

Dear Subscriber:

Enclosed is the 2021 update for *Sentencing California Crimes*, Volumes 1 and 2, published by The Rutter Group, a Thomson Reuters Business.

### **Filing Instructions**

**REMOVE AND RECYCLE** all of the pages from behind all of the tabs, retaining the tabs.

**INSERT** the new pages behind their respective tabs.

We love to hear from you! If you have suggestions or comments about our publications, please don't hesitate to call us at 1-800-747-3161 or write us at [west.rutter\\_customer\\_service@thomson.com](mailto:west.rutter_customer_service@thomson.com).

For further information on our publications and seminars, please visit us at [www.ruttergroup.com](http://www.ruttergroup.com) or [www.rutteronline.com](http://www.rutteronline.com).

Thank you for your continued patronage.

Sincerely,

The Rutter Group



# SENTENCING CALIFORNIA CRIMES

---

---

## **J. RICHARD COUZENS**

Judge of the Superior Court  
County of Placer (Ret.)

## **TRICIA A. BIGELOW (RET.)**

Presiding Justice, Court of Appeal,  
2<sup>nd</sup> Appellate District, Div. 8 (Ret.)

## **GREGG L. PRICKETT**

Judge of the Orange County Superior Court

**September 2021-2022**

CONTINUING LEGAL EDUCATION  PROGRAMS AND PUBLICATIONS

**THE RUTTER GROUP™**

A DIVISION OF THOMSON REUTERS

*For Customer Assistance Call 1-800-328-4880*

© 2021 Thomson Reuters/The Rutter Group, 9/2021

Mat #42695321

Copyright © 2021 The Rutter Group, a Thomson Reuters business.

Permission is hereby granted for the copying of pages or portions of pages of this book by photocopy, Xerox or other similar process, or by manual transcription, by or under the direction of licensed attorneys for use in the practice of law. Otherwise, all rights reserved; no copying for in-house training distribution or other use is permitted that will infringe the copyright without the express written consent of The Rutter Group, a Division of West, a Thomson Reuters Business.

**To contact us:** Write to The Rutter Group at 15760 Ventura Blvd., Suite 630, Encino, CA 91436; or phone (818) 990-3260, tollfree (800) 747-3161; or fax (818) 986-2180; or visit our website, [www.ruttergroup.com](http://www.ruttergroup.com).

This book should be cited as Couzens, Bigelow & Prickett, SENTENCING CALIFORNIA CRIMES (The Rutter Group 2020).

*Please note:* Programs and publications by The Rutter Group (TRG), a Division of West, a Thomson Reuters Business, are intended to provide attorneys with current and accurate information about the subjects covered. However, such information may not be sufficient in dealing with a client's particular legal problem, and TRG does not warrant or represent its suitability for such purpose. Attorneys attending programs presented by TRG or using its publications do so with the understanding that TRG is not engaged in the practice of law and does not render legal, accounting or other professional services; and that the information published by TRG should not be relied upon as a substitute for independent research to original sources of authority.

## **Notice to Reader**

Every effort is made to keep these materials current, including discussion of the most recently published cases. Accordingly, some of the cited cases may not be final. Reference should be made to the Cumulative Subsequent History Table in the California Official Reports to obtain the current status of any cited case.



## About the Authors



**J. Richard Couzens** is a retired superior court judge, having served on the Placer County bench for over 36 years. He remains on full-time active assignment in the Assigned Judges Program. Judge Couzens was Editor-in-Chief of the University of California, Davis Law Review, and was a law clerk to California Supreme Court Chief Justices Roger Traynor and Donald Wright. He has served on the California

Judicial Council and the California State-Federal Judicial Council. Judge Couzens has been actively involved in many Judicial Council advisory committees, including being chair of the Criminal Law Standing Advisory Committee. He has written and taught on a wide variety of topics in juvenile and criminal law. Judge Couzens is a co-author of “California Three Strikes Sentencing” and “Sex Crimes: California Law and Procedure,” published by The Rutter Group. He has been a regular member of the faculty of the B.E. Witkin Judicial College since 1995, primarily teaching criminal law. In 2007-2008 he was designated the on-site supervisor of the Chief Justice’s special criminal trial reduction program in Riverside County. In 2008 Judge Couzens was named Jurist of the Year by the California Judicial Council.



**Tricia A. Bigelow** was the Presiding Justice of the California Court of Appeal, Second District, Division 8; she retired in 2021.



**Gregg L. Prickett** was appointed in 1995 to the Orange County Superior Court and since 1999 has been exclusively presiding over serious felony trials. He currently serves as the supervising judge of the criminal courts of Orange County. Prior to his appointment to the bench, he served as a prosecutor with the Orange County District Attorney for 13 years, doing capital litigation during the last five of those years.

Judge Prickett has served on the California Judicial Council's Advisory Committee on Criminal Jury Instructions (CALCRIM). He has been a regular member of the faculty of the B.E. Witkin Judicial College since 2007. He has been an active instructor in judicial education since 2002 on such subjects as criminal law, evidence, and procedure. Judge Prickett has been an adjunct professor of trial practice at Chapman University School of Law in since 2008.

## Preface

We've all heard the phrase "do the crime, do the time." As so eloquently stated in *People v. Neely*, it's a "bedrock principle of criminal law; straightforward, simple, and concise. A defendant should know the consequences likely to flow from committing a crime. Likewise, the prosecutor, defense counsel and sentencing judge should know the length of the sentence and the rules for its determination. But, often they do not.

