

Admin.

July 15, 2020

## Memorandum 2020-9

**Draft Minutes of April and June Meetings**

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The Committee on Revision of the Penal Code held meetings on April 23-24, 2020 and June 24, 2020. This memorandum provides draft Minutes for each of those meetings.

Each 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.

**Research Priorities**

Based on the decisions made at the April meeting, the staff identified the following priorities for staff research:

- Explore the judge-controlled misdemeanor diversion program presented by Judge Lowenthal, including additional provisions (e.g. expanding the program to some felony offenses).
- Further research on the Alameda County Justice Restoration Project (ACJRP), described by DA O'Malley, and other related programs.
- Explore the possibility of a uniform statute for collaborative courts.
- Explore the possibility of a statute that would facilitate restorative justice programs, including safeguards like confidentiality.
- Monitor the Governor's budget proposals on probation and explore the concept of expanding eligible offenses and presumptions.

Those matters will be discussed further, as "ongoing business," at the July 24, 2020, meeting.

Respectfully submitted,

Brian Hebert  
Executive Director





1 No Committee decisions were required or made.

APPROVED AS SUBMITTED

\_\_\_\_\_  
Date

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

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Chairperson

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Executive Director

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**DRAFT MINUTES OF MEETING**  
**COMMITTEE ON REVISION OF THE PENAL CODE**  
**APRIL 23-24, 2020**

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1 A meeting of the Committee on Revision of the Penal Code was held on April  
2 23-24, 2020. Consistent with Executive Orders N-25-20 and N-29-20, the meeting  
3 was held as an online video webinar.

4 **Commission:**

5 *Present:* Michael Romano, Chairperson  
6 Assembly Member Sydney Kamlager  
7 Senator Nancy Skinner  
8 Hon. John Burton  
9 Hon. Peter Espinoza, Ret.  
10 Hon. Carlos Moreno, Ret.  
11 L. Song Richardson

12 **Staff:**

Brian Hebert, Executive Director  
13 Barbara Gaal, Chief Deputy Counsel  
14 Thomas Nosewicz, Senior Staff Counsel

15 **Invited Presenters:**

16 Anthony Adams, Deputy Public Defender, Mendocino  
17 County  
18 Hon. Lawrence Brown, Judge of the Superior Court of  
19 California, County of Sacramento  
20 sujatha baliga, Director of the Restorative Justice Project at  
21 Impact Justice, Just Beginnings Collaborative Fellow,  
22 MacArthur Fellow  
23 Katie Dixon (KD) of San Francisco County  
24 John Keene, Chief of Probation for San Mateo County and  
25 Secretary/Treasurer of the Chief Probation Officers of  
26 California  
27 Nicole Kirkaldy, Program Coordinator for Yolo County  
28 District Attorney's Neighborhood Court  
29 Hon. Daniel J. Lowenthal, Judge of the Superior Court of  
30 California, Los Angeles County  
31 Hon. Stephen Manley, Judge of the Superior Court of  
32 California, County of Santa Clara  
33 Hon. Nancy O'Malley, District Attorney, Alameda County,  
34 and President, California District Attorneys Association  
35 Hon. Richard Vlavianos, Judge of the Superior Court of  
36 California, County of San Joaquin, and Chair of the  
37 California Judicial Council Collaborative Justice Courts  
38 Advisory Committee

1 **Other Persons:**

2 Over 90 members of the public observed the meeting as webinar participants. The  
3 Committee did not prepare a list of those participants.

4 **C O N T E N T S**

4	Approval of Actions Taken.....	2
5	New Business .....	2
6	Ongoing Business .....	5

7 **APPROVAL OF ACTIONS TAKEN**

8 Unless otherwise indicated, the Committee decisions noted in these Minutes  
9 were approved by all members present at the meeting. If a member who was  
10 present at the meeting voted against a particular decision, abstained from voting,  
11 or was not present when the decision was made, that fact will be noted below.

12 **NEW BUSINESS**

13 The Committee considered Memorandum 2020-4 and its First Supplement  
14 (including the associated supplemental materials posted to its website), which  
15 discuss alternatives to incarceration. The Committee heard from panelists on the  
16 following topics:

- 17 • Diversion (Anthony Adams, Hon. Daniel J. Lowenthal, and Hon.  
18 Nancy O'Malley).
- 19 • Collaborative courts (Hon. Lawrence Brown, Hon. Stephen Manley,  
20 and Hon. Richard Vlavianos).
- 21 • Probation and restorative justice (sujatha baliga, John Keene, Nicole  
22 Kirkaldy, and Katie Dixon).

