

**Staff Memorandum 2022-14**  
**Draft Minutes of October 11–12, 2022 Meeting**

The Committee on Revision of the Penal Code held a meeting on October 11–12, 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,

Joy F. Haviland  
Senior Staff Counsel

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***DRAFT*** MINUTES OF MEETING  
COMMITTEE ON REVISION OF THE PENAL CODE  
October 11–12, 2022

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A meeting of the Committee on Revision of the Penal Code was held on October 11–12, 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.  
Hon. Carlos Moreno, Ret.  
Senator Nancy Skinner

*Absent:* Asm. Isaac Bryan

**Staff:**

*Present:* Thomas M. Nosewicz, Legal Director  
Joy F. Haviland, Senior Staff Counsel  
Rick Owen, Senior Staff Counsel

**Invited Presenters:**

- Michelle Parris, Program Director, Vera Institute of Justice
- Erwin Chemerinsky, Dean and Jesse H. Choper Distinguished Professor of Law, Berkeley Law School
- Chief Justice Stuart Rabner, New Jersey Supreme Court
- Sandra Susan Smith, Daniel & Florence Guggenheim Professor of Criminal Justice, Harvard Kennedy School and Director, Malcolm Wiener Center for Social Policy

- Stephanie Campos-Bui, Deputy Director, Policy Advocacy Clinic, Berkeley Law School
- Irene Vidyanti, Principal Analyst, Los Angeles County Office of the CIO
- Kate Weisburd, Associate Professor of Law, The George Washington University Law School
- Kendra Zoller, Deputy Legislative Director, California Department of Insurance
- Andrew Gulcher, Regional Supervising Investigator, California Department of Insurance
- Hon. J. Richard Couzens (Ret.)
- Hon. Lisa Rodriguez, San Diego County Superior Court
- Hon. Brett Alldredge, Tulare County Superior Court
- Hon. George Eskin (Ret.)
- Sue Burrell, Policy Director Emeritus, Pacific Juvenile Defender Center
- Ryan Couzens, Assistant Chief Deputy District Attorney, Yolo County
- Tiffanie Synnott, Supervising Public Defender, Sacramento County
- Bill Armstrong, President, California Bail Agents Association
- Jeff Clayton, Executive Director, American Bail Coalition
- Gina Clayton-Johnson, Executive Director, Essie Justice Group
- Chief Probation Officer David Koch, Sonoma County
- Insha Rahman, Vice President, Advocacy and Partnerships, Vera Institute of Justice
- Alison Shames, Director, Center for Effective Public Policy
- Matt Alsdorf, Associate Director, Center for Effective Public Policy

**Other Persons:**

Up to 72 members of the public observed the meeting. 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 2022-10 and its first supplement, which discuss bail, pretrial release, and other related matters. The Committee received presentations from Michelle Parris, Sandra Susan Smith, Kendra Zoller and Andrew Gulcher, and Sue Burrell.

The Committee also heard from panelists on the following topics:

- Perspectives from State Supreme Courts (Dean Erwin Chemerinsky, Chief Justice Stuart Rabner)
- Data Overview (Stephanie Campos-Bui, Irene Vidyanti, Professor Kate Weisburd)
- Perspectives from the Bench (Judge Richard Couzens, Judge Lisa Rodriguez, Judge Brett Alldredge, Judge George Eskin)
- Perspectives from Practitioners (Ryan Couzens, Tiffanie Synnott, Bill Armstrong, Jeff Clayton, Gina Clayton, David Koch)
- Insights from Other Jurisdictions (Insha Rahman, Alison Shames, Matt Alsdorf)

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

The Committee also heard public comment.

The Committee discussed bail, pretrial, and the ideas presented by the panelists. After discussion, the Committee directed staff to research the following topics:

- *Creating a way to pay or promise to pay cash bail directly to the court:* Allowing courts to accept an arrested person's promise to pay cash bail directly to the court, whether through a 10% (or less) refundable deposit or a written promise.
- *Expanding administrative release:* Setting guidelines in the Penal Code for the administrative release of people arrested for some felony offenses, in addition to misdemeanors.
- *Creating a statewide bail schedule:* Requiring the Judicial Council to set a statewide bail schedule with input from stakeholders and guided by evidence-based practices for offenses that are not eligible for administrative release.
- *Codifying and clarifying the requirements of In re Humphrey:* Specifying in the Penal Code that that cash bail may only be set after considering all other nonfinancial conditions, creating a process for courts to determine a detained person's ability to pay, removing restrictions on a court's ability to depart from the bail schedule, and creating a standard for pretrial detention.
- *Arraignment should occur no later than 48 hours of arrest:* Removing the exception for Sundays and holidays from Penal Code § 825.
- *Codify the Fourth Amendment requirement of a prompt judicial review of probable cause:* Require courts to make a record of the determination in each case for both adult and juvenile cases.
- *Extend AB 1228 to people on all forms of supervision:* Mirroring the Pretrial Detention Workgroup's recommendation to apply pretrial release and detention screening procedures to persons charged with violations of all forms of supervision.

### **Ongoing Business**

The Committee considered Memorandum 2022-12, which presented updates on research from the September 2022 meeting.

The Committee considered Memorandum 2022-13, which presented updates on possible Committee recommendations. The Legal Director gave a presentation outlining the possible recommendations and the Committee heard public comment.

The Committee gave staff provisional guidance to further develop and draft the following recommendations for the Committee's 2022 annual report:

1. Establish state-funded direct restitution payments to victims.
2. Create victims' right to restorative justice.
3. Modernize civil compromise.
4. Judges determine whether competency restoration is appropriate.
5. Require judges to determine whether someone is unlikely to be restored to competency.
6. Set a 30-day timeline for the receipt of competency evaluation reports.
7. Encourage counties to share data to identify and address "frequent utilizers."
8. Prohibit traffic stops for non-safety-related traffic offenses.
9. Limit consent searches during traffic stops.
10. Require prompt appointment of counsel.
11. Provide a list with the Annual Report to the Legislature of non-wobbler Penal Code felony offenses without convictions in the last 3, 5, or 10 years.

Staff will prepare a draft of the 2022 Annual Report for the Committee to review at its next meeting on November 29, 2022.

### **Administrative Matters**

The Chair welcomed Assemblymember Isaac Bryan to the Committee, although he was unable to attend.

The Committee considered Memorandum 2022-11 presenting draft Minutes for the Committee's September meeting.

The Committee approved the Minutes without change.