

Admin.

November 10, 2021

Memorandum 2021-18

Draft Minutes of September 30, 2021 Meeting

The Committee on Revision of the Penal Code held a meeting on September 30, 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
SEPTEMBER 30, 2021

1 A meeting of the Committee on Revision of the Penal Code was held on
2 September 30, 2021. 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
7 Assembly Member Alex Lee

8 Senator Nancy Skinner

9 Hon. Peter Espinoza, Ret.

10 Hon. Carlos Moreno, Ret.

11 Priscilla Ocen

12
13 *Absent:* Hon. Carlos Moreno, Ret.

14 **Staff:**

15 *Present:* Brian Hebert, Executive Director

16 Thomas M. Nosewicz, Legal Director

17 Rick Owen, Staff Counsel

18 Lara Hoffman, Stanford Fellow

19 **Other Persons:**

20 Hon. Thelton Henderson, appointed to the Committee by Governor Newsom
21 on September 9, 2021, also attended the meeting.

22 Up to 49 members of the public observed the meeting as attendees. The
23 Committee did not prepare a list of those attendees.

CONTENTS

24	Approval of Actions Taken	2
25	Ongoing Business	2
26	Administrative Matters.....	4



1
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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.

ONGOING BUSINESS

The Committee considered Memorandum 2021-16, which presented updates on possible Committee recommendations. The Legal Director gave a presentation outlining the possible recommendations, and the Committee heard public comment.

The Committee gave staff provisional guidance to further develop and draft the following recommendations for the Committee’s 2021 annual report:

1. Create a review process for life without parole sentencing

The Committee directed staff to draft recommendations to restore judicial authority to dismiss special circumstances, allow for judicial resentencing after 25 years of incarceration, and require the Board of Parole Hearings to conduct clemency reviews of people serving life without parole, focusing on their age, medical condition, history of abuse or trauma, and other relevant factors.

2. Repeal the Three Strikes Law

The Committee directed staff to draft a recommendation to repeal the Three Strikes law. The Committee directed staff to draft secondary recommendations to create a washout period after which strikes can no longer be used to enhance a sentence, establish that juvenile conduct cannot be counted as a strike, and prohibit doubling of sentences as a result of a prior strike conviction when the new offense is not a strike, as well as that the reforms should be retroactive.

1 3. Equalize parole eligibility for all offenses

2 The Committee directed staff to draft a recommendation to expand parole
3 eligibility to people convicted of all offenses after they have served the term for
4 their primary offense.

5 4. Encourage alternatives to incarceration

6 The Committee directed staff to draft a recommendation to add a statement to
7 the Penal Code that the disposition of a criminal case shall use the least restrictive
8 means possible and that alternatives to incarceration should be imposed in all
9 nonviolent cases unless incarceration is necessary to prevent physical injury to
10 others, failing to impose incarceration would depreciate the seriousness of the
11 offense, or is otherwise prohibited.

12

13 5. Strengthen the mental health diversion law.

14 The Committee directed staff to draft a recommendation to strengthen the
15 mental health diversion law, Penal Code section 1001.36, by presuming that when
16 a defendant has a diagnosis for a specified “mental disorder,” the statutory
17 requirement that the mental disorder “was a significant factor in the commission
18 of the charged offense” is satisfied.

19 6. Allow appellate courts to reduce sentences

20 The Committee directed staff to draft a recommendation to allow judges to
21 review sentences for excessiveness on appeal without giving deference to the
22 decision of the sentencing judge, and to allow this power to be exercised on appeal
23 even in cases where the defendant pleaded guilty.

24 The Committee will decide at a future meeting whether this recommendation
25 should be included in the final report.

26 7. Modernize county parole

27 The Committee directed staff to draft the following recommendation related to
28 county parole:

- 29 • require that all counties review for county parole release everyone
30 serving a jail sentence who would be eligible for parole consideration if
31 confined in state prison;

- 1 • the term of county parole supervision cannot be longer than two years
- 2 or however long the person would have spent in jail;
- 3 • the county parole board member appointed by the presiding judge have
- 4 professional or lived experience in the areas of social work, substance
- 5 use disorder treatment, foster care, rehabilitation, community reentry,
- 6 or the effects of trauma and poverty; and,
- 7 • people released to county parole are to be supervised by the county
- 8 probation department.

9 8. Expand residential reentry programs

10 The Committee directed staff to draft recommendations that CDCR expand its
11 residential reentry programs, and that the Board of Parole Hearings be able to
12 grant release to a residential reentry program.

13 9. Encourage increased parole grants

14 The Committee directed staff to draft a recommendation that the parole grant
15 rate be safely increased by implementation of the reforms suggested by the
16 Committee in its 2020 Annual Report.

17 The Committee agreed to review and make modifications to the draft annual
18 report at its next meeting.

19 ADMINISTRATIVE MATTERS

20 The Chair welcomed Hon. Thelton Henderson, Ret., to the Committee.

21 The Committee considered Memorandum 2021-17 presenting draft Minutes
22 for the Committee’s July meeting.

23 The Committee approved the Minutes without change.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Director