

Fourth Supplement to Memorandum 88-59

Subject: Annual Report (Unconstitutional Statutes Report)

A draft of the report on statutes repealed by implication or held unconstitutional for the 1988 Annual Report is set out on page 2 of this supplement.

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STATUTES REPEALED BY IMPLICATION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The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.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(1) No decision of the United States Supreme Court or of the California Supreme Court holding a statute of this state repealed by implication has been found.

(2) No decision of the United States Supreme Court² or of the California Supreme Court holding a statute of this state unconstitutional has been found.

1. This study has been carried through 46 Cal. 3d 193 (Advance Sheet No. 22, August 18, 1988) and 108 S. Ct. 2922 (Advance Sheet No. 18, July 15, 1988).

2. In *Hicks on Behalf of Feiock v. Feiock*, 108 S.Ct. 1423 (1988), concerning contempt proceedings under Code of Civil Procedure Section 1209.5 on failure to pay child support, the United States Supreme Court held that, if the contempt proceedings are criminal in nature, the statute would violate the due process clause of the Fourteenth Amendment since the statute has the effect of presuming the ability to pay the ordered support. However, the court remanded the case for the purpose of determining whether the contempt proceedings were civil or criminal. See also *In re Hicks*, 180 Cal. App. 3d 649, 225 Cal Rptr. 748 (1986).