Criminal Law Advisory Committee

Annual Agenda¹—2025

Approved by Rules Committee: October 22, 2024

I. COMMITTEE INFORMATION

Chair:	Hon. Lisa Rodriguez, Chair, Judge, Superior Court of San Diego County Hon. Serena Murillo, Vice Chair, Judge, Superior Court of Los Angeles County
Lead Staff:	Sarah Fleischer-Ihn, Attorney, Criminal Justice Services Office

Committee's Charge/Membership:

<u>Rule 10.42(a)</u> of the California Rules of Court states the charge of the Criminal Law Advisory Committee, which is to make recommendations to the Judicial Council for improving the administration of justice in criminal proceedings.

<u>Rule 10.42(b)</u> sets forth the membership categories of the committee. The Criminal Law Advisory Committee currently has 21 voting members. The current committee <u>roster</u> is available on the committee's webpage.

Subgroups of the Advisory Committee²:

- 1. Pretrial Policy and Data Subcommittee
- 2. Protective Orders Working Group (POWG)
- 3. Joint Mental Health Legislation Subcommittee

¹ The annual agenda outlines the work a committee will focus on in the coming year or cycle and identifies areas of collaboration with other advisory bodies and the Judicial Council staff resources.

²For the definition of "subcommittee" see Cal. Rules of Court, rule 10.30(c); "working group" see rule 10.70, "workstream," see rule 10.53(c); and "education curriculum committee," see rule 10.50(c)(6).

Meetings Planned for 2025³ (Advisory body and all subgroups listed above.)

Date/Time/Remote or Location if in person (see footnote 3 for in-person meetings):

- January 2025 (videoconference to discuss rule and form proposals and discuss pending legislation)
- February, March 2025 (videoconference to discuss rule and form proposals and discuss pending legislation)
- April, May, June 2025 (videoconference to discuss pending legislation)
- July 2025 (videoconference to discuss rule and form proposals and discuss pending legislation)
- August, September, October 2025 (videoconference to discuss pending legislation)
- November, December 2025 (videoconference to discuss rule and form proposals)
- Other videoconference meetings as needed

Subcommittee Meetings:

- Pretrial Policy and Data Subcommittee: as needed to work on rule and form proposals and reviewing legislation
- Protective Orders Working Group (POWG): as needed to work on rule and form proposals
- Joint subcommittee to review mental health legislation with the Collaborative Justice Courts Advisory Committee: as needed from February through September to review proposed legislation

⊔ '	Check here if in-person	meeting i	s approved	by the interna	l committee	oversight chair.
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³ Refer to section IV. 2. of the *Operating Standards for Judicial Council Advisory Bodies* for governance on in-person meetings.

Note: Because of the current budget and staffing constraints, advisory body chairs and staff must first consider meeting remotely. The chair of the Executive and Planning Committee is suspending advisory body in-person meetings for the 2024–2025 annual agenda cycle. If an in-person meeting is needed, the responsible Judicial Council office head must seek final approval from the advisory body's internal oversight committee chair. Please see the prioritization memo dated July 1, 2024, for additional details.

II. COMMITTEE PROJECTS

#	New or One-Time Projects ⁴	
1.	Develop a stay-away order from protected retail establishments under AB 3209	Priority 1(a) ⁵
		Strategic Plan Goal IV ⁶
	Project Summary: The committee will develop new forms to implement AB 3209 (Stats. 2024, ch. 169), which defendants convicted of specified theft offenses or persons arrested for specified theft offenses to stay away from establishment for up to two years.	
	Status/Timeline: Anticipate circulating for comment in winter 2024, for an effective date of July 1, 2025.	
	<i>Fiscal Impact/Staff Resources:</i> Committee staff; the Joint Rules Subcommittee of Trial Court Presiding Judges Advisory Committees (TCPJAC/CEAC JRS) will review proposals for court operations impacts as necessary.	and Court Executive
	This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services relevant materials.	to ensure their review of
	Internal/External Stakeholders: Trial courts, justice system partners	
	AC Collaboration: Joint project with Civil and Small Claims Advisory Committee, potential collaboration with Working Group	Joint Protective Order

⁴ All proposed projects for the year must be included on the Annual Agenda. If a project implements policy or is a program, identify it as *implementation* or *a program* in the project description and attach the Judicial Council authorization/assignment or prior approved Annual Agenda to this Annual Agenda.

