

Admin.

October 2, 2012

## Memorandum 2012-38

**2012-2013 Annual Report (Staff Draft)**

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Attached to this memorandum is a staff draft of the Commission's 2012-2013 *Annual Report*. In the interest of saving photocopying and mailing costs, we have not reproduced the appendices to the Annual Report (e.g., text of Commission's governing statute, calendar of topics, cumulative table of legislative action on Commission recommendations, and Commission publications). After approval of the text of the Annual Report, the staff will add these appendices.

Much of the content of the Annual Report is routine, and does not change significantly from year to year. Matters requiring special attention are noted below.

## CONTINGENT TEXT

Because we are presenting the draft report in October, some portions of the draft are contingent on events that have not yet occurred. The contingent portions of the report have been temporarily flagged with [light shading and brackets].

For example:

- The disposition of two studies that *could* be completed at the December meeting (*Third Decennial Review of Exemptions from Enforcement of Judgments* and *Nonresidential Subdivisions*). The description of those matters as completed or pending studies is contingent on decisions that will be made in December.
- The Commission's decisions on new topics and priorities for 2013. Those decisions might require adjustments to the parts of the Annual Report that describe the Commission's anticipated 2013 work priorities.
- The final disposition of other bills in the 2011-12 legislative session could "chapter out" sections revised pursuant to a Commission recommendation. The enactment of those bills could affect the tally of sections affected by Commission recommendations.

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Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

Any of those matters could require purely technical adjustments to the report. Unless the Commission directs otherwise, the staff will make any necessary changes prior to publication of the report, under the staff's existing discretion to make editorial changes of that character. See *CLRC Handbook of Practice and Procedures*, Rule 2.7.4 (Dec. 2010).

### **Activities of Commission Members and Staff**

The report typically notes any activities of Commission members and staff related to the Commission's work, such as speeches made and articles published during the past year. See p. 26. **Please notify the staff if you have any activities of this nature to report, which would then be added to the draft.**

### EDITORIAL SUGGESTIONS

If you have any editorial suggestions relating to the draft, please be sure to inform the staff.

Respectfully submitted,

Steve Cohen  
Staff Counsel

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

*STAFF DRAFT*

2012-2013 Annual Report

California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, CA 94303-4739  
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Cite this report as *2012-2013 Annual Report*, 42 Cal. L. Revision Comm'n Reports 1 (2012).

## SUMMARY OF WORK OF COMMISSION

### **Community Redevelopment Law Clean-Up**

In 2011, a statute was enacted that required the Commission to prepare Community Redevelopment Law clean-up legislation, for submission to the Legislature and Governor by January 1, 2013. The Commission began its work on that topic on February 1, 2012, when the statutory mandate first operated. Nearly all of the Commission's resources were dedicated to that study until June 27, 2012, when the statute that required and authorized the study was repealed. As a result, the Commission had to cease its work on the topic. Although the study was not completed, substantial progress was made and it is likely that the Commission's work on the topic would be useful in any future efforts to reform or clean up community redevelopment law.

### **Recommendations to the 2012 Legislature**

In 2012, bills effectuating six Commission recommendations and part of a seventh were enacted, relating to the following subjects:

- Statutory clarification and simplification of CID law
- Trial court restructuring:
  - Rights and responsibilities of the county as compared to the superior court
  - Appellate jurisdiction of bail forfeiture
  - Writ jurisdiction in a small claims case
  - Statutes made obsolete by trial court restructuring
- Statutory cross-references to "Tort Claims Act"
- Ownership of amounts withdrawn from a joint account

In 2012, the Commission also submitted a report to the Legislature on the following subject, which did not recommend introduction of legislation:

- Charter schools and the Government Claims Act

**Recommendations to the 2013 Legislature**

In 2013, the Commission expects that the Legislature will consider legislation recommended by the Commission on the following subjects:

- Commercial and industrial common interest developments
- Statutory clarification and simplification of CID law (clean-up legislation)

**Commission Activities Planned for 2013**

During 2013, the Commission intends to work on the following major topics: the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA), mediation confidentiality, [commercial and industrial subdivisions,] revision of the Fish and Game Code[, and exemptions from enforcement of judgments: third decennial review]. The Commission will work on other topics as time permits.

## CONTENTS

	<i>Page</i>
Introduction .....	9
Community Redevelopment Law Clean-Up.....	10
2013 Legislative Program .....	11
Major Studies in Progress .....	11
Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) .....	11
Mediation Confidentiality .....	11
[Commercial and Industrial Subdivisions.....	12
Revision of the Fish and Game Code .....	12
[Exemptions from Enforcement of Judgments: Third Decennial Review .....	12
Other Subjects .....	12
Calendar of Topics for Study.....	12
Function and Procedure of Commission.....	13
Background Studies .....	14
Recommendations.....	15
Official Comments.....	16
Commission Materials as Legislative History .....	16
Use of Commission Materials To Determine Legislative Intent .....	18
Publications.....	23
Electronic Publication and Internet Access .....	23
Electronic Mail.....	23
MCLE Credit .....	24
Personnel of Commission .....	24
Commission Budget.....	26
Other Activities .....	26
National Conference of Commissioners on Uniform State Laws .....	26
Other Staff Activities .....	27

Legislative History of Recommendations in the 2012  
 Legislative Session.....28  
 Statutory Clarification and Simplification of CID Law.....28  
 Trial Court Restructuring .....28  
 Statutory Cross-References to “Tort Claims Act” .....29  
 Ownership of Amounts Withdrawn From Joint  
 Account .....29  
 Resolution Authorizing Topics for Study .....29  
 Report on Statutes Repealed by Implication or Held  
 Unconstitutional .....30  
 Recommendations .....31

