Staff Memorandum 2025-01
Survivors of Intimate-Partner Violence as Criminal Defendants and Related Matters

At its April 2025 meeting, the Committee on Revision of the Penal Code will consider how California's criminal system accounts for defendants' experiences of intimate partner violence.

Introduction

Research shows a strong link between intimate partner violence (IPV) and incarceration.[1] IPV refers to physical, sexual, or psychological harm inflicted by a current or former partner,[2] and it disproportionately affects women — particularly women of color and immigrant women, who face additional barriers to seeking help.[3] The consequences of IPV are far-reaching and include mental health conditions, substance use disorders, traumatic brain injury, and death.[4] Nationally, nearly half of all female homicide victims are killed by a current or former intimate partner.[5] In California, in cases where the contributing factor was known, "domestic violence" accounted for approximately 35% of homicides against women.[6]

"Criminalized survivor" describes individuals — overwhelmingly women — who have been arrested, convicted, and sentenced for offenses directly connected to their experiences of abuse.[7] These offenses may include defending themselves against an abuser, being coerced into committing a crime, or failing to protect a child from harm.[8]

A recent study by the Stanford Criminal Justice Center shows the prevalence of criminalized survivors in our criminal system. Researchers surveyed women incarcerated for murder or manslaughter in California prisons, using validated scales to assess whether they experienced IPV in the year before their conviction, and if so, the severity of the abuse they endured.[9] Among the 625 women surveyed, 74% were assessed as "IPV positive," meaning they had experienced IPV in the year before the murder.[10] Of those, the vast majority were

[1] See Leigh Goodmark, *Imperfect Victims: Criminalized Survivors and the Promise of Abolition Feminism*, 12 (2023) (citing studies indicating that 50–95% of incarcerated women have been raped, sexually assaulted, or subjected to abuse by intimate partners).
[2] Behaviors include physical aggression, sexual coercion, psychological abuse, and controlling behaviors. World Health Organization, *Intimate Partner Violence.*
[3] See Debbie Mukamal, et al., *Fatal Peril: Unheard Stories from the IPV-to-Prison Pipeline*, Stanford Criminal Justice Center, 23–24 (November 2024).
[4] Shane P.D. Jack et al., *Surveillance for Violent Deaths — National Violent Death Reporting System, 27 States, 2015*, Morbidity & Mortality Wkly. Rep., 1, 8, September 28, 2018.
[5] Kameron J. Sheats, et al., *Surveillance for Violent Deaths — National Violent Death Reporting System, 39 States, the District of Columbia, and Puerto Rico, 2018*, Morbidity and Mortality Weekly Report, Table 4 (January 28, 2022).
[6] California Department of Justice, *Homicide in California 2023*, 31, Table 22 (July 2024).
[7] See Leigh Goodmark, *Imperfect Victims: Criminalized Survivors and the Promise of Abolition Feminism*, 12–13 (2023).
[8] Id. at 15–17.
[9] Debbie Mukamal, et al., *Fatal Peril: Unheard Stories from the IPV-to-Prison Pipeline*, Stanford Criminal Justice Center (November 2024).
[10] Id. at 51.

evaluated as being in extreme (66%) or severe (12%) danger of being killed by their partner.[11]

This memorandum first explains how the Penal Code and caselaw address IPV evidence in self-defense claims in murder cases, and then explores more recent efforts to address the impact of IPV in other crimes. Note that IPV was previously referred to as "battered women's syndrome" and this memorandum uses the older term when it appeared in prior versions of the statutes discussed below.

Self-Defense and Intimate-Partner Violence

California has implemented several criminal laws to account for defendants' experiences with intimate partner violence. However, as explained below, the state's self-defense laws remain outdated. While legislative and judicial developments in the 1990s improved the admissibility of expert testimony on the effects of IPV, the legal standards governing self-defense have not been modernized, which can create significant barriers for survivors asserting self-defense.