⁵ For non-rules and forms projects, select priority level 1 (must be done) or 2 (should be done). For rules and forms proposals, select one of the following priority levels: 1(a) Urgently needed to conform to or accurately reflect the law; 1(b) Council has directed the committee to consider new or amended rules and forms; 1(c) Change is urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public; or 1(d) Proposal is otherwise urgent and necessary, such as a proposal that would mitigate exposure to immediate or severe financial or legal risk. For each priority level 1 proposal, the advisory body must provide a specific reason why it should be done this year and how it fits within the identified category. 2(a) Useful, but not necessary, to implement changes in law; 2(b) Responsive to identified concerns or problems; or 2(c) Helpful in otherwise advancing Judicial Council goals and objectives. If an advisory committee is interested in pursuing any Priority Level 2 proposals, please include justification as to why the proposal should be approved at this time

⁶ Indicate which goal number of The Strategic Plan for California's Judicial Branch the project most closely aligns.

#	New or One-Time Projects		
2.	Amend the rule of court on mental competency proceedings to implement new laws	Priority 1(a), 2(a)	
		Strategic Plan Goal IV	
	Project Summary: Amend California Rules of Court, rule 4.130 on mental competency proceedings to incorporate statutory changes and update case law references. As relevant to the rule, <u>SB 1323</u> (Stats. 2024, ch. 646) streamlines competency proceeding procedures, provides courts with more treatment-based solutions for felony defendants, and allows courts to determine whether it is in the interests of justice to restore a defendant to competence in a felony case that is eligible for diversion. As relevant to the rule, <u>SB 1400</u> (Stats. 2024, ch. 647) would remove authority for a court to dismiss a misdemeanor incompetent to stand trial case and instead require the court to determine if the defendant is eligible for mental health diversion or other treatment, and to allow dismissal if a conservatorship is filed. Additionally, while amending the rule to implement the new laws, the committee may update rule 4.130(d)(3), which provides that the defendant's statements made during the examination cannot be used in a trial on the defendant's guilt or a sanity trial in a not guilty by reason of sanity trial, to reflect more recent case law.		
	Status/Timeline: Anticipate circulating for comment in winter 2024, for an effective date	of July 1, 2025.	
	Fiscal Impact/Staff Resources: Committee, staff; the Joint Rules Subcommittee of Trial Advisory Committees (TCPJAC/CEAC JRS) will review proposals for court operations in This project may result in an allocation or distribution of funds to the courts. We will coordinate relevant materials.	mpacts as necessary.	
	Internal/External Stakeholders: Trial courts, justice system partners		
	AC Collaboration: Collaborative Justice Courts Advisory Committee, Probate and Mental Health Advisory Committee		
3.	Amend rules and forms related to criminal protective orders to implement new laws	Priority 1(a)	
		Strategic Plan Goal IV	
	Project Summary: Amend California Rules of Court, rule 4.700, firearm relinquishment procedures, and the criminal protective order forms to incorporate SB 2907 (Stats. 2024, ch. 538) and SB 899 (Stats. 2024, ch. 544), which address firearm relinquishment procedures for criminal protective orders and establish a 15-year maximum postconviction protective order term under Penal Code section 273.5. The committee will also consider revisions to the criminal protective orders based on stakeholder suggestions regarding consequences for violating a protective order and including a protected person's date of birth for inclusion in the National Crime Information Center's Protection Order File, a federal electronic database maintained by the U.S. Department of Justice. Status/Timeline: Anticipate circulating for comment in spring 2025, for an effective date of January 1, 2026.		

