

First Supplement to Memorandum 87-91

Subject: Annual Report (Unconstitutional Statutes Report)

A draft of the report on statutes repealed by implication or held unconstitutional for the 1987 Annual Report is set out below.

Respectfully submitted,

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REPORT ON
STATUTES REPEALED BY IMPLICATION
OR HELD UNCONSTITUTIONAL

Section 8290 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The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.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 reviewed the decisions of the United States Supreme Court and the California Supreme Court published since the Commission's last Annual Report was prepared¹ and has the following to report:

(1) No decision of the United States Supreme Court or the California Supreme Court holding a statute of this state repealed by implication has been found.

1. This study has been carried through 43 Cal. 3d 1077 (Advance Sheet No. 28, October 20, 1987), and 107 S.Ct. 3280 (Advance Sheet No. 18, July 15, 1987).

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

(3) One decision of the California Supreme Court holding a statute of this state unconstitutional has been found.³

In Mills v. Superior Court, 42 Cal. 3d 951 (1986), the court held that Penal Code Section 872, which permits the prosecution to present evidence at a preliminary examination by affidavit in certain circumstances, imposes an impermissible burden on a criminal defendant's right of cross-examination in violation of the due process clause of Article 1, Section 15, of the California Constitution.

2. In Perry v. Thomas, 107 S.Ct. 2520 (1987), however, the U.S. Supreme Court held that Labor Code Section 229, which permits wage collection actions to be maintained without regard to the existence of any private agreement to arbitrate, conflicts with Section 2 of the Federal Arbitration Act and is preempted by the Supremacy Clause of Article 6 of the United States Constitution.

3. In People v. Wade, 43 Cal. 3d 366 (1987), the court reaffirmed its holding in People v. Superior Court (Engert), 31 Cal. 3d 797, 806, 183 Cal. Rptr. 800, 647 P.2d 76 (1982), that Penal Code Section 190.2(a)(14), the heinous murder special circumstances provision, is unconstitutionally vague and overbroad.