

Admin.

September 10, 2020

Memorandum 2020-12

Draft Minutes of July Meetings

The Committee on Revision of the Penal Code held a meeting on July 23–24, 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.

Respectfully submitted,

Thomas M. Nosewicz
Senior Staff Counsel

DRAFT MINUTES OF MEETING
COMMITTEE ON REVISION OF THE PENAL CODE
JULY 23–24, 2020

1 A meeting of the Committee on Revision of the Penal Code was held on July
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. Peter Espinoza, Ret.
9 Hon. Carlos Moreno, Ret.
10 L. Song Richardson

11 *Absent:* Hon. John Burton

12 **Staff:**

13 *Present:* Brian Hebert, Executive Director (July 23, 2020)
14 Barbara Gaal, Chief Deputy Counsel
15 Thomas Nosewicz, Senior Staff Counsel

16 *Absent:* Brian Hebert, Executive Director (July 24, 2020)

17 **Invited Presenters:**

18 Mia Bird, Visiting Assistant Professor, UC Berkeley Goldman School of Public
19 Policy

20 Keely Bosler, Director of Finance

21 Charles Callahan, California Department of Corrections and Rehabilitation,
22 Deputy Director (A), Facility Support – Division of Adult Institutions

23 Bridget Cervelli, Legal Services for Prisoners with Children

24 Aaron Fischer, Disability Rights California

25 Ryken Grattet, Chair and Professor, UC Davis Department of Sociology

26 Butte County Sheriff Kory L. Honea, California Sheriffs' Association Second Vice
27 President

28 Max Huntsman, Inspector General, Los Angeles County

29 James King, Ella Baker Center

30 **Other Persons:**

31 Up to 40 members of the public observed the meeting as attendees. The
32 Committee did not prepare a list of those attendees.

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1 APPROVAL OF ACTIONS TAKEN

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

6 NEW BUSINESS

7 The Committee considered Memorandum 2020-8 and its First Supplement,
8 which discuss short sentences. The Committee heard from panelists on the
9 following topics:

- 10 • Measuring Recidivism Outcomes Across Sentencing Types in
11 California (Mia Bird, Ryken Grattet).
- 12 • Perspectives on Serving Sentences in Jails and Prisons (Bridgett
13 Cervelli, Aaron Fischer, Max Huntsman, James King).
- 14 • Administering Short Sentences (Charles Callahan, Sheriff Kory L.
15 Honea).

16 The Committee is grateful for their participation. The Committee also heard public
17 comment on short sentences.

18 The Committee made the decisions reported below.

19 **Recidivism Outcomes Presentation**

20 The Committee directed staff to follow-up with Professors Bird and Grattet
21 about the data they presented. In particular, it would be helpful for the Committee
22 to learn whether recidivism results change based on the length of a sentence or if
23 someone is incarcerated in their own community, whether the data includes
24 details about particular counties and local players, and information about the
25 magnitude of the results.

26 **Short Jail and Prison Sentences Issues**

27 The Committee directed staff to explore financial incentive programs that
28 would encourage local jurisdictions to reduce incarceration and recidivism while

1 improving public safety. This research should include investigations into similar
2 programs in other states.

3 The Committee was particularly interested in how behavioral and mental
4 health issues contribute to short sentences. Staff should explore this issue with a
5 particular focus on steps that Los Angeles County has taken to address these
6 problems, particularly through its Office of Diversion and Reentry (which is run by
7 the Committee's Peter Espinoza).

8 Staff should also investigate:

- 9 • Costs of operating the California Department of Corrections and
10 Rehabilitation Reception Centers, particularly for the 37% of people
11 with determinate sentences who arrive at CDCR with an expected
12 length of stay of one year or less.
- 13 • How Realignment has affected practices in local jails, particularly for
14 alternative custody programs.
- 15 • The possibility of expanding or equalizing credit-earning opportunities
16 in jails and prisons.

17 ONGOING BUSINESS

18 The Committee considered Memorandum 2020-10, which provided additional
19 information on alternatives to incarceration. The Committee made the decisions
20 reported below.

21 **Misdemeanor Diversion**

22 The Committee remains interested in exploring judge-led diversion for
23 misdemeanors and low-level offenses. Staff should continue refining this idea,
24 including by researching rules and outcomes of similar programs in other
25 jurisdictions, including benefits to diversion programs beyond reducing court
26 congestion. Staff should also consider whether offenses in the Vehicle Code
27 present any special issues for a diversion program and what low-level felonies
28 may be appropriate for inclusion in this program.

29 Staff should also continue to monitor efforts in the Legislature that would
30 create a similar program.

31 Finally, while discussing results from a pilot diversion program in Los
32 Angeles, the Committee directed staff to further investigate why misdemeanor
33 filings had significantly decreased in the last few years.

1 **Alameda County Justice Restoration Project**

2 The Committee directed to staff explore how a program like the Alameda
3 County Justice Restoration Project — which is aimed at people with prior felony
4 convictions — could be part of a larger menu of diversion and alternative to
5 incarceration options for judges, including what entity could be responsible for
6 encouraging and certifying such programs throughout California.

7 **Collaborative Courts**

8 The Committee directed staff to continue to explore how other states centralize
9 and regulate collaborative courts. Based on that research, staff should consider
10 communicating with the Judicial Council about establishing a relationship to
11 explore similar regulation in California, which may begin with a mandate to
12 collect data.

13 **Restorative Justice**

14 The Committee remains interested in exploring the potential of restorative
15 justice programs. Staff should continue researching this topic.

16 **Probation — Length of Terms**

17 The Committee expressed support for a recommendation that would shorten
18 probation terms. Staff should monitor and report on a pending bill, AB 1950 by the
19 Committee’s Asm. Kamlager, that will shorten probation terms.

20 **Probation — Eligibility**

21 The Committee expressed support for revising probation eligibility rules,
22 including potentially creating a new category in the Penal Code for offenses that
23 would have a probation sentence as a presumptive outcome.

24 While discussing these issues, the Committee also expressed interest in
25 learning more about probation conditions, including whether probation
26 conditions are consistent with rehabilitation and what conditions make a
27 probation sentence or other alternative to incarceration less attractive than a short
28 jail sentence. The Committee would also like data on how prosecutors in different
29 parts of the state differ in offering probation.

30 **Sealing and Expungement**

31 While discussing probation issues, the Committee directed staff to research
32 and report on the status of programs, including a recent bill in the Legislature, that

1 make sealing and expungement of criminal records automatic, including at the
2 successful completion of a probation sentence.

3 ADMINISTRATIVE MATTERS

4 **Approval of Minutes**

5 The Committee considered Memorandum 2020-9 and its First Supplement,
6 presenting draft Minutes for the Committee's April and June meetings.

7 The Committee approved the Minutes without change.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Director