

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

relating to

**Elimination of Obsolete Provisions in
Penal Code Sections 1377 and 1378**

December 10, 1956

LETTER OF TRANSMITTAL

To HIS EXCELLENCY GOODWIN J. KNIGHT
Governor of California
and to the Members of the Legislature

The California Law Revision Commission was authorized by Resolution Chapter 207 of the Statutes of 1955 to make a study to determine whether Sections 1377 and 1378 of the Penal Code should be revised to eliminate certain language contained therein. The commission herewith submits its recommendation relating to this matter.

THOMAS E. STANTON, JR., *Chairman*
JOHN D. BABBAGE, *Vice Chairman*
JESS R. DORSEY, *Member of the Senate*
CLARK L. BRADLEY, *Member of the Assembly*
JOSEPH A. BALL
BERT W. LEVIT
STANFORD C. SHAW
JOHN HAROLD SWAN
SAMUEL D. THURMAN
RALPH N. KLEPS, *Legislative Counsel, ex officio*

JOHN R. McDONOUGH, JR.
Executive Secretary
December 10, 1956



RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

Relating to Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378

Penal Code Sections 1377 and 1378 provide as follows:

§ 1377. Certain Offenses for Which the Party Injured Has a Civil Action May Be Compromised. *When a defendant is held to answer on a charge of misdemeanor*, for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in the next section, except when it is committed:

1. By or upon an officer of justice, while in the execution of the duties of his office;
2. Riotously;
3. With an intent to commit a felony. [Emphasis added.]

§ 1378. Compromise to Be by Permission of the Court. Order Thereon to Bar Another Prosecution. If the party injured appears before the Court *to which the depositions are required to be returned*, at any time before trial, and acknowledges that he has received satisfaction for the injury, the Court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but in such case the reasons for the order must be set forth therein, and entered on the minutes. The order is a bar to another prosecution for the same offense. [Emphasis added.]

The language emphasized in these sections as set out above is both unnecessary and confusing and the commission recommends that it be eliminated.

The phrase "When a defendant is held to answer on a charge of misdemeanor" in Section 1377 is inaccurate. This language implies that there is, in connection with every misdemeanor action, a preliminary examination to determine whether the person accused shall be required to plead to the charge that he has committed an offense. Although this procedure is still followed in the case of certain misdemeanors tried in the superior court in counties not having a municipal court, it is not followed in the case of most misdemeanors which are tried in the inferior courts. In the latter cases, misdemeanor actions are initiated by the filing of a verified complaint in a court having jurisdiction of the offense charged.¹ The defendant is then arraigned² and may demur³ or plead⁴ to the charge.

The reference in Section 1378 to the court "to which the depositions are required to be returned" is ambiguous because it is not clear what

¹ CAL. PEN. CODE §§ 740, 949.

² *Id.*, § 976.

³ *Id.*, §§ 1002, 1004.

⁴ *Id.*, § 1016.

depositions are meant.⁵ Moreover, there is no need to identify the court to which reference is made by this language; it should be replaced by language referring simply to the court in which the action is pending.

The commission also recommends that, in accordance with the practice which has been adopted by the Legislative Counsel, Sections 1377 and 1378 be revised to delete the captions which were originally enacted as part of those sections.

The commission's recommendation would be effectuated by the enactment of the following measure:⁶

An act to amend Sections 1377 and 1378 of the Penal Code, relating to compromising certain public offenses by leave of court.

The people of the State of California do enact as follows:

SECTION 1. Section 1377 of the Penal Code is amended to read:

~~1377. Certain Offenses for Which the Party Injured Has a Civil Action May Be Compromised.~~ When a defendant is held to answer on a charge of misdemeanor, for which the person injured by the act constituting the offense a misdemeanor has a remedy by a civil action, the offense may be compromised as provided in the next section, except when it is committed:

1. By or upon an officer of justice, while in the execution of the duties of his office;
2. Riotously;
3. With an intent to commit a felony.

SEC. 2. Section 1378 of the Penal Code is amended to read:

~~1378. Compromise to Be by Permission of the Court. Order Thereon to Bar Another Prosecution.~~ If the party person injured appears before the Court to in which the depositions are required to be returned, the action is pending at any time before trial, and acknowledges that he has received satisfaction for the injury, the Court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but in such case the reasons for the order must be set forth therein, and entered on the minutes. The order is a bar to another prosecution for the same offense.

⁵ The reference may be to (a) depositions taken prior to issuing a warrant for arrest pursuant to former Section 811 of the Penal Code (repealed in 1951 by Cal. Stat. 1951, c. 1674, § 26, p. 3334); (b) depositions taken at the time of the preliminary examination pursuant to Penal Code Section 869; (c) depositions of potential witnesses at the trial taken conditionally in the State pursuant to either Section 882 or Section 1335 of the Penal Code; or (d) depositions of witnesses taken outside the State pursuant to Penal Code Section 1349 *et seq.* Penal Code Sections 870, 883, 1351, 1354, 1356, 1357, 1358, 1360 and 1361 refer to the "return" of various of these depositions.

⁶ Matter in italics would be added to the present law; matter in "strikeout" type would be omitted.

