <li>• Nonviolent offenders' assignment to Camp or a Firehouse and inmates assigned to Fire Camp in support positions (non-FF positions).</li> </ul>	33.3%	66.6%
<ul style="list-style-type: none"> <li>• Day-for-day minimum-custody offenders            These inmates receive enhanced credit based on Minimum Custody, and do not require FF training or camp placement to receive enhanced GCC.</li> </ul>	66.6%	66.6%

Importantly, under Prop. 57, *non-violent* offenders are also parole eligible when they have served the full-term of their *primary offense* as imposed by the court, without regard to any enhancements, priors, or consecutive sentencing (multiple victims). The ultimate sentence imposed is irrelevant as enhancements, consecutive sentences, or alternative sentences do *not* impact parole eligibility. For example, let's say a 2<sup>nd</sup> strike, *1<sup>st</sup> degree residential burglar* who burgles two separate homes on separate days while on parole for robbery and has four prior prison commitments is sentenced to 15 years, 8 months calculated as follows:

Count	Charge	Punishment Range	Strike Prior	Imposed Sentence
1	PC § 459	2-4-6 yrs. State Prison	x2	8 years
2	PC § 459	2-4-6 yrs. State Prison	x2	32 Months (1/3 the mid-term of 4 years x 2)
				+5 Years [PC 667(a)(1) serious prior]
Total Sentence				15 years, 8 months

Pursuant to *Prop. 57*, this offender is now parole eligible after just **4 years** (term imposed for the primary offense only) vs. approximately **10 years, 4 months** (66.6% of 15 years, 8 months). Numerous inmates from Los Angeles County, including those with significant criminal histories, are getting paroled early under *Prop. 57*.

Pursuant to *Prop. 57*, even *violent* offenders assigned to fire camps serve only 50% of their sentence, not including additional reductions for rehabilitation credits, educational credits, and Milestone credits.

Inmates who serve in the California Conservation Camp Program (fire camps) are also eligible to file petitions in court to have their cases dismissed

and expunged pursuant to AB 2147 (Reyes). Penal Code § 1203.4b was added to allow a sentencing court to dismiss these cases in the interest of justice.<sup>36</sup>

Inmates are eligible for elderly parole as well. Pursuant to AB 3234 (Ting), Penal Code § 3055(a) has been amended to allow elderly parole for inmates who have served 20 years (vs. 25) and are 50 years old (vs. 60).<sup>37</sup> For example, let's say a 30-year old offender commits 1<sup>st</sup> degree murder with premeditation and deliberation, and with a firearm and is sentenced to 50 years-to-life in state prison. This inmate is now eligible for elderly parole at age 50, and after serving only 20 years in prison.

Lastly, the Governor has the authority to grant executive clemency in the form of commutations, pardons, and reprieves. The Governor has exercised this authority. In 2019, the Governor granted 22 pardons, 23 commutations, and 737 reprieves in the form of his moratorium on the death penalty.<sup>38</sup> In 2020, the Governor has granted numerous pardons and commutations.<sup>39</sup>

## ***Conclusion***

While California and Los Angeles County are certainly safer and less violent than the 1990s and early-to-mid 2000s, more work needs to be done. Violent crime remains a significant threat to public safety. The use of firearms in violent crimes remains troublesome. Sentences, including enhancements, for violent crimes are important tools that have made our communities safer by removing violent offenders from our overwhelmingly law-abiding residents. Victims and offenders deserve justice. The broad discretion in our criminal justice system is necessary and robust. The tools and mechanisms to reduce

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<sup>36</sup> Penal Code § 1203.4b *excludes* those inmates convicted of PC §§ 187, 261, 262, 288, 290 crimes, escape within previous 10 years, 451, and any crime punishable by death or life.

<sup>37</sup> Penal Code § 3055(a) *excludes* those inmates sentenced pursuant to the strike law, 1<sup>st</sup> degree murder of a peace officer in the performance of duty, and LWOP / Death.

<sup>38</sup> <https://www.gov.ca.gov/wp-content/uploads/2020/02/Executive-Report-on-Clemency-2019-signed.pdf>

<sup>39</sup> <https://www.gov.ca.gov/2020/06/26/governor-newsom-grants-executive-clemency-6-26-20/>; <https://www.gov.ca.gov/2020/03/27/governor-newsom-grants-executive-clemency-3-27-20/>

or dismiss allegations and enhancements already exist and are regularly utilized by prosecutors, judges, CDCR, and the Governor.