Evidence Code § 1107

Evidence of IPV and expert testimony about its psychological effects can significantly shape a jury's understanding of a survivor's mental state and decisions. Before 1991, however, defendants accused of committing violent crimes against their abusers were often denied the ability to use this evidence.[12] To address this issue, the Legislature enacted Evidence Code section 1107, which explicitly allowed the admission of expert testimony regarding "battered women's syndrome."[13]

Even after section 1107 was enacted, courts limited how this expert testimony could be used to support self-defense claims in murder cases. "Perfect" self-defense — explained further below — is only allowed if the defendant both subjectively believes they are in danger and that belief is objectively reasonable. But courts frequently did not allow IPV expert testimony to be used as evidence for the objective component of self-defense.[14]

This changed with the 1996 California Supreme Court decision in *People v. Humphrey*, which held that evidence of IPV is relevant to both the subjective and objective components of self-defense claims.[15] The Court recognized that such testimony helps expose and correct gender biases and stereotypes of abusive

[11] Id. at 53.
[12] See *In re Walker*, 147 Cal.App.4th 533, 546–547 (2007).
[13] AB 1500 (1993–1994 Regular Session); Evidence Code § 1107.
[14] See *People v. Aris*, 215 Cal.App.3d 1178 (1989).
[15] *People v. Humphrey*, 13 Cal.4th 1073, 1086 (1996).

relationships, including if a woman were really being abused, she would simply leave the relationship.[16]

While the Court expanded the use of expert testimony in cases involving IPV, it emphasized that it was not altering the Penal Code's definition of self-defense or the legal standard applied in these cases.[17] The Court explained that "the question is whether a reasonable person in the defendant's circumstances would have perceived a threat of imminent injury or death, and not whether killing the abuser was reasonable in the sense of being an understandable response to ongoing abuse."[18] The Court warned that "evidence merely showing that a person's use of deadly force is scientifically explainable or empirically common does not, in itself, show it was objectively reasonable."[19]

Even after the *Humphrey* decision, California's self-defense law remains largely unchanged from its origins in the 19th century. The law continues to impose rigid requirements that do not fully account for the realities of long-term abuse. While courts have acknowledged the need for expert testimony in these cases, the underlying legal standard has not been modernized, as discussed next.

California's self-defense standard

California's self-defense law, enacted in 1872, uses archaic language to describe when a homicide is "justified":[20]

> [w]hen committed in the lawful defense of such person, or of a spouse, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished…[21]

As noted, courts have clarified that self-defense claims must satisfy both a subjective and objective component. A person must show that they "actually *and*

[16] Id. at 1087. See also Mindy B. Mechanic, *Battered Women Charged with Homicide: Expert Consultation, Evaluation, and Testimony*, 32 J. Aggression, Maltreatment & Trauma, 1, 7–8 (May 2022).

[17] *People v. Humphrey*, 13 Cal.4th 1073, 1087 (1996)

[18] Id. at 1088.

[19] Id. In *People v. Sotelo-Urena*, 4 Cal.App.5th 732 (2016), an appellate court applied *Humphrey* to allow expert testimony on how chronic homelessness shaped a defendant's perception of danger. However, the court emphasized that it was not creating a new "reasonable homeless person" standard and that the standard for self-defense remained unchanged. Id. at 751.

[20] Penal Code § 197(3). This section has been amended three times since 1872 but current law is virtually identical to the 1872 language.

[21] The provision continues to address additional requirements if the killing occurs during "mutual combat": "but such person, or the person in whose behalf the defense was made, if he or she was the assailant or engaged in mutual combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed." Penal Code § 197(3).

reasonably believe[d] in the necessity of defending oneself from imminent danger of death or great bodily injury."[22]

This "reasonable person" standard requires jurors to consider all the circumstances as they were known and appeared to the defendant.[23] This can include evidence of the victim's past acts of violence against the defendant, the effects of these past experiences on the person's state of mind, and any physical limitations of the accused person, among other things.[24]

The Penal Code, with a provision enacted in 1984 known as the Home Protection Bill of Rights, creates a presumption of reasonableness for any person using deadly force in their residence against someone who has "unlawfully and forcibly entered the residence."[25] But this presumption does not hold in cases where the decedent was a member of the family or household, so it does not apply to many IPV cases.[26]

Once a defendant presents substantial evidence that they acted in self-defense, the burden shifts to the prosecution to disprove the claim beyond a reasonable doubt.[27]

