

Staff Memorandum 2022-11
Draft Minutes of September 2, 2022 Meeting

The Committee on Revision of the Penal Code held a meeting on September 2, 2022. 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,

Rick Owen
Senior Staff Counsel

DRAFT MINUTES OF MEETING
COMMITTEE ON REVISION OF THE PENAL CODE
September 2, 2022

A meeting of the Committee on Revision of the Penal Code was held on September 2, 2022. Consistent with Government Code Section 11133, the meeting was held as an online video webinar.

Committee:

Present: Michael Romano, Chairperson
Hon. Peter Espinoza, Ret.
Hon. Thelton Henderson, Ret.
Assembly Member Alex Lee
Hon. Carlos Moreno, Ret.

Absent: Senator Nancy Skinner

Staff:

Present: Brian Hebert, Executive Director
Thomas M. Nosewicz, Legal Director
Joy F. Haviland, Senior Staff Counsel

Absent: Rick Owen, Senior Staff Counsel

Invited Presenters:

- Steven Raphael, Professor of Public Policy, UC Berkeley & Co-Chair California Racial Identity and Profiling Advisory (RIPA) Board
- Chauncey Smith, Senior Manager of Criminal Justice, Advancement Project California
- Maria Ponomarenko, Co-Founder and Counsel, NYU Policing Project
- Lizabeth Rhodes, Director, LAPD Office of Constitutional Policing

- Jordan Woods, Professor of Law, University of Arizona — James E. Rogers College of Law
- Paul Heaton, Professor of Law and Academic Director, Quattrone Center for the Fair Administration of Justice
- Judge Juliet J. McKenna, Associate Judge, Superior Court of the District of Columbia
- Carlie Ware, PARR Team Supervisor, Santa Clara County Public Defender
- Galit Lipa, Executive Director, Indigent Defense Improvement Division, Office of the State Public Defender
- Aditi Goel, Senior Program Manager, Sixth Amendment Center
- David Angel, Assistant District Attorney, Santa Clara County

Other Persons:

Up to 37 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 considered Memorandum 2022-07 and its first supplement, which both discuss traffic enforcement and assignment of counsel. The Committee received special presentations from Professors Steven Raphael, Co-Chair of the California Racial Identity and Profiling Advisory (RIPA) Board, and Paul Heaton, Academic Director of the Quattrone Center for the Fair Administration of Justice.

The Committee also heard from panelists on the following topics:

- Traffic Enforcement (Chauncey Smith, Mario Ponomarenko, Lizabeth Rhodes, and Jordan Woods).
- Assignment of Counsel (Judge Juliet J. McKenna, Carlie Ware, Galit Lipa, Aditi Goel, and David Angel).

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

The Committee also heard public comment.

The Committee discussed the data presented by Professors Raphael and Heaton and the ideas presented by the panelists. After discussion, the Committee directed staff to research the following topics:

- *Effectiveness of advising of the right to refuse a consent search:* Research whether requiring a *Miranda*-like warning before obtaining consent to search has any impact.
- *Racial disparities in stops for non-moving violations:* Determine whether data reflects racial disparities in stops for non-moving violations and analyze search and discovery rates in those types of stops.
- *Effect of traffic stop reforms in jurisdictions that have implemented them:* Research whether recently implemented traffic stop reforms have reduced the number of stops and racial disparities in those jurisdictions.
- *Geographical differences in traffic stop rates:* Investigate whether data showing the frequency of stops in specific neighborhoods of particular jurisdiction have been collected.
- *Use of “ruses” to obtain consent to search:* Research case law on legality of searches based on ruses or tricks.

Ongoing Business

Following a presentation by the Legal Director, the Committee discussed research updates and proposals from the May 2022 meeting on competency to stand trial and related matters. After discussion, the Committee directed staff to continue developing the following proposals as outlines in Memorandum 2022-09:

- Require judges to determine whether restoration to competency is appropriate in felony cases.
- Require judges to determine at the outset whether someone is unlikely to be restored to competency.
- Set a statutory timeline for the receipt of competency evaluation reports.
- Fund counties to share data to identify and address “frequent utilizers.”

Administrative Matters

The Committee considered Memorandum 2022-08 presenting draft Minutes for the Committee's May 17, 2022 meeting.

The Committee approved the Minutes without change.