Staff Memorandum 2025-07
Survivors of Intimate-Partner Violence as Criminal Defendants
Updates on Staff Research and Preliminary Proposals

At its April 2025 meeting, the Committee heard from panelists about and discussed how California's criminal system accounts for defendants' experiences of intimate-partner violence (IPV). This memorandum presents brief research updates and a staff proposal for further discussion on those topics.

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Summary Updates on Staff Research

The Committee directed staff to further research several topics, as indicated below:

1. General retroactivity and expanding Penal Code § 1473.5

At its April meeting, the Committee discussed a staff recommendation to allow habeas corpus relief under Penal Code § 1473.5 — a law enacted to allow relief for people convicted of murder before expert testimony on IPV and its effects was allowed in trials — for individuals who would have received a different outcome under the California Supreme Court's recent decision in *People v. Collins*. In *Collins*, the Court clarified that a parent can only be held liable for failure-to-protect murder if they knew, to a substantial degree of certainty, that a life-endangering act was occurring or about to occur and failed to act in conscious disregard for life.[1] While this clarification narrowed the grounds for convicting a parent based on failure to act, whether it applies retroactively is a complex legal question under California law, as explained further below.

[1] *People v. Collins*, 17 Cal.5th 293, 310 (2025).

In addition to the staff recommendation focused on the *Collins* cases, Committee members considered whether to pursue a broader recommendation to establish a general retroactivity statute for new rules established by judicial decisions.

That question presents considerable theoretical and practical difficulties. To begin, under the current retroactivity framework articulated by the California Supreme Court, two different tests — one based in California case law and the other in federal law from the United States Supreme Court — decide whether older cases can benefit from a new rule established by a judicial decision.[2] Under both tests, new "substantive" rules are given retroactive effect — meaning they can apply to cases that have completed the normal appellate process. A substantive rule is one that "alters the range of conduct or the class of persons that the law punishes."[3]

But if the new rule is not "substantive" and is merely "procedural," its retroactivity depends on whether courts apply the state or federal test. Under the federal test, a new procedural rule does not apply retroactively to final cases.[4] But the state test allows a new procedural rule to apply retroactively if the rule's primary purpose is "to promote reliable determinations of guilt or innocence."[5] Courts must also consider "the extent of the reliance by law enforcement authorities on the old standards" and "the effect on the administration of justice."[6] In 2022, the California Supreme Court confirmed that it has not decided whether courts must apply the state or federal test when determining retroactivity of procedural rules.[7]

The complexity of these legal tests can lead to inconsistent applications and legal uncertainty, as courts must assess the nature and purpose of each new rule on a case-by-case basis. But a general retroactivity rule would be a significant departure from the well-established principle that new criminal laws are generally not retroactive.[8] And a general retroactivity statute would require clear criteria that balance the need for uniform application of the law with the judicial

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[2] See *In re Milton*, 13 Cal.5th 893 (2022).
[3] *Teague v. Lane*, 489 U.S. 288, 311 (1989); *People v. Mutch*, 4 Cal.3d. 389, 395–396 (1971).
[4] *Edwards v. Vannoy*, 593 U.S. 255, 258 (2021).
[5] *In re Milton*, 13 Cal.5th 893, 915 (2022) (quoting *People v. Guerra*, 37 Cal.3d. 385, 402 (1984)).
[6] *In re Milton*, 13 Cal.5th 893, 905 (2022) (cleaned up). The rule's purpose is the "critical factor in determining retroactivity" while the other factors "are of significant relevance only when the question of retroactivity is a close one after the purpose of the new rule is considered." Id. at 912.
[7] Id. at 905.
[8] See Penal Code § 3 (providing that new statutes are presumptively not retroactive); *People v. Burgos*, 16 Cal.5th 1, 8 (2024) (describing the rule from *In re Estrada*, 6 Cal.2d 740 (1965) that "an amendment to a statute that lessened punishment for a crime gave rise to an inference of contrary legislative intent; that is, that the Legislature must have intended that the amendment mitigating punishment would apply retroactively to every case to which it constitutionally could apply.").

system's and crime victims' interest in finality. Courts have struggled with articulating those principles for decades.

