

First Supplement to Memorandum 90-132

Subject: 1990 Annual Report (Additional Material for Unconstitutional Statutes Report)

Attached to this supplement is a revised version of the "Report on Statutes Repealed by Implication or Held Unconstitutional" which is included in the 1990 Annual Report at page 2221. The revised material picks up a recent California Supreme Court case holding a statute unconstitutional.

Inclusion of this case also requires revision of the "Recommendations" part of the Annual Report to comply with Government Code Section 8290 which requires the Commission to recommend the repeal of unconstitutional statutes.

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Report on Statutes Repealed by Implication or Held Unconstitutional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The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.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 prepared³⁴ 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(1) No decision of the United States Supreme Court or the California Supreme Court holding a statute of this state repealed by implication has been found.

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

(3) One decision of the California Supreme Court held a statute of this state unconstitutional.³⁵

In *People v. Sanders*, 51 Cal. 3d 471, 520 (1990), the court reaffirmed its holding in *People v. Superior Court (Engert)*, 31 Cal. 3d 797 (1982), that the "heinous, atrocious, or cruel" special circumstance for imposing the death penalty under Penal Code Section 190.2(a)(14) is unconstitutionally vague.

Recommendations

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the

34. This study has been carried through 51 Cal. 3d 608 (Advance Sheet No. 30, November 6, 1990) and 110 S. Ct. 3309 (Advance Sheet No. 18, July 15, 1990).

35. One decision of the California Supreme Court imposed constitutional limitations upon the application of a state statute. In *People v. Prather*, 50 Cal. 3d 428, 787 P.2d 1012, 267 Cal. Rptr. 605 (1990), the court held that Section 28(f) of Article I of the California Constitution, which requires that prior felony convictions be used without limitation for the purpose of sentence enhancements, barred the application of Penal Code Section 1170.1(g) (sentence limited to twice the base term for the offense) to enhancements imposed for prior felony convictions.

One decision of the California Supreme Court imposed a procedural requirement in the application of a California statute. In *Mitchell v. Superior Court*, 49 Cal. 3d 1230, 783 P.2d 731, 265 Cal. Rptr. 144 (1990), the court held that Section 16 of Article I of the California Constitution requires that persons charged with contempt under the Red Light Abatement Law (Pen. Code § 11229) be afforded a jury trial.

topics previously authorized for study (see "Calendar of Topics Authorized for Study" set out as Appendix 1 to this Report).

Pursuant to the mandate imposed by Government Code Section 8290, the Commission recommends the repeal of the provision referred to under "Report on Statutes Repealed by Implication or Held Unconstitutional," *supra*, to the extent that that provision has been held unconstitutional and has not been amended or repealed.