23 The Committee is grateful for their participation. The Committee also heard public  
24 comment on alternatives to incarceration.

25 The Committee made the decisions reported below. (*Hon. John Burton did not*  
26 *participate in these decisions.*)

27 **Diversion**

28 The Committee directed the staff to conduct further research on the pilot  
29 misdemeanor diversion program that operated in Los Angeles County from 2015  
30 to 2017. The Committee expressed interest in the possibility of extending that  
31 program statewide, including additional provisions such as expanding it to some  
32 felony offenses. Among other things, the staff should further explore:

- 1 • How the program worked.
- 2 • The results of the program, especially any recidivism data.
- 3 • Demographic data on the participants.
- 4 • The pros and cons of pre-plea and post-plea approaches.
- 5 • Which types of cases to include in such a program, and how much
- 6 discretion judges should have about these matters.
- 7 • The effect of prosecutorial charging decisions on eligibility for
- 8 diversion.
- 9 • Data and other information on similar programs operating
- 10 elsewhere.

11 The Committee also discussed means of incentivizing use of diversion  
12 programs, particularly the possibility of creating a statutory presumption in favor  
13 of diversion. The staff should examine this in the context of the Los Angeles model,  
14 as well as more broadly.

15 The staff should also seek data on how many diversion programs are operated  
16 statewide, what types of programs exist in which locations, which programs are  
17 most successful, and other data on such programs.

18 In addition, Committee members would like further information on:

- 19 • Whether to give a judge authority to designate a qualified mental
- 20 health expert and provide for the cost of examination if the defense
- 21 makes a prima facie showing of eligibility under Penal Code Section
- 22 1001.36.
- 23 • Mandating county participation in diversion programs.
- 24 • Law Enforcement Assisted Diversion (LEAD) programs.
- 25 • Ways to promote public-private partnerships in this area.
- 26 • The diversion programs — in particular the Alameda County
- 27 Justice Restoration Project (ACJRP) — described by DA O'Malley
- 28 and exploring whether they can be expanded state-wide.

### 29 **Collaborative Courts**

30 Committee members observed that collaborative courts across the country  
31 appear to be successful, yet generally lack a uniform statutory framework. The  
32 Committee would like further information on the pros and cons of establishing  
33 such a framework, including the possibility of revising sentencing laws to  
34 expressly acknowledge the role of collaborative courts.

35 The Committee also discussed how to incentivize creation and use of  
36 collaborative courts. The staff should research this matter, including the use of  
37 funding incentives like those in Proposition 47 and Senate Bill 678.

1 The Committee also directed the staff to collect more data on collaborative  
2 courts, particularly from the Judicial Council. In addition, the staff should explore  
3 Judge Manley’s suggestions regarding elimination of certain statutory  
4 requirements that constrain judicial discretion in operating collaborative courts.

### 5 **Restorative Justice**

6 The Committee expressed interest in restorative justice programs, but is  
7 inclined to proceed cautiously regarding statutory reforms in this area. The  
8 Committee asked the staff to provide further information on such programs,  
9 especially research on the following points:

- 10 • A statute that would facilitate restorative justice programs,  
11 including safeguards like confidentiality.
- 12 • Any data relating to restorative justice programs, or means of  
13 obtaining such data.
- 14 • Victim impact.
- 15 • Penal Code Section 1378 (dismissal due to civil compromise) and  
16 possible revisions of that provision.
- 17 • Funding and other means of incentivizing use of restorative justice  
18 programs (including public-private partnerships).
- 19 • Issues of power and privilege relating to restorative justice  
20 programs.
- 21 • Use of restorative justice for “violent” crimes.
- 22 • Lessons from the COVID-19 crisis, including uses of new  
23 technologies in restorative justice programs.
- 24 • Nicole Kirkaldy’s suggestions regarding restitution and clearing  
25 records.

### 26 **Probation**

27 The staff should monitor the status of the Governor’s budget proposals relating  
28 to probation. The staff should also explore the following:

- 29 • Data on probation (e.g., data on who does and who does not get  
30 probation for the same crime, the extent to which each county uses  
31 probation, what percentage of probation violations are based on  
32 technical violations, and any criminogenic aspects of probation).
- 33 • Standard terms of probation, including privacy waivers, and which  
34 approaches work, and which approaches do not work.
- 35 • The role of new technologies in probation.
- 36 • Whether the list of probation-eligible offenses should be modified  
37 and what presumptions are appropriate.