Additionally, AB 600, enacted by the Legislature in 2023 and partially implementing the Committee's long-standing recommendation for widely-applicable second-look sentencing, achieves some of the goals of a general retroactivity statute.[9] The law allows judges to initiate resentencing "if the applicable sentencing laws at the time of original sentencing are subsequently changed by new statutory authority or case law."[10] But this law places no requirement on courts to review old cases and allows them to reject requests for resentencing without having to issue a written order or any response at all.[11]

Given these considerations, the Committee may wish to consider focusing on the staff recommendation to allow habeas corpus relief for individuals affected by *People v. Collins*, as this targeted approach addresses the specific issues identified in *Collins* without the broader challenges of implementing a general retroactivity statute.

2. Coercion defense

The Committee discussed the coercion defense available to survivors of IPV and the staff recommendation to establish factors to help guide its application.[12] At this time, research shows that there is no clear consensus among the experts consulted by staff on whether such a recommendation would result in any meaningful changes to how the law is applied or what the specific factors should be. While some panelists at the April meeting recommended extending the coercion defense to all offenses, a bill currently pending in the Legislature would accomplish this if passed.[13]

Staff will continue researching this topic pending further discussion and direction from the Committee.

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[9] AB 600 (2023–2024 Regular Session).

[10] Penal Code § 1172.1(a)(1).

[11] Penal Code § 1172.1(c) ("A defendant is not entitled to file a petition seeking relief from the court under this section. If a defendant requests consideration for relief under this section, the court is not required to respond."). See also *Baker v. Superior Court,* Supreme Court No. S286009, Petition for Review Denied October 2, 2024 (a statement by Justice Evans joined by all the other members of the Court noted that a court's "policy simply not to review any Penal Code section 1172.1 petitions at all … would contravene legislative mandates.").

[12] Penal Code §§ 236.23, 236.24.

[13] AB 938 (2025–2026 Regular Session). Murder, except some felony-murder offenses, would still be excluded.

3. Appointment of counsel in vacatur motions based on IPV

The Committee discussed challenges with the implementation of California's vacatur law, which allows courts to vacate convictions that were a direct result of intimate partner violence, sexual violence, or trafficking.[14] Committee members raised concerns about the lack of appointed counsel to ensure practical access to the relief for those eligible.

Assembly Bill 2483, passed in 2024 and based on a Penal Code Committee recommendation, created a default rule that trial courts "shall consider whether to appoint counsel" in all postconviction proceedings.[15] The law defines "postconviction proceeding" as "a proceeding to modify a sentence or conviction pursuant to an ameliorative statute" and provides a non-exclusive list of ameliorative statutes. The vacatur laws under Penal Code sections 236.14 and 236.15 are not in that list.[16]

While it is staff's conclusion that California's vacatur law is already covered by this definition of "ameliorative statutes," the Committee may wish to recommend a clarifying amendment to AB 2484 to explicitly include the vacatur statutes, making it clear that courts may appoint counsel in those proceedings. A similar rule exists for all petitions for habeas corpus — a legal process that is exceedingly similar to motions to vacate a conviction.[17]

4. Pending clemency and resentencing regulations

As discussed during the April meeting, Governor Newsom's administration recently announced plans to develop regulations about how the Board of Parole Hearings (BPH) should make clemency and resentencing referrals.[18] These regulations have not yet been made public.

Staff is closely monitoring this situation and will keep the Committee updated.