#	New or One-Time Projects	
	Fiscal Impact/Staff Resources: Committee staff; the Joint Rules Subcommittee of Trial Conditional Conditions (TCPJAC/CEAC JRS) will review proposals for court operations impact This project may result in an allocation or distribution of funds to the courts. We will coordinate relevant materials. Internal/External Stakeholders: Trial courts, justice system partners AC Collaboration: Protective Order Working Group	pacts as necessary.
4.	Revise the felony plea form	Priority 1(a), 2(b)
		Strategic Plan Goal IV
	 (2024) 17 Cal.5th 77 and Proposition 36 (if passed), revising the item regarding a factual baguilty or no contest pleas entered to take advantage of a plea agreement, and adding an evidence of the second second	f July 1, 2025. ourt Presiding Judges and Court Executive impacts as necessary.
5.	Consider amending the rule of court defining the scope of the Criminal Law Advisory	Priority 1(c)
	Committee (rule 10.42)	Strategic Plan Goal IV
	Project Summary: Rule 10.42 authorizes the Criminal Law Advisory Committee to make recommendations to the Judicial Council for improving the administration of justice in criminal proceedings. The committee will consider amending the rule of court to include	

#	New or One-Time Projects			
	additional duties related to providing statewide guidance on pretrial issues, subject to specific project review and approval by the appropriate internal committee of the council. The committee recommends this proposal to be responsive to recent developments in pretrial including litigation on the use of bail schedules, case law, recommendations from the State Legislature's Committee on the Revision of the Penal Code, and calls from trial court leadership for statewide guidance promoting consistency.			
	Status/Timeline: Anticipate circulating for comment in spring 2025, for an effective date of January 1, 2026.			
	Fiscal Impact/Staff Resources: Committee staff ☐ This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.			
	Internal/External Stakeholders: None			
	AC Collaboration: None			
6.	Develop procedures for affordable bail determination and pretrial release processes	Priority 1(a), 1(c)		
		Strategic Plan Goal IV		
	Project Summary: To assist in the implementation of <i>In re Humphrey</i> (2021) (11 Cal.5th 135) and <i>In re Harris</i> (2024) (16 Cal.5th 292), the committee will consider revising <i>Defendant's Financial Statement</i> (CR-105) and/or <i>Defendant's Statement of Assets Form</i> (CR-115) to allow use in the pretrial context and may develop rules of court necessary to provide guidance on "least restrictive" non-financial conditions as defined in SB 129, the use of risk assessments, and the <i>Harris</i> factors for pretrial hearings.			
	Status/Timeline: Anticipate circulating for comment in spring 2025, for an effective date of January 1, 2026.			
	Fiscal Impact/Staff Resources: Committee staff This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.			
	Internal/External Stakeholders: Trial courts, justice system partners			
	AC Collaboration: None			
	AC Connociation. None			

#	New or One-Time Projects			
7.	Develop a new form on firearm prohibitions while on mental health diversion	Priority 1(a), 1(c)		
		Strategic Plan Goal IV		
	Project Summary: The committee will consider developing a new court form to reflect find which allows the court to prohibit the possession of firearms when a person is on mental her person is a danger to themselves or others. The prohibition was added by AB 455 (Stats. 20 the California DOJ Bureau of Firearms.	alth diversion and the court finds that the		
	Status/Timeline: Anticipate circulating for comment in spring 2025, for an effective date of January 1, 2026.			
	Fiscal Impact/Staff Resources: Committee staff; the Joint Rules Subcommittee of Trial Co Advisory Committees (TCPJAC/CEAC JRS) will review proposals for court operations imp			
	This project may result in an allocation or distribution of funds to the courts. We will coordinate relevant materials.	e with Budget Services to ensure their review of		
	Internal/External Stakeholders: Trial courts, justice system partners, California DOJ Bures	au of Firearms		
	AC Collaboration: None			
8.	New project to consider recommending Judicial Council-sponsored legislation to revise	Priority 1		
	Penal Code section 1172.2 on compassionate release	Strategic Plan Goal IV		
	Project Summary: The committee will consider developing a recommendation for Judicial Council-sponsored legislation amending Penal Code section 1172.2 on compassionate release to replace references to resentencing the defendant to release or termination of the prison term. While the statute intends for a defendant found to be eligible for compassionate release to be released from custody, the use of the term "resentencing" in the statute does not result in this objective, resulting in court inefficiencies and delayed relief for defendants with serious and advanced illnesses with an end-of-life trajectory or permanent medical incapacitation. Section 1172.2 was added to the Penal Code effective January 1, 2023.			
	<i>Status/Timeline:</i> Legislative proposal anticipated to circulate for public comment in spring 2025, be submitted to council in fall/winter 2025, and, if approved, lead to introduction of legislation that would, if enacted, take effect January 1, 2027.			
	Fiscal Impact/Staff Resources: Committee staff, Governmental Affairs			
	This project may result in an allocation or distribution of funds to the courts. We will coordinate relevant materials.	e with Budget Services to ensure their review of		