In addition, a self-defense claim that only shows a subjective belief in imminent danger is "imperfect" self-defense and reduces a murder conviction to manslaughter, which results in a shorter sentence.[28]

[22] *People v. Thomas*, 14 Cal.5th 327, 386 (2023) (cleaned up but emphasis in original).
[23] Penal Code § 198. See also *People v. Clark*, 130 Cal.App.3d 371, 377 (1982).
[24] *People v. Smith*, 151 Cal. 619, 628 (1907) ("… a defendant is entitled to have a jury take into consideration all the elements in the case which might be expected to operate on his mind.…"). See also *People v. Garvin*, 110 Cal.App.4th 484, 488 (2003); *People v. Humphrey*, 13 Cal.4th 1073, 1099–1101 (1996); *People v. Horn*, 63 Cal.App.5th 672, 686 (2021).
[25] Penal Code § 198.5. See also *People v. Owen*, 226 Cal.App.3d 996, 1005 (1991) (the author of the measure explained that it gives "the benefit of the doubt in such cases to the resident, establishing a presumption that the very act of forcible entry entails a threat to the life and limb of the homeowner.").
[26] Penal Code § 198.5.
[27] *People v. Breverman*, 960 P.2d 1094, 1102 (1998). See also Jud. Council of Cal., Crim. Jury Instructions 505 bench note (2024).
[28] Penal Code §§ 192(a) 193(a). See also *People v. Barton*, 12 Cal.4th 186, 199 (1996); *In re Christian S.*, 7 Cal.4th 768, 771 (1994).

Imminence

California courts have interpreted the statutory term "imminent danger" narrowly. It is required for both perfect and imperfect self-defense.[29]

The California Supreme Court has defined imminent danger as one that is "immediate and present and not prospective or even in the near future."[30] This standard originates from an 1869 California Supreme Court decision involving a violent property dispute between two men.[31] There, the defendant chased down a man on horseback after the man had vandalized his property and fled.[32] At trial, the defendant sought to introduce evidence that the victim previously threatened to kill him.

But the Court held that evidence of the previous threats alone could not justify the killing "because it may be that the party making the threat has relented or abandoned his purpose, or his courage may have failed, or the threat may have been only idle gasconde, made without any purpose to execute it."[33] Instead, the legal standard for "imminence" required an immediate demonstration of force at the time of the encounter.[34]

This 19th-century framework contrasts sharply with modern cases involving survivors of IPV, which often include patterns of violence, control, coercion, and prolonged acts of physical aggression. Still, California self-defense law requires a showing of imminent danger "that, from appearances, must be instantly dealt with."[35]

Courts in some other states have interpreted "imminence" differently. For example, courts in Georgia, Maryland, and Washington have all held that in

[29] Penal Code § 192(a). See also *People v. Barton*, 12 Cal.4th 186, 199 (1996).

[30] *People v. Thomas*, 14 Cal.5th 327, 386 (2023) (cleaned up and emphasis removed). See also *In re Christian S.*, 7 Cal.4th 768, 783 (1994); *People v. Aris*, 215 Cal.App.3d 1178, 1187 (1989) (overruled on other grounds in *People v. Humphrey*, 13 Cal.4th 1073, 1089 (1996)). See also CALCRIM No. 3470.

[31] *People v. Scoggins*, 37 Cal. 676, 682 (1869). See also *People v. Aris,* 215 Cal.App.3d 1178, 1188 (1989) (quoting *Scoggins* extensively on imminence); *People v. Humphrey,* 13 Cal.4th 1073, 1095 (1996) (quoting *Scoggins* on imminence); *In re Christian S.*, 7 Cal.4th 768, 783 (1994) (quoting *Aris* on imminence); *People v. Thomas*, 14 Cal.5th 327, 386 (2023) (quoting *Christian S.* on imminence)

[32] Id.

[33] Id. "Gasconde" is bravado or bluster.

[34] Id.