"For over 30 years, opinions of the California Courts of Appeal have commented on the frustrating and needless complexity of the Determinate Sentencing Law (DSL). Reversals and remands for resentencing resulting from the misapplication of the DSL litter the pages of appellate decisions, both published and unpublished. This is yet another such case to fall victim to the 'labyrinthine procedures,' of the 'legislative monstrosity' whose 'mind-numbingly complicated' statutes are 'capable of ensnaring even its most erudite aficionados.' Here, the collective experience and wisdom of the trial judge, the prosecutor and defense counsel resulted in an unlawful sentence whose pronouncement violated the rules governing (1) the imposition of consecutive sentences that implicate indeterminate and determinate terms, (2) the proper selection of a base term for a given offense, and (3) the designation of appropriate principal and subordinate terms under the DSL." (*People v. Neely* 176 Cal. App. 4th 787, 791, 97 Cal. Rptr. 3d 913 (2d Dist. 2009); footnotes omitted.)

The complex and confusing rules that compose California's criminal sentencing scheme are the result of the Determinate and Indeterminate Sentencing laws' beginnings, with a myriad of overlays brought about by both voter initiatives and legislative processes. The interaction of the Determinate and Indeterminate Sentencing laws meshed with such specialized laws as the Three Strikes law, the One Strike law, Proposition 36 (drugs), the gang statutes, and domestic violence laws has created an exceptionally elusive series of rules and procedures, frequently counter-intuitive and in conflict. Sometimes the relatively simple sentencing statutes have experienced judges and practitioners in a quagmire. Indeed, the complexity of the Determinate Sentencing Law caused one appellate justice to observe: "As a sentencing judge wends his way through the labyrinthine procedures of section 1170 of the Penal Code, he must wonder, as he utters some of its more esoteric incantations,

if, perchance, the Legislature had not exhumed some long-departed Byzantine scholar to create its seemingly endless and convoluted complexities. Indeed, in some ways it resembles the best offerings of those who author bureaucratic memoranda, income tax forms, insurance policies or instructions for assembly of packaged toys.” (*Community Release Bd. v. Superior Court*, 91 Cal. App. 3d 814, 815 n.1, 154 Cal. Rptr. 383 (4th Dist. 1979))

*Sentencing California Crimes* is the authors’ attempt to demystify the complex sentencing rules and procedures applicable to California crimes. Sentencing is understood best by presenting the rules in a linear manner like a sentencing proceeding. There is a beginning, a middle, and an end—as is presented in this treatise. We hope these materials will assist judges, prosecutors, and defense counsel by providing straightforward guidelines and relevant statutory and case law.

### **The Terminology**

Those practitioners new to criminal law, as with any particular area of the law, will find judges and attorneys using a highly refined technical language as a shorthand to more complex practices and concepts. Phrases such as “a bullet,” “a *Harvey* waiver,” and “wobbler” abound the discussion of cases and possible settlement. Appendix A offers a glossary of the most common of these words, phrases and sections.

### **Additional Resources**

Appendix B provides a list of additional sentencing resources for use by judges and practitioners.

### **Acknowledgments**

The authors gratefully acknowledge the generous assistance of the following persons in the preparation of these materials: Hon. John J. “Jack” Ryan, Orange County Superior Court (Ret.); Hon. Russell Scott, Monterey County Superior Court; Hon. Roger Warren, Sacramento County Superior Court (Ret.); Hon. David Wesley, Los Angeles Superior Court; Hon. Phil Pennypacker, Santa Clara Superior Court; Hon. Morris Jacobson, Alameda Superior Court; Hon. Dylan Sullivan, El Dorado Superior Court; Theresa Jaurequi, staff attorney for the Los Angeles Superior Court; and Andrea McCann, staff attorney for the Center for Judicial Education and Research (CJER), the education division of the Administrative Office of the Courts.

### **Citations**

Unless otherwise indicated, all statutory citations are to the California Penal Code.



**THOMSON REUTERS**  
**WESTLAW™**

**MOST PREFERRED ONLINE LEGAL RESEARCH SERVICE**

Thomson Reuters Westlaw has been voted the #1 Best Online Legal Research vendor year-after-year by industry professionals. That's because we continually invest more than any other online legal research provider in our people and technology where it matters most. As a result, you find exactly what you need quickly and confidently.

- Build the strongest argument with the most comprehensive collection of legal content
- Deliver better results confidently with WestSearch®, the only search engine designed specifically for the law
- Rely on the most current version of the law with proprietary editorial enhancements
- Access your legal research anytime, anywhere with the free Westlaw apps

---

LEARN MORE: [legal.thomsonreuters.com](https://legal.thomsonreuters.com)

SIGN ON: [westlaw.com](https://westlaw.com)

24/7 REFERENCE ATTORNEYS: 1-800-REF-ATTY (733-2889)

## THOMSON REUTERS PROVIEW™

**This title is one of many now available on your tablet as an eBook.**

Take your research mobile. Powered by the Thomson Reuters ProView™ app, our eBooks deliver the same trusted content as your print resources, but in a compact, on-the-go format.

ProView eBooks are designed for the way you work. You can add your own notes and highlights to the text, and all of your annotations will transfer electronically to every new edition of your eBook.

You can also instantly verify primary authority with built-in links to WestlawNext® and KeyCite®, so you can be confident that you're accessing the most current and accurate information.

**To find out more about ProView eBooks and available discounts, call 1-800-328-9352.**