#	New or One-Time Projects		
	Internal/External Stakeholders: Trial courts, justice system partners, Governmental Affair AC Collaboration: None	rs, Legislation Committee	
9. New project to consider recommending Judicial Council–sponsored legislation to amend Priority		Priority 1	
	Penal Code sections authorizing referral of defendants by criminal courts to CARE Act proceedings	Strategic Plan Goal IV	
	Project Summary: In response to amendments to the Penal Code by SB 1323 (Stats. 2024, ch. 646) and SB 1400 (Stats. 2024, ch. 647) regarding referral of defendants found incompetent to stand trial to CARE Act proceedings, the committee will consider developing a recommendation for Judicial Council—sponsored legislation to revise and clarify the statutory deadlines for hearings in response to those referrals and to provide a pathway for referrals to CARE Act proceedings without a judicial determination that a defendant is ineligible for diversion.		
	<i>Status/Timeline:</i> Legislative proposal anticipated to circulate for public comment in spring 2025, be submitted to council in fall/winter 2025, and, if approved, lead to introduction of legislation that would, if enacted, take effect January 1, 2027.		
Fiscal Impact/Staff Resources: Committee staff, Governmental Affairs			
	☐ This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.		
	Internal/External Stakeholders: Trial courts, justice system partners, Governmental Affair	rs, Legislation Committee	
	AC Collaboration: Collaborative Justice Courts Advisory Committee, Probate and Mental	Health Advisory Committee	

#	Ongoing Projects and Activities	
1.	Review pending legislation	Priority 1
		Strategic Plan Goal II
	Project Summary: The committee will review pending criminal law legislation and provide recouncil should support or oppose the legislation. The committee will provide subject matter expressions are considered as a support of the committee will provide subject matter expressions.	
	Status/Timeline: Ongoing	
	Fiscal Impact/Staff Resources: Governmental Affairs, committee staff	
	This project may result in an allocation or distribution of funds to the courts. We will coordinate we relevant materials.	vith Budget Services to ensure their review of
	Internal/External Stakeholders: None	
	AC Collaboration: None	
2.	Criminal justice and mental health	Priority 1
		Strategic Plan Goal II
	Project Summary: The committee will participate in the joint mental health subcommittee with the Collaborative Justice Courts Advisory Committee to review pending legislation related to criminal justice and mental health and provide recommendations as to whether the Judicial Council should support or oppose the legislation. The committee will provide subject matter expertise on pending criminal justice and mental health legislation and related issues. Status/Timeline: Ongoing	
	Fiscal Impact/Staff Resources: Governmental Affairs, committee staff	
	☐ This project may result in an allocation or distribution of funds to the courts. We will coordinate with Budget Services to ensure their review of relevant materials.	
	Internal/External Stakeholders: None	
	AC Collaboration: Collaborative Justice Courts Advisory Committee	