[35] *People v. Thomas*, 14 Cal.5th 327, 386 (2023) (cleaned up and emphasis removed). See, e.g., Rachel Snyder, *Who Gets to Kill in Self-Defense,* The New York Times (September 4, 2024); *People v. Ayobi*, 2015 WL 2095704 (2015) (defendant convicted of murder despite evidence of years of IPV and decedent telling defendant and their children that "death can come at any time."); *People v. Aris,* 215 Cal.App.3d 1178 (1989) (no imminency despite abuser's threat that he didn't think he would let the defendant live until the morning); *People v. Lucas,* 160 Cal.App.2d 305 (1958) (no self-defense despite defendant claiming that her husband regularly choked her and made multiple death threats on the night of the homicide).

cases involving IPV, "imminence" is not a strictly temporal consideration and that sufficient danger can exist even when there was no confrontation at the moment of the killing.[36]

And in Canada, a 2013 revision to self-defense law made "imminence" one of several factors to be considered in determining the reasonableness of a person's actions and not an element required in every self-defense claim.[37] The law built on a 1990 Supreme Court of Canada decision that the definition of "reasonable" must be adapted to the realities of women who experience IPV.[38] In holding that expert witness testimony on Battered Woman Syndrome was relevant, the court explained, "If it strains credulity to imagine what the 'ordinary man' would do in the position of a battered spouse, it is probably because men do not typically find themselves in that situation. Some women do, however. The definition of what is reasonable must be adapted to circumstances which are, by and large, foreign to the world inhabited by the hypothetical 'reasonable man'."[39]

Influence of fear alone

The Penal Code specifies that a person acting in self-defense "must have acted under the influence of [] fear[] alone."[40] Courts have interpreted this language to limit self-defense to situations where fear is the only factor motivating a person's decision to kill.[41] When a person acts out of fear *and* a desire to harm their attacker, self-defense is not available.[42] Courts have clarified that the law does not prevent the person who commits the killing from feeling anger or other emotions, but that those other emotions cannot be causal factors in their decision to use deadly force.[43]

Habeas corpus expansion

After specifying that evidence of IPV was admissible with Evidence Code 1107, the Legislature established a specific habeas remedy for people convicted of murder before January 1, 1992 — the effective date of Evidence Code section 1107.[44] The law allowed habeas relief when evidence of BWS was not introduced

[36] See *Smith v. State*, 268 Ga. 196, 200 (1997); *Porter v. State*, 455 Md.220, 245 (2017); *State v. Janes*, 121 Wash.2d 220, 242 (1993).
[37] Canadian Criminal Code § 34(1). See also Elizabeth Sheehy, *Self-defence: Canadian law 1985–2022*, Centre for Women's Justice (2023).
[38] *R v Lavallee*, 1 SCR 852 (1990).
[39] Id. *Cf*. Arkansas Code § 5-2-607(a)(3) (Arkansas allows deadly self-defense when someone reasonably believes that the decedent was "[i]mminently endangering the person's life or imminently about to victimize the person from the continuation of a pattern of domestic abuse.").
[40] Penal Code § 198.
[41] *People v. Nguyen*, 61 Cal.4th 1015, 1045 (2015).
[42] *People v. Shade*, 185 Cal.App.3d 711, 716 (1986).
[43] *People v. Trevino*, 200 Cal.App.3d 874, 879 (1988).
[44] Penal Code § 1473.5. See also SB 799 (2001–2002 Regular Session).

at trial and credible evidence created a "reasonable possibility" that there would have been a different result if such evidence had been considered.[45]

In 2004, the law was expanded to apply to individuals convicted of any violent offense before the *Humphrey* decision in August 1996 — not just murders before 1992.[46]

Consideration of IPV by the Board of Parole Hearings

The Legislature has specified how the Board of Parole Hearings (BPH) should consider IPV evidence in some circumstances and BPH regulations also provide further guidance.

