

Admin.

December 7, 2020

## Memorandum 2020-20

**Draft Minutes of November Meeting**

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The Committee on Revision of the Penal Code held a meeting on November 12-13, 2020. This memorandum provides draft Minutes for that meeting.

The 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,

Rick Owen  
Staff Attorney



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**DRAFT MINUTES OF MEETING**  
**COMMITTEE ON REVISION OF THE PENAL CODE**  
**NOVEMBER 12–13, 2020**

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1 A meeting of the Committee on Revision of the Penal Code was held on  
2 November 12–13, 2020. Consistent with Executive Orders N-25-20 and N-29-20,  
3 the 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. (November 12, 2020)  
10 L. Song Richardson

11 *Absent:* Hon. John Burton  
12 Hon. Carlos Moreno, Ret. (November 13, 2020)

13 **Staff:**

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

18 **Invited Presenters:**

19 Hillary Blout, Executive Director, For the People  
20 Hon. J. Richard Couzens (Ret.), Superior Court, Placer County  
21 District Attorney-Elect George Gascón, Los Angeles County  
22 Anne Irwin, Director, Smart Justice California  
23 Jay Jordan, Executive Director, Californians for Safety and Justice  
24 Adnan Khan, Executive Director, Re:Store Justice  
25 Sam Lewis, Executive Director, Anti-Recidivism Coalition  
26 Shanae Polk, Director of Operations, 2nd Call  
27 Heidi Rummel, Director, Post-Conviction Justice Project, USC Gould School of  
28 Law  
29 Jennifer Shaffer, Executive Officer, Board of Parole Hearings  
30 Keith Wattley, Executive Director, UnCommon Law  
31 Taina Vargas-Edmond, Executive Director, Initiate Justice

1 **Other Persons:**

2 Up to 170 members of the public observed the meeting as attendees. The  
3 Committee did not prepare a list of those attendees.

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4 APPROVAL OF ACTIONS TAKEN

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

9 NEW BUSINESS

10 The Committee considered Memorandum 2020-15 and its First Supplement,  
11 which discussed parole release and Penal Code Section 1170(d)(1) resentencings.  
12 Los Angeles County District Attorney-elect George Gascón addressed the  
13 Committee. The Committee also heard from panelists on the following topics:

- 14 • Parole Release (Keith Wattley, Heidi Rummel, Jennifer Shaffer).
- 15 • Resentencing under Penal Code Section 1170(d)(1) (Hillary Blout,  
16 Hon. J. Richard Couzens).
- 17 • Perspectives on Life Sentences (Sam Lewis, Adnan Khan, Shanae  
18 Polk).
- 19 • Perspectives on the Penal Code (Anne Irwin, Taina Vargas-  
20 Edmond, Jay Jordan).

21 The Committee is grateful for their participation. The Committee also heard public  
22 comment on parole release and Penal Code Section 1170(d)(1) resentencings.

23 The Committee discussed the remarks of DA-elect Gascón and proposals made  
24 by the panelists, including clarifying and revising the legal standard used by the  
25 Board of Parole Hearings to determine parole suitability, creating statutory  
26 presumptions for granting parole in some circumstances, prohibiting the use of  
27 subjective criteria such as insight or remorse in parole determinations, adding  
28 procedural guidance to referrals made under Penal Code Section 1170(d)(1), and  
29 providing for second-look sentencing in some cases.

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

2 **Parole Release Standards**

3 The Committee directed staff to explore revising and simplifying the legal  
4 standard used by the Board of Parole Hearings to determine parole suitability.  
5 Research should include determining whether current law can be harmonized to  
6 resolve contradictory elements. Staff should further research whether a more  
7 specific suitability standard may be appropriate and whether statutory  
8 presumptions would be effective in reducing subjectivity in decision-making.  
9 Additionally, staff should research modifications to the standard of proof used at  
10 parole hearings and the standards used by court reviewing parole decisions.

11 **Penal Code Section 1170(d)(1) Resentencing**

12 The Committee directed staff to further research creating a more specific  
13 process for courts considering referrals under Penal Code Section 1170(d)(1),  
14 including deadlines, hearings, and the appointment of counsel in some  
15 circumstances. Staff should also explore whether there should be a presumption  
16 that a person be resentenced when it is recommended by law enforcement. Staff  
17 should also research financial incentives for local prosecutors to create  
18 resentencing units, second-look sentencing after a significant period of  
19 incarceration has been served, and revisions that would facilitate easier transfer of  
20 information between the California Department of Corrections and Rehabilitation  
21 (CDCR) and law enforcement agencies investigating possible Penal Code Section  
22 1170(d)(1) referrals.

