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## **BAGLEY-KEENE OPEN MEETING ACT**

Meetings of the Board of State and Community Corrections (BSCC) are required to be conducted as “open meetings,” in accordance with the Bagley-Keene Open Meeting Act (OMA). The OMA is found in Government Code sections 11120-11132<sup>1</sup>. Newly appointed members of a state board or commission must be provided a copy of the OMA, and a complete copy is attached for you. This summary covers the OMA’s major provisions, which are most apt to be relevant to the BSCC.

Generally, the OMA requires all state bodies, including the BSCC, to publicly notice their meetings, prepare agendas, accept public testimony and conduct meetings and reach decisions on their business in public unless specifically authorized by the OMA to meet in closed session.

### **Meeting Defined**

A meeting occurs when a quorum of a state body convenes in one location to address issues under the body’s jurisdiction. (§ 11122.5) The California Penal Code defines a quorum as ten members of the nineteen-member BSCC. (§ 6025)

### **Notice of Meetings/Agenda**

At least 10 days before an open meeting, notice of the meeting must be given along with an agenda that sufficiently describes the items of business to be transacted or discussed. Notice must also be made available on the Internet and must include the agenda. (§§ 11125(a), 11125(b)). The OMA provides limited exceptions to the agenda requirements, primarily in cases of emergency (see below), or where the body becomes aware of an urgent matter after the 10-day notice period has passed. (§11125.3)

### **Public Access to Meetings**

All meeting locations, including teleconference locations, must comply with the Americans with Disabilities Act. (§ 11123.1) Also, the BSCC cannot prohibit attendees from meetings based on discriminatory factors such as race, gender, religion, and national origin. (§ 11131) The BSCC may not impose conditions on attending open meetings such as signing an attendance sheet or requiring disclosure of other information. (§ 11124) As such, although we ask that individuals who wish to address the BSCC to call in advance, advanced notice cannot be required.

The public may address the BSCC on any agenda item subject to certain procedural limitations the BSCC may adopt. (§ 11125.7) It has been the practice of the BSCC to ask for public comment early in its agenda. Generally, the Chair will direct anyone who does want to speak to limit his or her comments to three to five minutes if possible.

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<sup>1</sup> All statutory references are to the CA Government Code unless otherwise indicated.



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## **Special Meetings**

The OMA provides for special meetings under limited circumstances, including discussing pending litigation, proposed legislation, licensing matters, and certain personnel actions. A special meeting requires only 48 hours notice, but mandates a two-thirds vote to authorize the special meeting itself, as well as a factual basis for the shortened notice period, among other procedural requirements. (§ 11125.4)

## **Emergency Meetings**

Section 11125.5 permits an emergency meeting when “prompt action is necessary due to the disruption or threatened disruption of public facilities.” A majority of the BSCC determines whether an emergency situation has occurred due to a work stoppage or crippling disaster that severely impairs public health or safety. After determining an emergency meeting is necessary, the BSCC must immediately notify those who have requested to be advised of meetings.

## **Serial Meetings**

The point of the OMA is that any decisions by a board or commission to take a particular action must be aired out in public. As such, the OMA prohibits communication between BSCC members to develop a collective concurrence on a matter outside of duly noticed meetings. (§ 11122.5(b)) The communication may not be direct, through the use of devices, or through intermediaries. Typically, a “serial meeting” is a series of communications each of which involves less than a quorum of a board, but when taken as a whole engages a majority of the body’s members. What may be defined as a serial meeting is not always clear under the OMA. In general, the point here is that you may not confer with one another about how to vote on an item in person or through anyone else. This may be the single most important point about the OMA.

You may wonder, then, why staff briefs you on the BSCC meeting agendas prior to the meeting. Staff discussing the topics with you and trying to address your questions in advance of the meeting is acceptable for two reasons. One, we do not discuss the reactions of any single BSCC member with the other BSCC members.

Second, we are not advising you how to vote but rather reviewing the information we are presenting so we can determine if we have gaps in the presentation that need to be addressed before the meeting.



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### **Meetings by Teleconference**

Section 11123(b)(1) permits BSCC meetings by teleconference so long as the public can access the teleconference location and can address the BSCC from that location. Additionally, the BSCC must post the agenda at each teleconference location.

### **Public Access to Records**

The OMA requires that the BSCC make available to the public access all non-confidential records provided to the majority of the BSCC at or before the meeting. (§ 11125.1) As such, all materials provided to you in your briefing binders are also available to the public at the meetings.

### **Closed Session**

Section 11126.3 of the OMA permits closed sessions only under limited circumstances, including discussing personnel matters, pending litigation, real property negotiations, and security matters. The BSCC must publicly report any personnel decision made in a closed session. (§ 11125.2)

Whenever staff proposes to include a closed session in a meeting, staff will prepare a rationale for the closed session and detailed guidance on how to proceed.

\*The Official “Handy Guide to The Bagley-Keene Open Meeting Act 2004” can be located online at the following address:

[https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/bagleykeene2004\\_ada.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/bagleykeene2004_ada.pdf)