5. Exploring potential reforms to address gender bias in criminal trials

At the April meeting, panelists discussed the gender bias that women who become criminal defendants often encounter during criminal trials. Professor Sandra Babcock, an expert in gender and the law, described her research on the pervasive role of gender bias in criminal trials of women in capital cases. The

[14] Penal Code §§ 236.14(a), 236.15(a).
[15] Penal Code § 1171(c)(1).
[16] Penal Code § 1171(a).
[17] California Rule of Court 4.551(d) (court must appoint counsel if issuing an order to show cause).
[18] See Penal Code §§ 4801(a) (clemency referrals); 1172.1(a)(1) (resentencing referrals); Hannah Wiley, *Newsom Cites Menendez Brothers Case in Seeking Changes to Parole Board Process*, Los Angeles Times, March 10, 2025.

discussion considered how intersectional biases, rooted in race, gender, and sexuality, can profoundly affect charging decisions, trial narratives, and sentencing outcomes.[19]

During the Committee's discussion, two potential reforms were raised for further exploration:

- A "Gender Justice Act" modeled on the Racial Justice Act,[20] which would explicitly prohibit bias in charging, conviction, and sentencing decisions, and establish procedural mechanisms to raise and adjudicate such claims.
- A rule of evidence that would limit or require close judicial review of evidence rooted in or reflecting gender bias. This idea would build on existing protections in California's Evidence Code, such as limitations on the admission of evidence of a complaining witness's sexual conduct or manner of dress.[21]

Committee staff will continue to research these ideas and will report back with additional updates at future meetings and expect it to be a focus of the Committee's July 2025 meeting, which is currently anticipated to cover the Racial Justice Act.

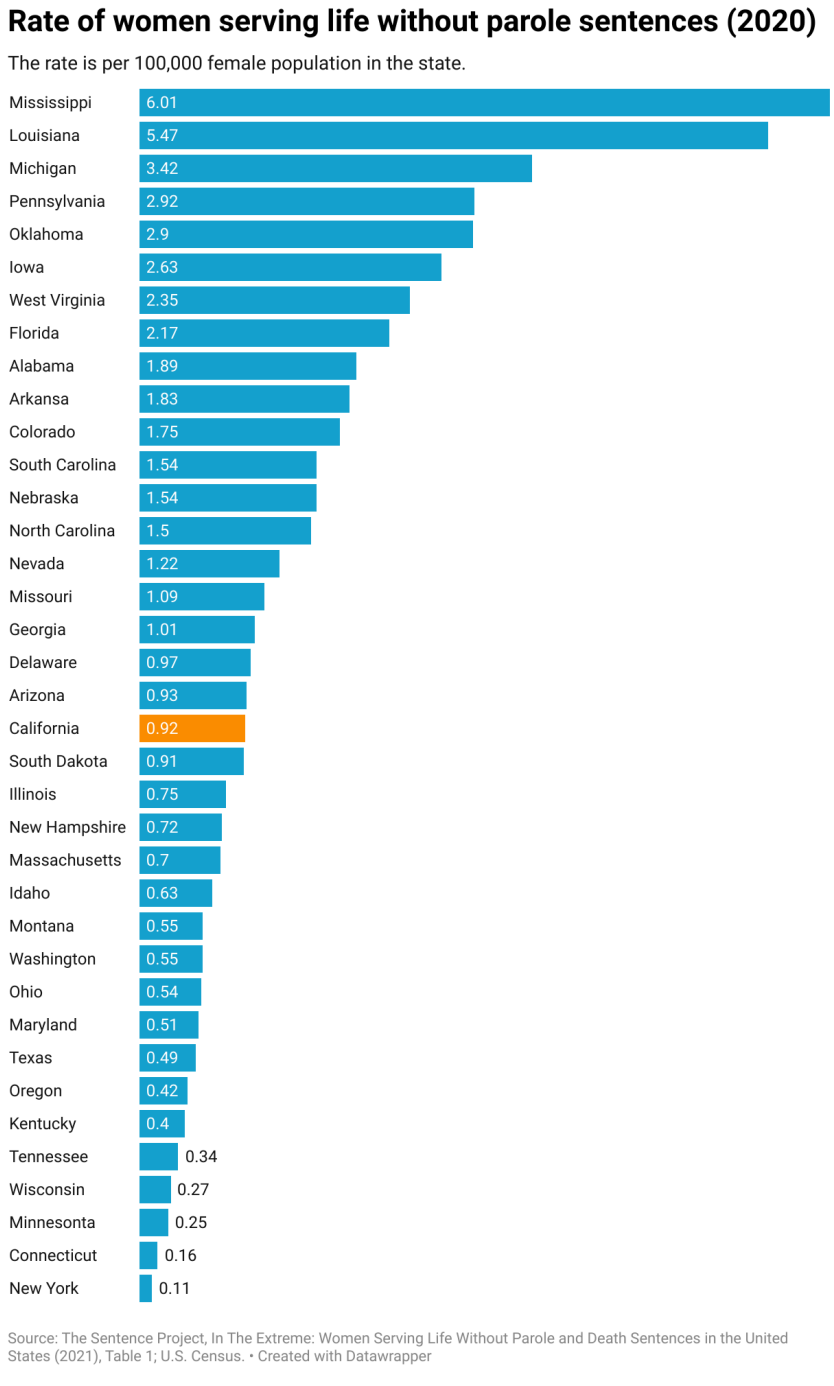
[19] See Sandra Babcock, *Gendered Capitol Punishment*, 31 Wm. & Mary J. Race, Gender Soc. Just. (March 2025).