23 **ONGOING BUSINESS**

24 The Committee considered Memorandum 2020-16, which provided updates on  
25 possible Committee recommendations. The Committee made the decisions  
26 reported below:

27 **Reclassifying Common Traffic Offenses from Misdemeanors to Infractions**  
28 **and Lower Fines and Fees**

29 After a staff presentation on a proposal to reclassify as infractions some  
30 common traffic offenses that can be charged as either infractions or misdemeanors,  
31 the Committee directed staff to continue research into this idea, including  
32 reducing the number of traffic points and fines and fees associated with these  
33 offenses.

1 **Lower CDCR Incarceration Rate and Improve Recidivism Outcomes by**  
2 **Increasing Local Control**

3 After a staff presentation on a proposal that would require counties to maintain  
4 custody of any person sentenced to state prison but expected to serve less than a  
5 year in prison, the Committee directed staff to continue researching and refining  
6 this proposal.

7 **Eliminate Mandatory Minimum Sentences for All Non-Violent Offenses and**  
8 **Expand Alternatives to incarceration**

9 After a staff presentation on a proposal to eliminate mandatory minimum  
10 sentences for all non-violent offenses by removing restrictions on probation  
11 eligibility and other mandatory terms of incarceration, the Committee directed  
12 staff to continue further research and refinement of this idea.

13 **Establish a New Crime of “Aggravated Shoplifting”**

14 After a staff presentation on a proposal to establish a new offense of  
15 “aggravated shoplifting” that would apply in some situations where robbery is  
16 currently charged, the Committee directed staff to expand its research into other  
17 common theft scenarios and consider whether a new offense of “aggravated theft”  
18 should be created.

19 The Committee also directed staff to research amending the residential  
20 burglary law to better reflect the seriousness of some of these offenses by revising  
21 the relevant definition of “inhabited dwelling house.”

22 **Focus Sentencing Enhancements on the Most Dangerous Offenses and**  
23 **Circumstances**

24 After a staff presentation on a proposal to establish presumptions giving judges  
25 greater guidance in exercising their discretion under Penal Code Section 1385 to  
26 impose sentence enhancements, the Committee directed staff to continue further  
27 research and refinement of this idea.

28 **Refine Gang Enhancements to Target Violent Criminal Enterprises and**  
29 **Reduce Prejudicial Evidence Before Juries**

30 After a staff presentation on a proposal to modify the gang enhancement to  
31 focus on violent and organized groups and to procedures to ensure defendants  
32 charged with gang enhancements receive fair trials based on reliable evidence, the  
33 Committee directed staff to continue further research and refinement of this idea.

1 **Apply Recently Repealed Sentencing Enhancements to Everyone**

2 After a staff presentation on a proposal to apply the repeal of two common  
3 sentencing enhancements to all cases by allowing jails and CDCR to  
4 administratively remove these enhancements, the Committee directed staff to  
5 continue further research and refinement of this idea.

6 **Equalize Custody Credits for Good Behavior in Jail, Prison, and State**  
7 **Hospitals**

8 After a staff presentation on a proposal to equalize credits for good behavior  
9 between jail and prison — and to allow for the earning of good conduct credit for  
10 people confined to a state hospital after being found incompetent to stand trial —  
11 the Committee directed staff to continue research and refinement of this idea.

12 Staff should also examine whether the various credit schemes created  
13 following the passage of Proposition 57 in 2016 could be applied retroactively to  
14 incarcerated people and the feasibility of applying good conduct and other credits  
15 to youth offender parole eligibility dates.

16 ADMINISTRATIVE MATTERS

17 **Approval of Minutes**

18 The Committee considered Memorandum 2020-18 presenting draft Minutes  
19 for the Committee’s September and Octobers meetings.

20 The Committee approved the Minutes without change.

APPROVED AS SUBMITTED \_\_\_\_\_ Date

APPROVED AS CORRECTED \_\_\_\_\_ Chairperson

(for corrections, see Minutes of next meeting) \_\_\_\_\_ Executive Director