Clemency investigations

Since at least 1941, the BPH has had statutory authorization to refer people to the Governor for clemency consideration "on account of good conduct, or unusual term of sentence, or any other cause."[47] In 1991, the Legislature amended this statute to authorize recommendations based on "evidence of battered woman syndrome."[48]

Governor Newsom's administration recently announced plans to develop new regulations on how BPH should make clemency referrals in all cases (not just those where there is relevant IPV evidence) as well as use its statutory authority under Penal Code section 1172.1 to make resentencing referrals to courts.[49] These regulations have not yet been made public.[50]

In New Jersey, Governor Phil Murphy recently launched a clemency program focused on granting expedited review to specific categories of people, including survivors of IPV, sexual violence, or sex trafficking who are incarcerated for crimes committed against their abusers.[51]

[45] Penal Code § 1473.5(a).
[46] SB 1385 (2003–2004 Regular Session).
[47] Penal Code § 4801(a).
[48] Penal Code § 4801(a). AB 3436 (1992–1993 Regular Session). In 1995, "battered woman syndrome" was defined to be "effects of physical, emotional, or mental abuse upon the beliefs, perceptions, or behavior of victims of domestic violence where it appears the criminal behavior was the result of that victimization." AB 231 (1995–1996 Regular Session).
[49] See Hannah Wiley, *Newsom Cites Menendez Brothers Case in Seeking Changes to Parole Board Process*, Los Angeles Times, March 10, 2025.
[50] Board of Parole Hearings, *Clemency FAQ,* March 2025.
[51] See State of New Jersey, *Governor Murphy Launches Historic Clemency Initiative,* June 19, 2024.

Parole hearings for offenses before August 1996

In 2000, the Legislature directed BPH to "consider any information or evidence" that the petitioner suffered from battered woman syndrome at the time of the offense but was convicted before the enactment of Evidence Code section 1107 in 1991 (which allowed expert testimony at criminal trials on the effects of IPV).[52]

In 2012, this provision of the Penal Code was amended to (1) require BPH to "give great weight" to such evidence, (2) extend this special consideration to offenses that occurred before *People v. Humphrey* was decided on August 29, 1996, and (3) specify that BPH could not use a survivor's testimony about intimate partner violence to "support a finding that the prisoner lacks insight into his or her crime and its causes."[53]

BPH regulations

In addition to the statutory directive to give great weight to IPV in pre-1996 cases, BPH's regulations have since 2001 specified for all cases that a circumstance "tending to show suitability" for release is that the parole candidate "suffered from Battered Woman Syndrome … and it appears the criminal behavior was the result of that victimization."[54] BPH "shall" consider this information and specify what effect it had on the parole decision.[55] BPH regulations authorize but do not require BPH to conduct investigations into whether and to what extent IPV contributed to the offense.[56]

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Despite this legislative and regulatory framework, implementation has proven inconsistent. A 2023 study by the Stanford Criminal Justice Center identified 23 parole hearings held in 2021 where women serving a sentence for homicide in California explicitly linked their offense to experiences of IPV during their parole hearing.[57] Only 7 of these 23 people received a formal investigation from BPH to consider the existence and impact of IPV on their crime before their

[52] SB 499 (1999–2000 Regular Session) (creating Penal Code § 4801(b)). Beginning in 2000, BPH was also required to file annual reports "on the cases the board considered pursuant to this subdivision during the previous year, including the board's decisions and the specific and detailed findings of its investigations of these cases." Penal Code § 4801(b).

[53] AB 1593 (2011–2012 Regular Session); Cal. Pen. Code § 4801(b)(3). BPH interprets the limitation on IPV contributing to a lack of insight to only apply in hearings where the offense occurred before August 29, 1996, and not all parole hearings. See BPH Administrative Directive No: 2013-04.

[54] 15 CCR §§ 2281(d)(5); 2000(7). See also 15 CCR § 2402(d)(5).

