

Admin.

October 29, 2020

Memorandum 2020-18

Draft Minutes of September and October Meetings

The Committee on Revision of the Penal Code held meetings on September 17–18, 2020, and October 21, 2020. This memorandum provides draft Minutes for each of those meetings.

Each draft will be deemed final after it is approved by a vote of the Committee. When voting, the Committee may make specific changes to the Minutes. If so, those changes will be memorialized in the Minutes for the meeting at which the vote occurred.

Respectfully submitted,

Thomas M. Nosewicz
Senior Staff Counsel

DRAFT MINUTES OF MEETING
COMMITTEE ON REVISION OF THE PENAL CODE
SEPTEMBER 17–18, 2020

1 A meeting of the Committee on Revision of the Penal Code was held on
2 September 17-18, 2020. Consistent with Executive Orders N-25-20 and N-29-20, the
3 meeting was held as an online video webinar.

4 **Commission:**

5 *Present:* Michael Romano, Chairperson
6 Assembly Member Sydney Kamlager
7 Senator Nancy Skinner
8 Hon. Peter Espinoza, Ret.
9 Hon. Carlos Moreno, Ret.
10 L. Song Richardson (September 18, 2020)

11 *Absent:* Hon. John Burton
12 L. Song Richardson (September 17, 2020)

13 **Staff:**

14 *Present:* Brian Hebert, Executive Director
15 Barbara Gaal, Chief Deputy Director
16 Thomas Nosewicz, Senior Staff Counsel

17 **Invited Presenters:**

18 Governor Edmund G. Brown, Jr.
19 Sean Garcia-Leys, Civil Rights Attorney
20 Obed Gonzalez, California City Correctional Facility
21 Jared Lozano, California Department of Corrections and Rehabilitation
22 Lisa Roth, Deputy Public Defender, Los Angeles County
23 Lisa Romo, Office of the State Public Defender
24 Kevin Rooney, Supervising Deputy District Attorney, San Joaquin County
25 Hon. Jeff Rosen, District Attorney, Santa Clara County
26 Robert Weisberg, Stanford Law School
27 J. Vasquez, Communities United for Restorative Youth Justice

28 **Other Persons:**

29 Up to 70 members of the public observed the meeting as attendees. The
30 Committee did not prepare a list of those attendees.

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APPROVAL OF ACTIONS TAKEN

Unless otherwise indicated, the Committee decisions noted in these Minutes were approved by all members present at the meeting. If a member who was present at the meeting voted against a particular decision, abstained from voting, or was not present when the decision was made, that fact will be noted below.

NEW BUSINESS

The Committee considered Memorandum 2020-11 and its First Supplement, which discuss sentencing enhancements.

Governor Edmund G. Brown, Jr. addressed the Committee. The Committee also heard from panelists on the following topics:

- Enhancements and Related Matters in General (Robert Weisberg, Jeff Rosen, Lisa Roth).
- Gang Enhancements (Lisa Romo, Sean Garcia-Leys, Kevin Rooney).
- Prison Issues (J. Vasquez, Jared Lozano, Obed Gonzalez).

The Committee is grateful for their participation. The Committee also heard public comment on sentencing enhancements.

The Committee discussed many of the proposals suggested by Governor Brown and the panelists, including second-look sentencing (including resentencings under Penal Code Section 1170(d)), limiting sentencing enhancements to only doubling the base term of incarceration, allowing only one enhancement to be charged in a case, limiting enhancements to only be applied in extraordinary circumstances, providing guidance for a judge’s exercise of discretion under Penal Code Section 1385 to “strike” a sentencing enhancement, the effect of California’s “10-20-life” gun law in Penal Code Section 12022.53, and the impact of “great bodily injury” sentencing enhancements under Penal Code Section 12022.7.

After this discussion, the Committee made the decisions reported below.

1 **Guided Discretion in Penal Code Section 1385**

2 The Committee directed staff to explore how Penal Code Section 1385 could be
3 modified to provide guidance to judges exercising their discretion under this
4 section to “strike” sentencing enhancements. Possible guidance could include
5 direction to consider the age of a prior conviction used as an enhancement,
6 whether the prior conviction occurred when the defendant was a juvenile, any
7 mental health issues that may be relevant, and any evidence of disparate racial
8 impact in the use of a sentencing enhancement.

9 **Estes Robberies**

10 The Committee directed staff to further research how so-called “*Estes*
11 robberies” could be better addressed by the Penal Code. This research should
12 include exploring how the criminal law of other states handle fact patterns that
13 would be treated as *Estes* robberies in California, the viability of modifying the
14 existing statutory definition of robbery to exclude *Estes* robberies from its
15 coverage, and the creation of a new shoplifting offense that would better apply in
16 these situations.

