

Staff Memorandum 2023-05
Draft Minutes of March 17, 2023 Meeting

The Committee on Revision of the Penal Code held a meeting on March 17, 2023. Draft Minutes for that meeting are attached for Committee members to review.

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,

Thomas M. Nosewicz
Legal Director

DRAFT MINUTES OF MEETING
COMMITTEE ON REVISION OF THE PENAL CODE
March 17, 2023

A meeting of the Committee on Revision of the Penal Code was held on March 17, 2023. Consistent with Government Code Section 11133, the meeting was held as an online video webinar.

Committee:

Present: Michael Romano, Chairperson
Hon. Peter Espinoza, Ret.
Assembly Member Isaac Bryan
Hon. Carlos Moreno, Ret.
Senator Nancy Skinner

Absent: Hon. Thelton Henderson, Ret.

Staff:

Present: Thomas M. Nosewicz, Legal Director
Joy F. Haviland, Senior Staff Counsel
Rick Owen, Senior Staff Counsel

Invited Presenters:

- Molly Pickard, Research Manager, California Policy Lab
- Omair Gill, Research Association, California Policy Lab
- Steven Raphael, Professor of Public Policy, UC Berkeley, and Research Fellow, California Policy Lab
- Judge Daniel Lowenthal, Los Angeles County Superior Court
- Professor Colleen Chien, Santa Clara University School of Law
- Michael Fermin, Chief Assistant District Attorney, San Bernardino District Attorney

- Allison Rosenmayer, Deputy Public Defender, San Joaquin County Public Defender's Office
- Evan Kuluk, Deputy Public Defender, Alternate Defender Office, Contra Costa County
- Lois M. Davis, Senior Policy Research, RAND Corporation
- Robert Mestman, Senior Assistant District Attorney, Orange County District Attorney's Office
- Bryan Slater, Supervising Deputy District Attorney, Gang Team, Santa Clara County District Attorney
- Diana Teran, Director of Prosecution Support Operations, Los Angeles County District Attorney
- Jennifer Hansen, Deputy State Public Defender, Office of the State Public Defender
- Andrew Gutierrez, Supervising Deputy Public Defender, Office of the Public Defender, County of Santa Clara
- Matthew Wechter, Supervising Attorney, San Diego County Public Defender
- Greg Fidell, Policy Director, Initiate Justice
- Doug Bond, Chief Executive Officer, Amity Foundation

Other Persons:

Up to 78 members of the public observed the meeting as attendees. The Committee did not prepare a list of those attendees.

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 2023-01 and its first supplement, which discuss recent law changes and related matters. The Committee heard from panelists on the following topics:

- Racial Justice Act (Professor Chien, Michael Fermin, Allison Rosenmayer, Evan Kuluk)
- Perspectives from Prosecutors (Robert Mestman, Bryan Slater, Diana Teran)
- Perspectives from Public Defenders and Impacted People (Jennifer Hansen, Andrew Gutierrez, Matthew Wechter, Greg Fidell)

The Committee also heard presentations and remarks from the California Policy Lab, Judge Daniel Lowethnal, Lois M. Davis of the RAND Corporation, and Doug Bond of the Amity Foundation. The Committee is grateful for each panelists' participation. The Committee also heard public comment.

After discussion, the Committee directed staff to research the following topics:

- *Racial Justice Act*: Improvements and steam-lining of data gathering and access.
- *Procedural rules for resentencing*: Rules in the Penal Code addressing common issues in resentencings, such as access to records, appointment of counsel, the use of a centralized court, and other recommendations that would make resentencings more efficient.
- *Second-look sentencing*: Allowing people incarcerated for a set period of time to directly petition for resentencing or giving judges discretion to resentence at any time.
- *Codify that the mitigating circumstances in Penal Code § 1385 apply to "strike" enhancements*: Specify that the changes to Penal Code § 1385 made by SB 81 (2021 Skinner) apply to the use of prior strikes convictions.
- *Retroactive application of SB 1393*: Allow the changes made by SB 1393 (2018 Mitchell) that allow judges to dismiss the five year "nickel" prior in Penal Code § 667(a)(1) to apply retroactively to currently incarcerated people.

Administrative Matters

The Committee considered Memorandum 2023-02 presenting draft Minutes for the Committee's November 29, 2022 meeting.

The Committee approved the Minutes without change.

The Chair gave an update on pending legislation based on or supported by prior Committee recommendations.