

Staff Memorandum 2024-15
Draft Minutes of September 6, 2024 Meeting

The Committee on Revision of the Penal Code held a meeting on September 6, 2024. 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
September 6, 2024

A meeting of the Committee on Revision of the Penal Code was held on September 6, 2024. Consistent with Government Code Section 11123.5, the meeting was held as an online video webinar. Members of the public were able to physically attend, observe, hear, and participate in the meeting at the primary physical meeting location of 925 L Street, 1st Floor Conference Room, Sacramento, California.

Committee:

Remote attendance: Michael Romano, Chairperson
Hon. Peter Espinoza, Ret.
Priscilla Ocen
Heidi Rummel
Senator Nancy Skinner

Absent: Assembly Member Isaac Bryan

Staff:

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

Physical location: Megan Hyenga, Office Technician

Invited Presenters:

- Professor Steven Raphael, UC Berkeley Goldman School of Public Policy and California Policy Lab
- Jon Eldan, Founder and Executive Director, After Innocence
- James Mink, Policy Lead, After Innocence
- Obie Anthony, Founder and Executive Director, Exonerated Nation

- Joseph Trigilio, Associate Clinical Professor and Executive Director, Loyola Project for the Innocent, Loyola Law School
- Jasmin Harris, Director of Policy, The Innocence Center
- Nisha Shah, Deputy Director of Litigation, Habeas Corpus Resource Center
- Thomas Trainor, Deputy in Charge, Conviction Integrity Unit, Los Angeles County District Attorney
- Jennifer Shaffer, Executive Officer, Board of Parole Hearings

Other Persons:

Up to 33 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 2024-09 and its first supplement, which discuss innocence, wrongful convictions, and related matters. The Committee also heard from panelists on the following topics:

- Compensation for Innocence (Jon Eldan, James Mink, and Obie Anthony)
- Proving Innocence and Wrongful Convictions (Joseph Trigilio, Jasmin Harris, Nisha Shah, Thomas Trainor)

The Committee considered Memorandum 2024-13, which discusses conduct credits for indeterminate-sentenced people. The Committee received a presentation from Jennifer Shaffer, Executive Officer of the Board of Parole Hearings that explained the impact on credit-earning from the Superior Court's order in *Criminal Justice Legal Foundation v. CDCR*.

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

The Committee considered Memorandums 2024-11 which presented updates on 2024 violent crime statistics.

The Committee discussed innocence, wrongful conviction, and related matters, as well as credit-earning for indeterminately-sentenced people. After discussion, the Committee directed staff to research the following topics:

- **Compensation:** Expanding compensation to cover family members; providing attorney fees for successful claimants; regularly adjusting compensation amounts for inflation; compensating for time spent on the sex offender registry, parole, probation, and other similar restraints on liberty; allowing a look-back period for people who received compensation capped under prior law; streamlining process to receive compensation after an acquittal or vacatur on direct appeal; considering shifting compensation costs to responsible actors; allowing compensation for unlawful incarceration; and a general redrafting of the relevant code sections to clarify the law.
- **Habeas corpus:** harmonizing standards for relief to require showing a reasonable probability of a different outcome; updating procedural rules so that limits on successive and late petitions do not bar meritorious claims; specifying that courts have the power to dismiss cases with prejudice as a remedy; requiring favorable evidence be disclosed even after conviction, including violations of the Racial Justice Act; requiring greater disclosure of prosecutorial and law enforcement material after conviction, including specifying that jury notes should be disclosed in post-conviction discovery; expanding prosecutorial power to investigate innocence cases.
- **Credit-earning:** Revisions to the Penal Code that would restore credit-earning for people as was the case before the Superior Court order in *Criminal Justice Legal Foundation v. CDCR*.

Ongoing Business

The Committee received a presentation from Professor Steven Raphael on research and data on lowering the blood-alcohol content level that shows a per se violation of California's DUI laws. The Committee will continue considering this topic.

The Committee considered Memorandum 2024-12, which presented updates on proposals from the March 2024 meeting. Staff will continue developing the following proposals as outlined in Memorandum 2024-12:

- Establish prosecutor-led diversion for gun possession offenses.
- Modernize civil asset forfeiture.

The Committee also heard public comment.

Administrative Matters

The Committee considered Memorandum 2024-10 presenting draft Minutes for the Committee's July 2024 meeting.

The Committee approved the Minutes without change.