

**Staff Memorandum 2023-11**  
**Draft Minutes of October 2, 2023 Meeting**

The Committee on Revision of the Penal Code held a meeting on October 2, 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

Joy F. Haviland  
Senior Staff Counsel

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***DRAFT*** MINUTES OF MEETING  
COMMITTEE ON REVISION OF THE PENAL CODE  
October 2, 2023

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A meeting of the Committee on Revision of the Penal Code was held on October 2, 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

**Staff:**

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

**Invited Presenters:**

- Shima Baradaran Baughman, Professor of Law, Brigham Young University Law School
- Alex Chohlas-Wood, Executive Director, Stanford Computational Policy Lab
- Jennifer Doleac, Executive Vice President of Criminal Justice, Arnold Ventures
- Carissa Byrne Hessick, Professor of Law, University of North Carolina School of Law
- Amy E. Lerman, Professor of Public Policy and Political Science, UC Berkeley Goldman School of Public Policy & Director, Possibility Lab

- Aurélie Ouss, Assistant Professor, Department of Criminology, University of Pennsylvania
- Mia Bird, Assistant Adjunct Professor, UC Berkeley Goldman School of Public Policy
- W. David Ball, Professor of Law, Santa Clara University School of Law

**Other Persons:**

Up to 29 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 2023-07 and its first supplement, which discuss selected issues on prosecutorial discretion, plea bargaining, and related matters. The Committee heard from panelists on the following topics:

- Prosecutorial Discretion (Shima Baradaran Baughman, Alex Chohlas-Wood, Jennifer Doleac)
- Guilty Pleas (Carissa Byrne Hessick, Amy E. Lerman)
- California's Use of Incentives in the Criminal Legal System (Aurélie Ouss, Mia Bird, W. David Ball)

The Committee is grateful for the participation of all of the panelists.

The Committee also heard public comment.

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

- Further detail on the incentive programs in California discussed at the meeting (i.e. juvenile realignment in the 1990s and SB 678), including funding structures.

- A concrete proposal for an incentive program to address short prison stays modeled on the incentive programs discussed at the meeting.
- More information about prosecutorial rejection and dismissal rates in other states and historical data in California on rejection and dismissal rates.
- Recommendations related to guilty pleas outlined in Memorandum 2023-07, including motions to reopen pretrial release conditions, adding presumptive probation to the default triad in Penal Code § 18, addressing the use of the same facts to support both the element of an offense and a sentencing enhancement, and allowing defendants to request lesser-related offenses.

### **Ongoing Business**

The Legal Director gave a presentation on Memorandum 2023-09, which presented an update on 2023 violent crime statistics.

Committee staff gave a presentation outlining possible recommendations developed from both the March and June 2023 meetings. The Committee considered Memorandum 2023-10, which presented updates on research from the June 2023 meeting, and recommendations that were previously presented in Memorandum 2023-06.

The Committee gave staff direction to further develop and draft the following recommendations for the Committee's 2023 annual report:

1. Create general resentencing procedures.
2. Apply the "nickel prior" reform retroactively.
3. Clarify that SB 81's updates to Penal Code § 1385 apply to strikes.
4. Expand second-look resentencing.
5. Improve data access to support Racial Justice Act claims.
6. Focus welfare fraud prosecutions on the most serious cases.
7. Reduce the scope of criminal fines and fees.
8. Expand Law Enforcement Assisted Diversion (LEAD).

Staff will prepare a draft of the 2023 Annual Report for the Committee to review at its next meeting in November 2023.

Staff will also work with the California Policy Lab to update the list of offenses that rarely result in arrest or conviction that was included as part of the 2022 Annual Report.

### **Administrative Matters**

The Committee considered Memorandum 2023-08 presenting draft Minutes for the Committee's June 23, 2023 meeting.

The Committee approved the Minutes without change.