

8/14/69

Memorandum 69-95

Subject: Annual Report

Attached hereto is a statement to be included in the next Annual Report on California statutes repealed by implication or declared unconstitutional since the last Annual Report. The cases mentioned in the statement are reproduced for your convenience.

Respectfully submitted,

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REPORT ON STATUTES REPEALED BY IMPLICATION
OR HELD UNCONSTITUTIONAL

Section 10331 of the Government Code provides:

The Commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States.

Pursuant to this directive the Commission has made a study of the decisions of the Supreme Court of the United States and of the Supreme Court of California handed down since the Commission's last Annual Report was prepared. ¹ It has the following to report:

(1) No decision of the Supreme Court of the United States or of the Supreme Court of California holding a statute of this state repealed by implication has been found.

(2) No decision of the Supreme Court of the United States holding a statute of this state unconstitutional has been found.

(3) Two decisions of the Supreme Court of California holding a statute of this state unconstitutional have been found.

Sections 478-504 of the Code of Civil Procedure authorized mesne civil arrest and bail but formerly did not require that the defendant be brought into court after his arrest or that he be notified of his rights. ²

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1. This study has been carried through 71 Adv. Cal. 733 (1969) and 89 St. Ct. 2151 (1969).
 2. Section 503 of the Code of Civil Procedure provided that the arrested defendant could apply to the court at any time before trial or entry of judgment to vacate the arrest order or to reduce the amount of bail.

In In re Harris,³ it was held that the former procedure for mesne process of civil arrest and bail did not provide the due process of law required by the Fourteenth Amendment to the United States Constitution and Article I, section 13, of the California Constitution. Legislation intended to correct this defect in the mesne process of civil arrest and bail⁴ was enacted at the 1969 Regular Session.

In Purdy & Fitzpatrick v. State,⁵ the California Supreme Court held Labor Code Section 1850 and related sections unconstitutional. Labor Code Sections 1850-1854⁶ prohibit the employment of aliens on public work except in special cases.

3. 69 Adv. Cal. 503, 447 P.2d 149, 72 Cal. Rptr. 341 (1968).

4. Cal. Stats. 1969, Ch. [SB 872].

5. 71 Adv. Cal. 587, P.2d , Cal. Rptr. (1969).

6. In view of Purdy & Fitzpatrick, Labor Code Sections 1940-1947 may also be constitutionally suspect. These sections prohibit the employment of any alien city, county, or department of the state.