17 **Gang Enhancements**

18 The Committee directed staff to gather any available data on gang
19 enhancements, including their disparate racial impact and any effect on public
20 safety. Staff should also research gang laws in other states, including if any states
21 have modified or repealed these laws, and the viability of modernizing any parts
22 of California law, including the definition of a “criminal street gang” in Penal Code
23 Section 186.22(f).

24 **Retroactive Application of Recent Sentencing Reforms**

25 The Committee directed staff to gather data on the effects of making recent
26 changes to sentencing enhancements — including the changes in SB 620 (Bradford)
27 (2017) and SB 1393 (Mitchell) (2018) — retroactive, and to explore a proposal that
28 would make these changes apply retroactively.

29 **ONGOING BUSINESS**

30 The Committee considered Memorandum 2020-13, which provided updated
31 information on matters previously considered by the Committee. The Committee
32 made the decisions reported below.

1 **Reclassifying Common Traffic Offenses from Misdemeanors to Infractions**

2 After a staff presentation on a proposal to reclassify as infractions those
3 common traffic offenses that can be charged as either infractions or misdemeanors
4 under Penal Code § 17(d), the Committee directed staff to continue further
5 research and refinement of this idea.

6 **Probation Eligibility**

7 After a staff presentation on a proposal to modify how the Penal Code
8 addresses a judge’s ability to impose a sentence of probation, the Committee
9 directed staff to focus research on the offenses where probation is forbidden or
10 presumptively unavailable. The Committee remains interested in a general
11 presumption of probation for many offenses but will first explore the offenses
12 where probation is unavailable or is presumptively unavailable.

13 **Equalize and Expand Credits**

14 After a staff presentation about the differences in credit-earning possibilities
15 for people in jail and prison, the Committee directed staff to continue researching
16 this topic and refining a proposal to equalize credits in these two settings, and to
17 possibly recommend expanding credits in some circumstances.

18 ADMINISTRATIVE MATTERS

19 **Approval of Minutes**

20 The Committee considered Memorandum 2020-12 presenting draft Minutes
21 for the Committee’s July meeting.

22 The Committee approved the Minutes without change.

APPROVED AS SUBMITTED

Date

APPROVED AS CORRECTED
(for corrections, see Minutes of next meeting)

Chairperson

Executive Director

DRAFT MINUTES OF MEETING
COMMITTEE ON REVISION OF THE PENAL CODE
OCTOBER 21, 2020

1 A meeting of the Committee on Revision of the Penal Code was held on
2 October 21, 2020. Consistent with Executive Orders N-25-20 and N-29-20, the
3 meeting was held as an online video webinar.

4 **Commission:**

5 *Present:* Michael Romano, Chairperson
6 Assembly Member Sydney Kamlager
7 Senator Nancy Skinner
8 Hon. Peter Espinoza, Ret.
9 Hon. Carlos Moreno, Ret.
10 L. Song Richardson

11 *Absent:* Hon. John Burton

12 **Staff:**

13 *Present:* Brian Hebert, Executive Director
14 Barbara Gaal, Chief Deputy Director
15 Thomas Nosewicz, Senior Staff Counsel
16 Rick Owen, Staff Counsel

17 **Invited Presenters:**

18 Attorney General Xavier Becerra
19 Nina Salarno Besselman, President, Crime Victims United
20 Neil Flood, Vice-President, California Correctional Peace Officers Association
21 Sheriff Dean Growdon (Lassen County), First Vice-President, California State
22 Sheriffs' Association
23 Chief John Keene, Legislative Chair and Secretary, Chief Probation Officers of
24 California
25 Chief Eric Nuñez (Los Alamitos), President, California Police Chiefs Association
26 Deputy District Attorney Paul M. Nuñez, Los Angeles County District Attorney's
27 Office
28 District Attorney Stephen M. Wagstaffe (San Mateo County), California District
29 Attorneys Association

30 **Other Persons:**

31 Up to 50 members of the public observed the meeting as attendees. The
32 Committee did not prepare a list of those attendees.

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NEW BUSINESS

The Committee considered Memorandum 2020-14 and its First Supplement, which presented the general views on changes to the Penal Code from the invited panelists.

Attorney General Xavier Becerra addressed the Committee. The Committee also heard from the following panelists:

- Panel 1 (Chief Eric Nuñez, Sheriff Dean Growdon, Neil Flood)
- Panel 2 (District Attorney Stephen M. Wagstaffe, Deputy District Attorney Paul M. Nuñez, Probation Chief John Keene, Nina Salarno Besselman).

The Committee is grateful for their participation. The Committee received public comment.

No Committee decisions were required or made.

<input type="checkbox"/> APPROVED AS SUBMITTED	_____	Date
<input type="checkbox"/> APPROVED AS CORRECTED (for corrections, see Minutes of next meeting)	_____	Chairperson
	_____	Executive Director