[20] Penal Code § 745. The Racial Justice Act prohibits the state from seeking or obtaining a conviction or sentence on the basis of a person's race, ethnicity, or national origin. A violation is established by a preponderance of the evidence of direct bias or racially discriminatory language by an actor in the case, or statistical disparities in charging or sentencing patterns in the relevant county.

[21] See Evidence Code §§ 782, 1103. These "rape shield laws" establish specific procedures for determining the admissibility of evidence of the complaining witness's sexual conduct when offered to attack their credibility, bar the introduction of evidence of the victim's past sexual conduct to prove consent in sexual assault cases, and limit the admissibility of evidence of how a victim was dressed at the time of the crime when offered to show their consent.

6. State-level data on women serving life without parole sentences

Following a presentation from Alissa Skog of the California Policy Lab about incarceration trends for women in California, the Committee asked if there was data from different states on women serving life without parole sentences. Using a 2021 report from the Sentencing Project, the California Policy Lab provided data on this question, which gives population-adjusted rates of women serving life without parole sentences in different states:



Preliminary Staff Proposal

After hearing witness testimony at the April 2025 meeting, the Committee discussed updating California's self-defense law for cases in which a survivor of IPV kills their abuser. Below is a preliminary proposal from staff for further discussion and analysis by the Committee.

Modernize the statutory definition of self-defense in IPV cases

Summary Staff Proposal
Specify that where the defendant is accused of killing their abuser, self-defense is allowed when used to prevent or escape a threat of ongoing, life-threatening domestic abuse. Modify the "imminence" and "fear alone" requirements to make them factors that a jury should consider when assessing the defense, and not necessary prerequisites for raising self-defense. This change to the law would allow juries to more fully consider the entire context of these complex cases.

Current Law
Under California law, a person may use deadly force only if they reasonably believe they face imminent danger of death or great bodily injury. Courts interpret "imminent" narrowly, requiring athreat that "must be instantly dealt with."[22] Additionally, fear must be the sole motivating factor for the use of deadly force.

Background
California's self-defense law was enacted more than 150 years ago and has not been meaningfully updated to reflect the circumstances faced by survivors of long-term abuse. While the legal standard is rooted in traditional notions of sudden threat and immediate response, those expectations do not align with the realities of IPV where danger often builds over time and may not appear imminent in the narrow legal sense.

