

Admin.

June 16, 2021

Memorandum 2021-10

Draft Minutes of May Meeting

The Committee on Revision of the Penal Code held a meeting on May 13–14, 2021. 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

DRAFT MINUTES OF MEETING
COMMITTEE ON REVISION OF THE PENAL CODE
MAY 13–14, 2021

1 A meeting of the Committee on Revision of the Penal Code was held on May
2 13–14, 2021. Consistent with Executive Orders N-25-20 and N-29-20, the meeting
3 was held as an online video webinar.

4 **Commission:**

5 *Present:* Michael Romano, Chairperson
6 Assembly Member Alex Lee
7 Senator Nancy Skinner
8 Hon. Peter Espinoza, Ret.
9 Hon. Carlos Moreno, Ret.
10 Priscilla Ocen

11 **Staff:**

12 *Present:* Brian Hebert, Executive Director
13 Barbara Gaal, Chief Deputy Director
14 Thomas Nosewicz, Legal Director
15 Rick Owen, Staff Counsel
16 Lara Hoffman, Stanford Fellow

17 **Invited Presenters:**

18 Jeffrey Aaron, Mendocino County Public Defender
19 Kathy Allison, Secretary, California Department of Corrections and Rehabilitation
20 Susan Bustamante, California Coalition of Women Prisoners
21 Angela Chan, Policy Director and Senior Staff Attorney, Asian Americans Advancing
22 Justice
23 Amy Fettig, Executive Director, The Sentencing Project
24 Michele Hanisee, President, Deputy District Attorney Association of Los Angeles County
25 Jarrett Harper, Ambassador, Represent Justice
26 Dr. Joshua Kleinfeld, Professor of Law, Northwestern Pritzker School of Law

- 1 Mike Reynolds, Author of Three Strikes Ballot Initiative
- 2 Dr. Christopher Seeds, Assistant Professor of Criminology and Law and Society, UC
- 3 Irvine
- 4 Earlonne Woods, Producer, Co-Host, Co-Creator, Ear Hustle Podcast

5 **Other Persons:**

6 Up to 93 members of the public observed the meeting as attendees. The
7 Committee did not prepare a list of those attendees.

CONTENTS	
8 Approval of Actions Taken	2
9 New Business	2
10 Ongoing Business	

11 APPROVAL OF ACTIONS TAKEN

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

16 NEW BUSINESS

17 The Committee considered Memorandum 2021-06 and its First Supplement,
18 which discuss extreme sentences and high-profile enhancements. The Committee
19 heard from panelists on the following topics:

- 20 • Life Without Parole (Susan Bustamante, Michele Hanisee, Jarrett
21 Harper, Dr. Christopher Seeds).
- 22 • Three Strikes, Gun Enhancements & Hate Crimes (Jeffrey Aaron,
23 Angela Chan, Mike Reynolds, Earlonne Woods).
- 24 • Long Sentences/ Aging Out of Crime/ Comparative Analysis (Kathy
25 Allison, Amy Fetting, Joshua Kleinfeld).

1 The Committee is grateful for their participation. The committee also heard
2 public comment on extreme sentences.

3 The Committee discussed many of the proposals suggested by the panelists,
4 including second-look sentencing for those sentenced to LWOP, eliminating the
5 Three Strikes law, and setting a 20-year limit on all sentences. After this discussion,
6 the Committee made the decisions reported below.

7 **Second-look for LWOP**

8 The Committee directed staff to further research whether there are any current
9 Board of Parole Hearings (BPH) regulations that authorize consideration of LWOP
10 cases. The Committee also directed staff to research whether other states use
11 LWOP and if so, whether those states have procedures that allow for review of
12 those sentences.

13 **10-20-Life Gun Enhancements**

14 The Committee directed staff to research how other states punish firearm use.
15 The Committee also directed staff to review empirical research on the impact of
16 gun enhancements on public safety.

17 **Three Strikes**

18 The Committee directed staff to explore potential reforms to the Three Strikes
19 law, including washout periods, elimination of juvenile strikes, and complete
20 repeal. The Committee also directed staff to survey the Penal Code for additional
21 statutes that punish recidivism.

22 **20-Year Limit on Sentence Lengths**

23 The Committee directed staff to research whether other states have imposed
24 limits on sentence lengths. Staff was also directed to explore the standards and
25 procedures used in the civil commitment process.

26 **Expand Proposition 57 Parole Eligibility**

27 The Committee directed staff to research the standards and grant rates for
28 Proposition 57 parole and to explore expanding Proposition 57 eligibility to
29 everyone serving a prison sentence.

1 **Limit “stacking”**

2 The Committee directed staff to research placing limits on the ability to “stack”
3 enhancements.

4 **Revise Accomplice Liability Laws**

5 The Committee directed staff to research accomplice liability laws, particularly
6 as used against women in “failure to protect” cases. The Committee also directed
7 staff to research explanations for the increase in the number of women serving life
8 sentences in California.

9 **ONGOING BUSINESS**

10 The Committee considered Memorandum 2021-07, which provided updates
11 and possible recommendations on capital punishment. After discussion, the
12 Committee made the decisions reported below.

13 **Abolish the Death Penalty**

14 The Committee voted to recommend that the death penalty be abolished in the
15 state. The Committee also voted to recommend that policymakers undertake the
16 following efforts to reduce the size of death row:

- 17 • Award clemency to commute death sentences.
- 18 • Settle pending legal challenges to death sentences.
- 19 • Recall death sentences under Penal Code § 1170(d)(1).
- 20 • Limit the felony-murder special circumstance.
- 21 • Restore judicial discretion to dismiss special circumstances.
- 22 • Amend the Racial Justice Act of 2020 to give it retroactive application.
- 23 • Remove people who are permanently mentally incompetent from death
24 row.

25 **ADMINISTRATIVE MATTERS**

26 Committee staff provided an administrative update.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Director