

First Supplement to Memorandum 95-47

Best Evidence Rule: Conforming Revisions and Transitional Provision

The staff proposes to add the following conforming revisions and transitional provision to the draft tentative recommendation calling for repeal of the best evidence rule:

CONFORMING REVISIONS

SEC. _____. Section 872.5 of the Penal Code is repealed.

§ 872.5 (repealed). Best evidence rule inapplicable to preliminary examinations

~~872.5. The best evidence rule shall not apply to preliminary examinations.~~

Comment. Section 872.5 is repealed to reflect the repeal of the best evidence rule. See Comment to Section 1520.

SEC. _____. Section 1417.7 of the Penal Code is amended, to read:

§ 1417.7 (amended). Photographic records of exhibits

1417.7. Not less than 15 days before any proposed disposition of an exhibit pursuant to Section 1417.3, 1417.5, or 1417.6, the court shall notify the district attorney (or other prosecuting attorney), the attorney of record for each party, and each party who is not represented by counsel of the proposed disposition. Before the disposition, any party, at his or her own expense, may cause to be prepared a photographic record of all or part of the exhibit by a person who is not a party or attorney of a party. The clerk of the court shall observe the taking of the photographic record and, upon receipt of a declaration of the person making the photographic record that the copy and negative of the photograph delivered to the clerk is a true, unaltered, and unretouched print of the photographic record taken in the presence of the clerk and, the clerk shall certify the photographic record as such without charge and retain it unaltered for a period of 60 days following the final determination of the criminal action or proceeding. ~~A certified photographic record of exhibits shall be deemed a certified copy of a writing in official custody pursuant to Section 1507 of the Evidence Code.~~

Comment. Section 1417.7 is amended to reflect the repeal of the best evidence rule. See Comment to Section 1520.

Section 1417.7 is also amended to make technical changes.

TRANSITIONAL PROVISION

Uncodified (added). Operative date

SEC. ____ (a) Except as provided in this section, this act becomes operative on January 1, 1997.

(b) This act does not apply to an action or proceeding commenced before January 1, 1997.

Respectfully submitted,

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