

Staff Memorandum 2024-20
Draft Minutes of October 29, 2024 Meeting

The Committee on Revision of the Penal Code held a meeting on October 29, 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
October 29, 2024

A meeting of the Committee on Revision of the Penal Code was held on October 29, 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
Assembly Member Isaac Bryan
Hon. Peter Espinoza, Ret.
Priscilla Ocen
Heidi Rummel
Senator Nancy Skinner

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:

- Jennifer Hansen, Attorney, California Appellate Project
- Johanna Lacoë, California Policy Lab
- Nathaniel Miller, Attorney at Law
- Alissa Skog, California Policy Lab
- Thomas Sloan, California Policy Lab
- Belle Yan, Assistant Professor and Supervising Attorney, University of San Francisco School of Law Racial Justice Clinic

Other Persons:

Up to 23 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 received presentations from the California Policy Lab about the public safety impacts from bail policy changes in Los Angeles and recidivism statistics for people resentenced or who obtained early release via certain parole mechanisms.

The Committee considered Memorandum 2024-14 and its first supplement, which discuss matters related to accomplice and other liability for murder and firearm enhancements. The Committee heard from the following panelists on these topics:

- Jennifer Hansen, Attorney, California Appellate Project
- Nathaniel Miller, Attorney at Law

The Committee received a presentation from Belle Yan about implementation of the Racial Justice Act and may further consider these issues next year.

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

After discussion, the Committee directed staff to include in the draft 2024 Annual Report recommendations related to these topics as detailed below.

Ongoing Business

The Legal Director gave a presentation on Memorandum 2024-18, which presented an update on 2024 midyear crime statistics.

The Committee considered Memorandum 2024-16, which presented staff proposals following the discussion of innocence and wrongful convictions at the September 2024 meeting, and Memorandum 2024-17, which provided a summary list of staff recommendations made throughout the year. Staff gave a presentation on staff recommendations for inclusion in the 2024 Annual Report.

The Committee heard public comment.

The Committee gave staff direction to draft the following recommendations for the Committee's 2024 Annual Report:

Driving under the influence

- Create presumptive judicial diversion for many first-time DUI offenses.
- Require free or reduced-fee DUI classes and require evaluations of the effectiveness of the classes.
- Expand the use of DUI collaborative courts.
- Streamline license suspensions related to DUI.

Innocence and wrongful convictions

- Harmonize the standards for relief in the habeas statutes to require a “reasonable probability of a different outcome” to obtain relief.
- Require courts to consider the merits of cases that show factual innocence by a reasonable probability.
- Specify that courts can dismiss criminal cases as a remedy.
- Expand post-conviction discovery.
- Modernize compensation for innocent people.

Asset forfeiture

- Exempt amounts below \$10,000 from civil asset forfeiture.
- Allow forfeiture proceeds to support crime victims.

Accomplice liability

- Eliminate accomplice liability for implied malice murder.
- Allow courts to reduce the degree of murder in SB 1437 resentencings.
- Eliminate the use of the felony-murder rule in provocative-act murder cases.
- Require being personally armed to receive the enhancement in Penal Code § 12022(a).
- Eliminate the gang exception in Penal Code § 12022.53(e).

Other recommendations

- Establish prosecutor-led diversion for gun possession offenses.
- Clarify in the Penal Code that indeterminately-sentenced people should receive credits under Proposition 57.

Staff will prepare a draft of the 2024 Annual Report for the Committee to review at its next meeting in November 2024.

Administrative Matters

The Committee considered Memorandum 2024-15 presenting draft Minutes for the Committee's September 2024 meeting.

The Committee approved the Minutes without change.