#	Ongoing Projects and Activities		
3.	Provide subject matter expertise for other advisory committees	Priority 1	
		Strategic Plan Goal IV	
	Project Summary: The committee will provide subject matter expertise for other advisory corrininal law and procedure.	mmittees working on proposals involving	
	Status/Timeline: Ongoing		
	Fiscal Impact/Staff Resources: Committee staff		
	This project may result in an allocation or distribution of funds to the courts. We will coordinate we relevant materials.	oith Budget Services to ensure their review of	
	Internal/External Stakeholders: None		
	AC Collaboration: Respective advisory committees		
4.	Participate in the Protective Orders Working Group	Priority 1	
		Strategic Plan Goal IV	
Project Summary: Continue participation in the Protective Orders Working Group, which assists in ensuring consistency and uniformity the different protective orders used in family, juvenile, civil, criminal, and probate proceedings, and helps to develop and update protective order forms and rules of court.		5 5	
	Status/Timeline: Ongoing		
	Fiscal Impact/Staff Resources: Committee staff		
	☐ This project may result in an allocation or distribution of funds to the courts. We will coordinate we relevant materials.	vith Budget Services to ensure their review of	
	Internal/External Stakeholders: California Department of Justice		
	AC Collaboration: Civil and Small Claims Advisory Committee, Family and Juvenile Law A	dvisory Committee	

III. LIST OF 2024 PROJECT ACCOMPLISHMENTS

#	Project Highlights and Achievements
1.	Amend California Rules of Court, rule 4.433, Matters to be considered at time set for sentencing. At its September 2024 meeting, the Judicial Council approved amendments to rule 4.433 to update parole period advisements.
2.	Revise criminal forms to incorporate legislation on firearm and body armor prohibitions and relinquishment requirements. At its September 2024 meeting, the Judicial Council approved revisions to six criminal forms to reflect firearm and body armor prohibitions and relinquishment requirements and additional changes.
3.	Develop a proposal to implement the Racial Justice Act. At its May 2024 meeting, the Judicial Council approved revisions to three forms, amendments to the rule of court on habeas corpus proceedings, and approved a new rule of court to implement the Racial Justice Act.
4.	Consider proposal addressing fee waivers for certified copies of criminal records. The committee considered the proposal at its February 2, 2024 in person meeting and directed staff to conduct further research. Staff will provide an update shortly.
5.	Pretrial release implementation. The committee launched the Pretrial Policy and Data Subcommittee in 2024.
6.	Revise Notification of Military Status form (MIL-100). At its September 2024 meeting, the Judicial Council approved revisions to the form to reflect new requirements in family law cases and clarify procedures in criminal matters.
7.	Develop a legislative proposal regarding access to prison records for resentencing. The committee is following pending legislation on this issue.
8.	Review pending legislation. CLAC provided subject matter expertise or a recommended position on over 35 criminal law bills, including AB 1779, Theft: jurisdiction; AB 1809, Recall and resentencing; AB 1909, Criminal fines: collection; AB 2065, Criminal justice records: offender data; AB 2160, California Women's Care Act; AB 2168, Prisons: anticipated prison stays; AB 2281, Tribal judges; AB 2308, Domestic violence: protective orders; AB 2309, City attorney: state law: misdemeanor; AB 2483, Postconviction proceedings; AB 2519, Misdemeanor offenses: deferral of sentencing: firearms prohibition; AB 2629, Firearms: prohibited persons; AB 2692, Criminal procedure: diversion; AB 2739, Firearms; AB 2788, Crimes; AB 2833, Restorative Justice Communications; AB 2907, Firearms: restrained persons; AB 2943, Crimes: shoplifting; AB 2985, Courts: mental health advisement; AB 3088, Criminal procedure: writ of habeas corpus; AB 3209, Retail Theft Restraining Orders; SB 21, Controlled substances; SB 285, Criminal procedure: sentencing; SB 898, Criminal procedure: sexual assault resentencing; SB 899, Protective orders: firearms; SB 912, Colorimetric field drug tests; SB 987, Pretrial release: pretrial assessment agencies; SB 1001, Death penalty: intellectually disabled persons; SB 1002, Firearms: prohibited persons; SB 1025, Pretrial diversion for veterans; SB 1133, Bail; SB 1317, Inmates: psychiatric medication: informed consent; SB 1323, Criminal procedure: competence to stand trial; and SB 1400, Competence to stand trial.
9.	Criminal justice and mental health. The committee reviewed pending legislation related to criminal justice and mental health and provided recommendations as to whether the Judicial Council should support or oppose the legislation. Committee members participated in a joint subcommittee on mental health legislation with members of the Collaborative Justice Courts Advisory Committee.