

Staff Memorandum 2022-13
Possible Proposals for 2022 Annual Report

At its October 2022 meeting, the Committee on Revision of the Penal Code will consider which recommendations to include in its 2022 Annual Report. The attached slide deck presents proposals for the Committee's review and discussion. Staff will present these slides and may also provide other relevant data for the Committee's review as it considers if any of these recommendations should form a part of this year's Annual Report.

Respectfully submitted,

Thomas M. Nosewicz
Legal Director

Review of Recommendations for 2022 Annual Report

October 12, 2022



Previous Proposals



1. Establish system for state-funded restitution payments to victims

PROPOSAL:

- Allow the state to pay court-ordered direct restitution to victims up to a certain amount.
- State can then determine whether and how to collect from the convicted person.
- Exclude corporations, insurance companies, and government agencies that likely have other means to recover.
- More info: [Staff Memorandum 2022-06](#)



2. Create victims' right to restorative justice

PROPOSAL:

- Establish a victims' right to be informed of and participate in a restorative justice program that has the following elements:
 1. **Community-based**: programs should be run by community-based organizations
 2. **Pre-approved**: county officials identify and approve acceptable programs
 3. **Victim-centered**: informed early in the process and given the option to participate
 4. **Confidential**: accused person's statements excluded from other proceedings
 5. **Widely-applicable**: wide variety of misdemeanors and felonies should be eligible
 6. **Success**: completion leads to non-filing or dismissal
- More info: [Staff Memorandum 2022-06](#)



3. Modernize civil compromise

PROPOSAL:

- Allow civil compromise — which allows court to dismiss a case if victim says they have received “satisfaction” — for non-violent, non-sex offense felonies.
- Clarify the definition of “satisfaction” to more clearly allow additional non-monetary resolutions, such as community service.
- Court must still approve dismissing the case.
- More info: [Staff Memorandum 2022-06](#)



4. Judges determine whether competency restoration is appropriate

PROPOSAL:

- For almost all felony cases, judge determines whether restoration is in the interest of justice, considering:
 - weapon
 - injury
 - likelihood and length of a term of incarceration if convicted
 - other relevant circumstances
- Presumption against restoration and in favor of diversion or other treatment for:
 - non-violent felonies
 - wobblers
 - assault and robbery offenses
- Mental health evaluator should also opine on suitability for diversion.
- More info: [Staff Memorandum 2022-09](#)



5. Require judges to determine whether someone is unlikely to be restored

PROPOSAL:

- At competency hearings, court must decide whether there is a substantial probability a person will be restored to competency within the required time frame.
- The court-appointed evaluator should also opine whether it is substantially likely a person will be restored to competency.
- More info: [Staff Memorandum 2022-09](#)



6. Set a 30-day timeline for the receipt of competency evaluation reports

PROPOSAL:

- Set a mandatory statutory timeframe of 30-days for the court-appointed mental health evaluator to return the competency report to the court.
- Allow all parties to request extensions for good cause.
- More info: [Staff Memorandum 2022-09](#)



7. Fund counties to share data to identify and address “frequent utilizers”

PROPOSAL:

- Fund data collection, linkage, and analysis.
- Fund programs using that data to directly address the needs of frequent utilizers.
- More info: [Staff Memorandum 2022-09](#)



New Proposals



8. Prohibit traffic stops for non-safety-related traffic offenses

CURRENT LAW:

- Law enforcement can stop people for any observed traffic infraction, no matter how minor the violation.

PROPOSAL:

- Prohibit officers from stopping vehicles for specified non-moving and equipment violations that do not endanger public safety.

PROJECTED OUTCOME:

- Reduction in racial disparities in traffic stops and better targeting of law enforcement resources on more serious offenses.



8. Prohibit traffic stops for non-safety-related traffic offenses

DETAILS & DECISIONS:

- Prohibit law enforcement from making stops for the following types of traffic infractions:
 - Vehicle or equipment registration
 - Positioning or number of license plates
 - Lighting equipment
 - Window tints or obstructions
 - Bicycle equipment and operation



9. Limit consent searches during traffic stops

CURRENT LAW:

- Law enforcement is permitted to request a person's consent to search their person or car without any facts that support a suspicion of wrongdoing.

PROPOSAL:

- Allow consent searches during traffic stops only when law enforcement has a reasonable suspicion that the search will uncover evidence of a crime.

PROJECTED OUTCOME:

- Reduce racial disparities in consent searches and better use of law enforcement resources.



9. Limit consent searches during traffic stops

DETAILS & DECISIONS:

- Allow law enforcement to request a person's consent to search during a traffic stop only when there is reasonable suspicion that the search will uncover evidence of a crime.



10. Require prompt appointment of counsel

CURRENT LAW:

- At arraignment, defendants must be informed of their right to counsel and, if they are indigent, be appointed counsel to appear at a future date.

PROPOSAL:

- Require counsel to be appointed shortly after booking and before arraignment.
- Ensure counsel have access to arrested people and necessary information about them from jails and courts.

PROJECTED OUTCOME:

- Quicker connection to services, less violations of pretrial conditions, and improvements to public safety in reduced future arrests.