# DISCRETION

FILED CASE



Preliminary  
Hearing



Judge can  
**dismiss**  
charges /  
allegations

Judge can  
**reduce**  
charges /  
allegations



Trial Court  
**PC 995(a)**



Judge can  
**dismiss**  
charges /  
allegations

Judge can  
**reduce**  
charges /  
allegations

# DISCRETION

Pre-trial / Post-Trial  
Motions



“Furtherance  
of Justice”  
**PC 1385(a)**  
**PC 1385(b)(1)**



Firearm  
Allegations  
**[PC 12022.5(c)]**  
**[PC 12022.53(h)]**  
**(SB 620)**



Prior Serious /  
Violent  
Convictions  
**[PC 667(f)(2)]**  
**[PC 1385(b)(1)]**  
**(SB 1393)**



Gang  
Allegations  
**[PC 186.22(g)]**



Judge can  
**dismiss /**  
**reduce**  
allegations

# DISCRETION

## SENTENCING



“Furtherance  
of Justice”  
**PC 1385(a)**  
**PC 1385(b)(1)**



Sentencing  
Guidelines

**Rules of Court:**  
**4.401 – 4.480**



**ALL relevant factors,**  
including aggravation  
(Rule 4.421) &  
mitigation (Rule 4.423)

# DISCRETION

**POST-CONVICITON**



**PC 1170(d)(1)**

**PC 1170(d)(2)(A)(i)**



**YOUTHFUL  
OFFENDERS  
(PC 3051)**

**Prop. 57**



**FIRE CAMP  
PC1203.4b**

**ELDERLY  
PAROLE  
PC 3055(a)**



**GOVERNOR's  
Commutation  
Pardon  
Reprieve**

## Exhibit 4

Written Materials from  
District Attorney Stephen M. Wagstaffe  
(San Mateo County)  
California District Attorneys Association

# COMMITTEE ON REVISION OF THE PENAL CODE

## CALIFORNIA PENAL CODE

1872: Enacted As One Of Original Four California Codes

1977: California Penal Code Had Four Parts With 47 Titles Within The Parts

- The Penal Code Was 653 Pages In Length

1987: Penal Code Expanded To Five Parts With 54 Titles

- The Penal Code Was 937 Pages In Length

2020: Penal Code Expanded To Six Parts With 84 Titles

- The Penal Code Is Now 1,250 Pages In Length

## Sentencing Limitations From A Prosecutor's Perspective

1970's: Types Of Crimes Were Traditional And Limited

- Length Of Sentences To State Prison Rested With Judiciary And Department of Corrections – Indeterminate Sentences
- Almost No Enhancements In Penal Code

1980's: Legislature And Governor Greatly Expanded Numbers Of Crimes And The Length Of Sentences For Crimes

- Determinate Sentencing Enacted 1977 And In Practice By 1980's, Deleting The Sentencing Authority of Department Of Corrections
- Mandatory Sentences Enacted And Reduced Sentencing Power Of Judiciary In Mandatory Sentence Cases, District Attorney's Held The Sentencing Power

1990's: Mandatory Sentences Expanded To Include Additional And Heavy Mandatory Sentences

- Three Strikes Law, 10-20-Life Firearm Use Enhancement And Sexual Assault One Strike-Life Sentence
- Sentencing Power In This Area Remained With Prosecutors, With Some Exceptions Such As *Romero Decision*

2000's: Maintenance Period Where Minor Changes In Sentencing

2010's: Criminal Justice Reform Starts In 2011 And Continues Through The Decade, Both Legislatively (AB 109) And By Initiative (Propositions 47,57,64)

- Substantive Changes To Rules: Felony-Murder Rule
- Specialized Court Programs And Alternatives To Incarceration Are Embraced

2011 – 2020: Criminal Justice Reform Returns Sentencing Authority To The Judiciary

# COMMITTEE ON REVISION OF THE PENAL CODE

## **VICTIM'S RIGHTS**

### **1982: ARTICLE I DECLARATION OF RIGHTS – SECTION 28 VICTIM'S BILL OF RIGHTS**

The People of the State of California find and declare all of the following:

(1) Criminal activity has a serious impact on the citizens of California. The rights of victims of crime and their families in criminal prosecutions are a subject of grave statewide concern.

(2) Victims of crime are entitled to have the criminal justice system view criminal acts as serious threats to the safety and welfare of the people of California. The enactment of comprehensive provisions and laws ensuring a bill of rights for victims of crime, including safeguards in the criminal justice system fully protecting those rights and ensuring that crime victims are treated with respect and dignity, is a matter of high public importance. California's victims of crime are largely dependent upon the proper functioning of government, upon the criminal justice system and upon the expeditious enforcement of the rights of victims of crime described herein, in order to protect the public safety and to secure justice when the public safety has been compromised by criminal activity.

(3) The rights of victims pervade the criminal justice system.

### **1986: Penal Code Sections 679 – 680.4 Legislature Enacts Statutes Providing Rights For**

#### **Victims And Witnesses Of Crime**

Section 679:

...the Legislature declares its intent, in the enactment of this title, to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy, and sensitivity. It is the further intent that the rights enumerated in Section 679.02 relating to victims and witnesses of crime are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protections afforded criminal defendants.

### **2008: Marsy's Law – The 2008 Victim's Bill Of Right Passed by Initiative**

Voters Enacts Guarantees Of Victims' Rights Which Are Placed In The California Constitution And In The Penal Code