While the Legislature enacted Evidence Code section 1107 in 1991 to allow expert testimony on the effects of intimate partner violence, and the California Supreme Court in 1996 affirmed its relevance to juries considering self-defense, these reforms did not alter the underlying legal standard.[23]

Survivors are still required to meet rigid legal requirements that are often impossible to satisfy, given the dynamics of abuse. For example, a survivor who kills her abuser when his back is turned may not be considered to have been in "imminent" danger, despite evidence of years of prior violence and threats. A threat like "I'll probably kill you in the morning" may not meet the statutory

[22] *People v. Thomas*, 14 Cal.5th 327, 386 (2023) (cleaned up and emphasis removed).
[23] See *People v. Humphrey*, 13 Cal.4th 1073, 1087 (1996).

threshold for imminent danger, despite the survivor's belief that waiting could be fatal.

Survivors also face legal hurdles under the "fear alone" requirement.[24] In some cases, a survivor who feared for her life may still be found guilty if evidence is presented that she was also angry at her abuser for infidelity, child abuse, or was motivated in part by knowledge of a life insurance policy. Even when fear is present and reasonable, the existence of other emotions or motivations can undermine a self-defense claim under the current standard.

Other states have adopted interpretations of their self-defense laws to specifically account for the realities of survivors of serious long-term abuse:

- Georgia allows evidence of prior abuse and expert testimony to establish that a person's belief that additional abuse was imminent was reasonable, even if "the actual threat of harm does not immediately precede the homicide."[25] Courts are required to give an IPV-specific jury instruction in these cases that tells jurors to consider the circumstances from the perspective "of a reasonable person possessing the same or similar psychological and physical characteristics of the defendant…"[26]
- Maryland permits self-defense even when the abuse was not contemporaneous with the killing or occurred after some planning.[27] Notably, Maryland's IPV statute permits such evidence even when the defendant is the first aggressor or used excessive force.[28]
- Oklahoma law requires courts to give a modified jury instruction in IPV-related self-defense cases. The instruction eliminates parts of the "reasonable person" standard and recognizes that survivors may act on the belief of future harm, likening the circumstances IPV survivors face to those of a hostage who acts before a promised future killing.[29]

[24] Penal Code § 198. See also *People v. Trevino,* 200 Cal.App.3d 874 (1988) (explaining that while it would be unreasonable to require an absence of any feeling other than fear, the law requires the person who kills to *act* out of fear alone).
[25] *Smith v. State,* 268 Ga. 196, 199 (1997).
[26] Id. at 200–201.
[27] *Porter v. State,* 455 Md. 220, 249 (2017).
[28] MD CTS & JPRO § 10(b).
[29] *Bechtel v. State,* 840 P.2d 1, 11–12 (1992).

- Washington courts have held that "imminent" danger does not require the threat to be immediate in time. The state Supreme Court has explained that an "imminent" threat can arise from circumstances that signal another cycle of abuse, even if the threat occurred days before the killing.[30]

- The Model Penal Code (MPC) emphasizes the immediacy of the need to act in self-defense, rather than the immediacy of the threatened unlawful force.[31] This standard requires that the actor believe their use of force is immediately necessary, but it does not require the threatened force to be immediate, only that it is expected to be used on the present occasion. The MPC does not require that fear be the sole reason for a person's actions, noting that the existence of other motives does not detract from the necessity of self-defense.[32]

As these examples show, states have found ways to modernize their self-defense laws to reflect the lived experiences of survivors without compromising the validity of their self-defense laws.

Staff Proposal

The Committee should consider recommending a statutory update to California's self-defense law in cases involving intimate partner violence, as outlined above.

Conclusion

Staff looks forward to discussing the research and proposal presented in this memorandum with the Committee.

Respectfully submitted,

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[30] *State v. Janes*, 121 Wash.2d 220,241–242 (1993). See also *State v. Allery*, 101 Wash.2d 591(1984).
[31] Model Penal Code § 3.04(1); MPC Part I Commentaries, vol. 2, 39–40 Comment 2(c). The Model Penal Code, published in 1962 by the American Law Institute, is a proposed set of laws developed by legal experts intended to serve as a model for state legislation.
[32] MPC Part I Commentaries, vol. 2, 39, Comment 2(b).