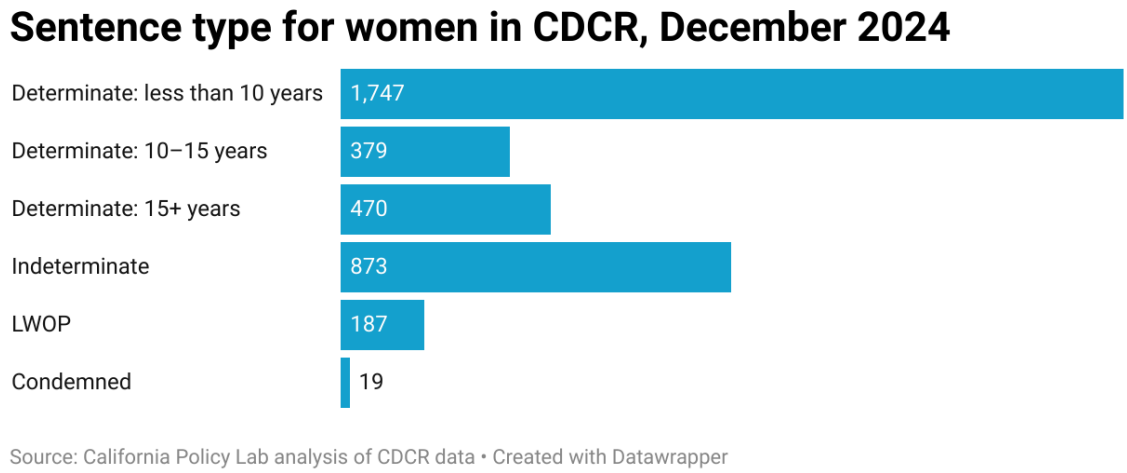
[55] 15 CCR § 2239. See also Board of Parole Hearings, *The California Parole Hearing Process Handbook*, 63, March 8, 2024.

[56] 15 CCR § 2830.

[57] Lauren Courtney, et al., *Great Weight: A Review of California Board of Parole Hearing Transcripts to Assess Frequency and Consideration of Intimate Partner Violence Among Women Convicted of Homicide Offenses*, Stanford Criminal Justice Center (June 2023). According to the report, there were 97 total parole hearings for women serving a homicide sentence in 2021.

hearing.[58] Of the 23 people in the sample, 8 were found suitable for parole and 15 were found unsuitable.[59] While BPH commissioners mentioned IPV as a relevant factor in their decision in 19 of the 23 hearings, the study found that the IPV was considered as an aggravating factor instead of mitigating in 18 of the 23 hearings.[60] Among other recommendations, the study recommended that BPH establish a specialized panel of commissioners to consider cases involving IPV, and do better screening and investigation to identify survivors of IPV.[61]

In addition, a significant number of women currently in prison are serving sentences that may not be eligible for review by BPH — more than a 1,000 women in prison (28% of the total female population) are serving a long determinate sentence greater than 10 years or life without parole.



[58] Id. at 17.
[59] Id. at 22.
[60] Id. at 22–23.
[61] Id. at 30–31.

Developments Addressing Other IPV-Related Offenses

More recent legislation has focused on creating a defense based on IPV "coercion" and sentencing considerations for survivors who commit offenses that are connected to their victimization. Unlike with self-defense, the offenses covered by these laws are not limited to acts of violence against an abuser.

Coercion defense

In 2016, the Legislature created a "coercion" defense that would apply to victims of human trafficking and applied it to cases involving IPV in 2021 in a separate statute.[62] The defense only applies to non-violent felonies and must be proven by the defendant by a preponderance of evidence.[63] If established, the coercion defense results in complete relief from criminal penalties and sealing of records.[64]

To establish this defense, a person must prove that they were "coerced to commit the offense as a direct result of being a victim of intimate partner violence or sexual violence at the time of the offense and had a reasonable fear of harm."[65] There is no further guidance in the statute about when an offense is a "direct result" of victimization.

And while the statutory language leaves some ambiguity about what it means to be "coerced to commit" an offense, a 2021 appellate decision clarified that the law does not require showing that the abuser had direct involvement in or even knowledge of the crime committed.[66] However, this is the only appellate decision on the coercion defense and it addresses only the statute defining coercion in the human trafficking context and not the nearly-identical statute for coercion for IPV.

A bill currently pending in the legislature, AB 938 (Bonta), would extend the coercion defense to all crimes except for murder.[67] At least one state, Wisconsin, applies its human-trafficking coercion law to all offenses, including murder.[68]

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[62] AB 1761 (2015–2016 Regular Session); AB 124 (2021–2022 Regular Session). The coercion defense is similar to the long-standing "duress" defense. A person acts under duress if, because of threat or menace, they reasonably believed their or someone else's life would be in immediate danger if they refused a demand to commit the crime. Penal Code § 26(6). See also *People v. Heath*, 207 Cal.App.3d 892 (1989). Unlike duress, coercion does not require a threat of imminent death or great bodily harm and only applies to nonviolent offenses.

