

Ending ‘three strikes’ law is among panel’s objectives

A committee formed to examine incarceration policies in California seeks to focus on diversion, rehabilitation programs



A STATE COMMITTEE is recommending expanded reentry programs and mental health treatment. Above, people incarcerated at San Quentin state prison. (Gary Coronado Los Angeles Times)

By Hannah Wiley

SACRAMENTO — For more than a year, a seven-person California commission has been quietly spearheading a massive effort to overhaul the thicket of criminal laws that make up the state penal code.

Its ideas for 2022 are ambitious, including an eventual end to the state’s controversial “three strikes” law and changes to lifetime prison sentences without the possibility of parole.

“I think there are a great number of injustices,” said Michael Romano, the chairman of the state Committee on Revision of the Penal Code and a Stanford Law School

lecturer. “And I think we can make our state even safer and more fair by looking at some of the details.”

The committee — comprising lawmakers, criminal law scholars and former federal and state judges appointed by the governor and legislative leaders — was formed in 2020 to closely examine California’s incarceration rates and make policy recommendations to lower them.

In broad terms, the advisory panel aims to provide lawmakers with ideas that move California toward more diversion and rehabilitation programs and away from the tough-on-crime policies of decades past. Members have encouraged the state Board of Parole Hearings to grant more prisoner releases and have characterized some sentence enhancements as too harsh. They favor mental health treatment in lieu of incarceration and have endorsed ending [California’s death penalty](#).

Its work resulted in six laws that Gov. Gavin Newsom signed in 2021 out of the [10 recommendations](#) the committee submitted. The [new laws](#) include limiting sentence enhancements for gang affiliation and ending mandatory sentence minimums for nonviolent drug offenses.

The changes, according to a committee overview, “will significantly reduce unnecessary incarceration for thousands of Californians, reduce racial disparities in criminal sentencing, and save taxpayer dollars better spent on programs proven to improve public safety.”

In December, the committee submitted its [second annual report](#) to the Legislature, recommending expanded reentry programs for paroled prisoners and strengthened laws to divert people with mental health concerns into treatment, not prison cells.

“The penal code is like a phone book. It’s so thick and so dense and complicated. I don’t think people understand it very well, in the system and out of the system,” Romano said.

But the current political climate could make such ambitious changes challenging.

A recent [increase](#) in retail smash-and-grab crimes and last year’s [31% rise in homicides](#) have left Democratic lawmakers under fire for endorsing more progressive criminal justice policies, though the policies are not clearly connected to current crime trends. Critics point to laws such as Proposition 47, a 2014 ballot measure that lowered certain drug and theft felony offenses to misdemeanors, and Proposition 57, a 2016 initiative to expand parole eligibility, as evidence of California’s missteps.

And they’re taking their frustrations to the ballot box.

In San Francisco, Dist. Atty. Chesa Boudin faces a June recall election after critics assailed his progressive policies as the wrong approach in light of [a recent uptick](#) in crime rates. Los Angeles County Dist. Atty. George Gascón has so far avoided a recall election, but his opponents have tried once and are already coordinating another recall attempt. Many of the issues are also likely to surface in the race for state

attorney general between incumbent Rob Bonta and Sacramento County Dist. Atty. Anne Marie Schubert.

“All we need are these anecdotal stories to scuttle really thoughtful approaches to reforms because we just err on the side of really wanting to be punitive to make a point,” said state Sen. Sydney Kamlager (D-Los Angeles), who served on the committee as an Assembly member before being elected to the Senate in March.

Kamlager wrote the law reforming gang enhancements, which she said have disproportionately affected people of color. The law, which took effect Jan. 1, requires prosecutors to prove a crime was committed because of a gang affiliation before adding a sentence enhancement. The bill was one of the most controversial of the 2021 legislative session and passed the Assembly on final approval with no votes to spare.

Despite that battle, and current headlines, Romano remains optimistic.

“California has led the nation in criminal justice reform,” Romano said. “Election after election, there have been reforms to reduce punishment and provide more opportunities for people to get out of jail and prison. At the same time, our crime rates have dropped.”

Robberies fell 13.8% in 2020, according to the California Department of Justice, as did the rape rate, by 8.2%. The total arrest rate also plunged by 17.5%, while the [violent crime rate](#) increased by less than 1%.

“Public safety has to be paramount, but responding just to sensational crimes ... does not necessarily reduce crime,” said state Sen. Nancy Skinner (D-Berkeley), a member of the penal code revision committee.

Instead, Skinner said, California should bolster diversion tactics such as mental health and rehabilitation programs that aim to cut crime rates without incarceration. Skinner wrote a law from the committee’s 2020 recommendation report to restrict sentence enhancements that she said overwhelmingly affect people of color.

That approach has drawn criticism from law enforcement representatives who argue the committee’s recommendations don’t consider victims.

“They don’t really have a balanced group, it seems,” said Michele Hanisee, president of the Assn. of Deputy District Attorneys for Los Angeles County. “They’re in lockstep with what they want to accomplish, which is across-the-board reduction in incarceration without necessarily a reasonable consideration of victims’ rights and the seriousness of some of these offenses.”

Hanisee said that the committee is attempting to solve complex social and socioeconomic issues through changes to the criminal justice system.

“It’s really not fair to expect prosecutors to be the ones to resolve these inequities when the harm has already occurred, when lack of opportunities, lack of education

has already occurred,” she said.

Susan Burton, the founder of A New Way of Life Reentry Project in Los Angeles County, sees it differently.

The penal code, Burton said, was written with an “eye toward solving social ills through incarceration and punishment.” She was incarcerated six times, but said she was never “offered any meaningful help or support” for a substance addiction that developed after her son was accidentally hit and killed by an off-duty LAPD officer in 1982.

“The approach they took was really harsh, had no compassion and was ineffective,” she said.

Newsom granted Burton a pardon in 2019, and she’s since become an advocate for reentry programs that help people find employment and housing.

Broader policy changes, though, will take time. Some of the committee’s recommendations require a simple majority vote in both houses of the Legislature. Other proposals would require either a two-thirds majority vote by lawmakers or a statewide ballot measure.

Romano said ending life sentences without parole and eliminating the three-strikes law are changes that would probably need to be approved by voters.

“Three strikes, life without parole, those would both need to be reformed by votes of the people through ballot measure,” he said. “Which we don’t envision anytime soon.”

In the meantime, members have outlined other ways to soften the three-strikes law, a 1994 ballot measure to double a sentence or send someone to prison for life if they are a repeat offender with a “serious” or “violent” felony record.

California prisons now hold more than 33,000 people serving three-strikes sentences, according to the committee’s report, and 80% are people of color.

The committee recommended the Legislature start with a five-year “washout period,” meaning strikes older than that couldn’t be counted toward a longer sentence. Juvenile strikes should also be excluded, the panel wrote, and sentences shouldn’t be doubled if there’s a prior strike but the new offense isn’t serious or violent.

The committee also recommended a gradual modification of life without parole. A sentence should be reexamined after 25 years of imprisonment, the report said, and the Board of Parole Hearings could recommend some people for clemency.

Kamlager said she’s interested in more changes to sentencing practices and expanding ways to release people on good behavior. With the committee’s recommendations in hand, she’ll have a robust list of options to choose from.