10. Require prompt appointment of counsel

DETAILS & DECISIONS:

1. Require counsel be assigned promptly after arrest: either sufficiently before arraignment so they can provide meaningful representation or within 24 hours of booking, whichever is earlier.
2. To facilitate prompt assignment of counsel:
 - a. Establish a presumption that a detained person is eligible for indigent defense services.
 - b. Require indigent defense counsel to be quickly notified of individuals who are being held in custody after an arrest.
 - c. Require local jails and courts to ensure that defense counsel and other members of the defense team, such as social workers, have access to detained people prior to formal appointment, without delaying the initial court appearance.
 - d. Allow people to waive the right to counsel only after they have spoken individually to a defense attorney.



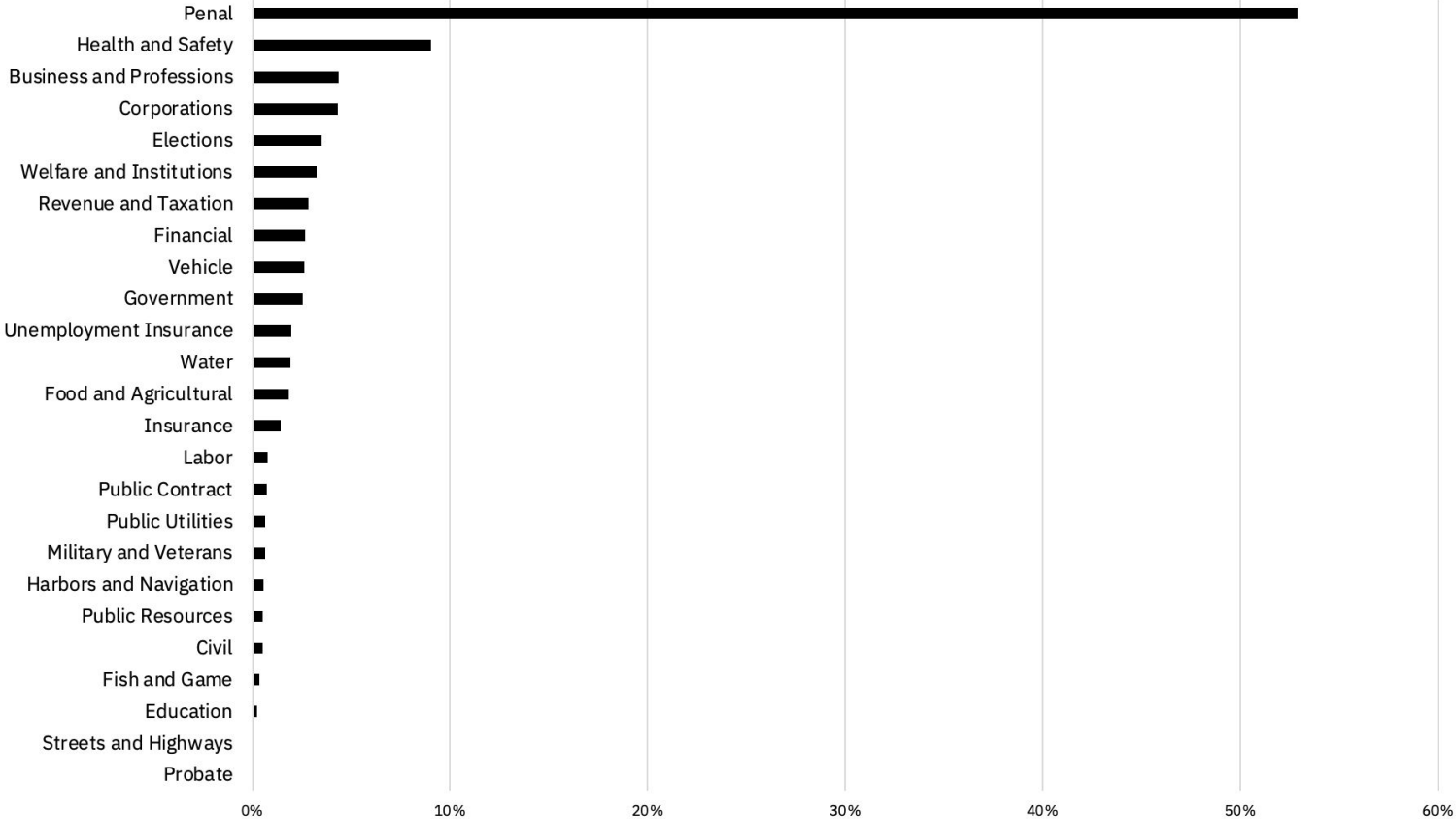
11. Penal Code offenses without convictions

PROPOSAL:

- California law has more than 1,400 felony offenses. 53% are in the Penal Code.
- With California Policy Lab, use data to see which offenses have not had a conviction in last 3, 5 or 10 years.
- On-going project: first phase will be limited to non-wobbler felony offenses in the Penal Code (about 300 offenses).
- Provide list with Committee's Annual Report for Legislature to decide if it wants to revisit any of the unused provisions.



Distribution of California Felony Offenses by Code



Source: Analysis of California Center for Judicial Education and Research *Felony Sentencing Handbook*