[63] Penal Code §§ 236.23(a) & (b), 236.24(a) & (b).

[64] Penal Code § 236.24(e).

[65] Penal Code § 236.24(a). See also CALCRIM 3414.

[66] *In re D.C.*, 60 Cal.App.5th 916, 921 (2021).

[67] AB 939 (2025–2026 Regular Session). AB 1497 (Haney), introduced in 2023, would have extended both the coercion defense and vacatur to violent felonies; AB 2354 (Bonta), introduced in 2024, would have extended vacatur relief to violent felonies. Both bills were unsuccessful.

[68] Wis. St. § 939.46(1m). See also *State v. Kizer*, 403 Wis.2d 142 (2022).

Vacatur of arrests and convictions

In addition to the coercion defense, people arrested or convicted for any nonviolent offense committed while the person was a victim of human trafficking, IPV, or sexual violence can petition a court to vacate arrests and convictions in some circumstances.[69] To obtain vacatur based on IPV, a petitioner must "establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of intimate partner violence or sexual violence that demonstrates that the person lacked the requisite intent to commit the offense."[70] This latter element — proof that the person lacked intent — is apparently not required for the coercion defense.

When vacatur relief is granted, the arrest or conviction is deemed not to have occurred, and all records are sealed and destroyed.[71]

There is no data on the extent to which the coercion defense or vacatur relief has been used since its implementation.

Plea negotiations, sentencing, and post-conviction relief

Other recent laws target different stages of the criminal process. Multiple provisions now require courts and prosecutors to consider a person's history of abuse when making sentencing and plea decisions or conducting post-conviction sentence reviews.[72]

There is no data showing how frequently these laws have been utilized or how effective they have been.

Other states, including Georgia, New York, and Oklahoma, have also recently enacted laws allowing judges to substantially reduce sentences when they find that IPV was a contributing factor to the offense.[73]

Failure to protect murder

"Failure to protect" prosecutions allow mothers who may themselves be victims of IPV to be charged with the killing of a child committed by their abusive partner. Under existing law, a person can be prosecuted as an accomplice for a

[69] Penal Code §§ 236.14(a), 236.15(a).
[70] Penal Code § 236.15(a).
[71] Penal Code § 236.15(t)(2).
[72] See Penal Code §§ 1016.7 (prosecutor's considerations during plea negotiations); 1170(b)(6) (presumption imposition of low term); 1170(d)(8)(C) (consideration during juvenile LWOP resentencings); 1172.1(a)(5) (consideration during law enforcement or judge initiated resentencing); 1385(c)(2)(E) (mitigating factor in favor of striking enhancements).
[73] N.Y. Penal Law §§ 60.12, 70.45; N.Y. Code of Crim. Proc. § 440.47; 22 Okl.St.Ann. §§ 1090.3. 1090.4.

crime committed against a child in their custody if they permit them to be in a situation where their health is endangered.[74]

A 2025 decision by the California Supreme Court, *People v. Collins*, reversed a murder conviction premised on this theory.[75] In *Collins*, the defendant was convicted of second-degree murder and assault for the death of her two-month-old son at the hands of his abusive father.[76] The father, who had an extensive history of violence towards the defendant-mother, committed the fatal act against their son while she was in another room.[77]

The Court affirmed that parents have a legal duty to take reasonable steps to protect their children from harm.[78] But, for the first time, it addressed the legal standard applicable in these types of cases: aiding and abetting implied malice murder based on a failure-to-protect.[79] Citing its recent decision in *People v. Reyes*[80] — which clarified that the accomplice's conduct must assist the very act that caused death — the court held that "liability for murder on a failure-to-protect theory is appropriately reserved for individuals who actually know to a substantial degree of certainty that a life-endangering act is occurring or is about to occur and failed to act in conscious disregard for life."[81] This and other statements from the Court are a significant clarification of how the failure-to-protect doctrine should be applied in homicide cases.[82]

The Court also acknowledged that IPV dynamics could be central in determining whether failure-to-protect liability was allowed.[83] A concurring opinion by Justice Liu also noted that existing data suggests that failure to protect cases are disproportionately prosecuted against women.[84]

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[74] Penal Code § 11165.2(a). See also *People v. Rolon*, 160 Cal. App. 4th 1206 (2008) (partially overruled in *People v. Collins*, 17 Cal.5th 293, 309 (2025)).
[75] *People v. Collins*, 17 Cal.5th 293 (2025).
[76] *People v. Collins*, 17 Cal.5th 293 (2025).
[77] Id. at 300–304.
[78] Id. at 308–309.
[79] For further information on implied malice murder, see Staff Memorandum 2024-14, 3–4, 8–9.
[80] *People v. Reyes*, 14 Cal.5th 981 (2023).
[81] Id. at 310.
[82] The Court noted repeatedly it was "clarify[ing]" various aspects of the standard and, in apparent recognition of the need to further settle legal issues, it additionally "clarif[ed] several legal principles regarding the requisite actus reus for second degree murder based on one's failure to act," even though this was not necessary for resolving the immediate case in front of it. *Id*. at 307, 310, 318, 321 n.9. According to the two dissenting justices, the *Collins* majority "disregarded" relevant caselaw, "add[ed] an element" to the offense, "depart[ed]" from established law, and reached issues that were not briefed by the parties. *Id*. at 343–345, 347.
[83] Id. at 309–310.
[84] Id. at 324–325 (concurring opinion of Justice Liu) (citing Oklahoma and California data).

Staff Recommendations

The Committee may wish to consider the following proposals to address the issues raised in this memorandum.

- **Modernize the statutory definition of self-defense for IPV cases.**
  For cases where the defendant is accused of killing their abuser, specify that self-defense is allowed when used to prevent or escape a threat of ongoing, life-threatening domestic abuse. In addition, specify that "imminence" and acting from fear alone are not necessary elements of a self-defense claim but factors that a jury should consider when assessing the objective reasonableness of the defense. This change to the law would, as other jurisdictions have done in these situations, allow juries to more fully consider the entire context of these complex cases.

- **Update habeas corpus relief for people who would benefit from a change in the self-defense law.**
  Additionally, if the self-defense law is changed in this way, habeas corpus relief should be made available to people whose convictions are final and would benefit from the change in law. This approach is consistent with how the Legislature has afforded relief for other changes in the law related to IPV.

- **Clarify the coercion defense and vacatur laws.**
  For both the coercion defense and vacatur laws, establish specific factors to bring more clarity to when these laws apply. Factors could include, but not be limited to: the length of time between the alleged abuse and the offense, whether the defendant was financially dependent on their abuser, and prior documented abuse (e.g. shelter stays, hospital records, witness statements).

- **Prioritize clemency review for cases where IPV was a contributing factor to the offense.**
  Similar to the approach in New Jersey, create prioritized clemency review for people serving longer sentences who have a conviction where IPV was a contributing factor to the offense. The reviews should be conducted by people with expertise in IPV and related issues.

- **Allow habeas corpus relief for people who would have a different result in failure to protect homicide cases under *People v. Collins*.**
  The California Supreme Court's recent decision in *Collins* significantly clarified the law around failure to protect homicide liability, particularly for cases involving IPV. The decision may be retroactive but that question

is complex and likely to be heavily litigated.[85] Consistent with past actions the Legislature has taken for cases involving IPV, the existing habeas corpus statute in Penal Code § 1473.5 should be updated to allow people to vacate their convictions if there would have been a different result in their case applying *Collins*.[86]

Conclusion

California has taken important steps to acknowledge the impact of IPV on criminal defendants. However, further reforms may be needed to fully address the complexities of IPV and more fairly account for its impact in criminal cases. The Committee should consider the analysis and proposals here in making recommendations that will accomplish these goals.

Respectfully submitted,

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[85] See, e.g., *In re Milton*, 13 Cal.5th 893, 912–920 (2022) (retroactivity law).

[86] Because many failure to protect cases are implied malice murders, this update to the habeas corpus statute would be consistent with the Committee's 2024 recommendation to eliminate accomplice liability for implied malice murder because it allows people to obtain relief based on a clarified statement of the legal rules.