APPENDICES

1. Statute Governing the California Law Revision  
 Commission ..... \_\_  
 2. Calendar of Topics Authorized for Study ..... \_\_  
 3. Legislative Action on Commission Recommendations  
 (Cumulative) ..... \_\_  
 4. Report of the California Law Revision Commission  
 on Chapter 180 of the Statutes of 2012  
 (Assembly Bill 805) ..... \_\_  
 5. Report of the California Law Revision Commission  
 on Chapter 470 of the Statutes of 2012  
 (Assembly Bill 1529) ..... \_\_  
 6. Commission Publications ..... \_\_

STATE OF CALIFORNIA

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**CALIFORNIA LAW REVISION COMMISSION**

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XOCHITL CARRION, Chairperson  
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SENATOR TOM HARMAN  
VICTOR KING  
CRYSTAL MILLER-O'BRIEN

[October 18, 2012]

To: The Honorable Edmund G. Brown, Jr.  
*Governor of California*, and  
The Legislature of California

In conformity with Government Code Section 8293, the California Law Revision Commission submits this report of its activities during 2012 and its plans for 2013.

Six Commission recommendations considered by the Legislature in 2012, and part of a seventh, were enacted into law, in whole or in substantial part.

The Commission is grateful to the members of the Legislature who carried Commission-recommended legislation in 2012:

- Assembly Member Norma Torres (Statutory Clarification and Simplification of CID Law)
- Assembly Member Roger Dickinson (Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the Superior Court (Part 1), Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture, Trial Court Restructuring: Writ Jurisdiction in a Small Claims Case, and part of Trial Court Restructuring: Statutes Made Obsolete by Trial Court Restructuring: Part 5)
- Assembly Committee on Judiciary (Statutory Cross-References to “Tort Claims Act”)

- Assembly Member Gatto (Ownership of Amounts Withdrawn from Joint Account)

The Commission has held five one-day meetings in 2012, and will hold a sixth one-day meeting in December. Meetings were held in Sacramento, Los Angeles, and Davis.

Respectfully submitted,

Xochitl Carrion  
*Chairperson*

## 2012-2013 ANNUAL REPORT

**Introduction**

The California Law Revision Commission was created in 1953 and commenced operation in 1954 as the permanent successor to the Code Commission,<sup>1</sup> with responsibility for a continuing substantive review of California statutory and decisional law.<sup>2</sup> The Commission studies the law to discover defects and anachronisms and recommends legislation to make needed reforms.

The Commission ordinarily works on major topics, assigned by the Legislature, that require detailed study and cannot easily be handled in the ordinary legislative process. The Commission's work is independent, nonpartisan, and objective.

The Commission consists of:<sup>3</sup>

- A Member of the Senate appointed by the Rules Committee
- A Member of the Assembly appointed by the Speaker
- Seven members appointed by the Governor with the advice and consent of the Senate
- The Legislative Counsel, who is an ex officio member

The Commission may study only topics that the Legislature has authorized.<sup>4</sup>

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1. See 1953 Cal. Stat. ch. 1445, operative September 9, 1953. The first meeting of the Commission was held on February 23, 1954.

2. See Gov't Code §§ 8280-8298 (statute establishing Law Revision Commission) (Appendix 1 *infra*). See also *1955 Report* [Annual Report for 1954] at 7, 1 Cal. L. Revision Comm'n Reports (1957).

3. For current membership, see "Personnel of Commission" *infra*.

4. Under its general authority, the Commission may study only topics that the Legislature, by concurrent resolution, authorizes for study. See *Calendar of Topics Authorized for Study*, Appendix 2 *infra*. However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution. Gov't Code § 8298. Additionally, a concurrent resolution or statute may directly confer authority to study a particular subject. See, e.g., 2006 Cal. Stat. res. ch. 128 [ACR 73] (nonsubstantive reorganization of weapon statutes); 2006 Cal. Stat. ch. 216 [AB 2034] (donative transfer restrictions).

The Commission has submitted 399 recommendations to the Legislature, of which 363 (more than 90%) have been enacted in whole or in substantial part.<sup>5</sup> Commission recommendations have resulted in the enactment of legislation affecting [24,739] sections of California law: [4,955] sections amended, [10,844] sections added, and [8,933] sections repealed.

The Commission's recommendations, reports, and other selected materials are published annually in hardcover volumes. Recent materials are also available through the Internet. A list of past publications and information on obtaining printed or electronic versions of Commission material can be found at the end of this Annual Report.<sup>6</sup>

### **Community Redevelopment Law Clean-Up**

In 2011, a statute was enacted that required the Commission to prepare Community Redevelopment Law clean-up legislation, for submission to the Legislature and Governor by January 1, 2013.<sup>7</sup> The Commission began its work on that topic on February 1, 2012, when the statutory mandate first operated.<sup>8</sup> Nearly all of the Commission's resources were dedicated to that study until June 27, 2012, when the statute that required and authorized the study was repealed.<sup>9</sup> As a result, the Commission had to cease its work on the topic. Although the study was not completed, substantial progress was made and it is likely that the Commission's work on the topic would be useful in any future efforts to reform or clean up community redevelopment law.

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5. See *Legislative Action on Commission Recommendations*, Appendix 3 *infra*.

6. See *Commission Publications*, Appendix 6 *infra*.

7. See former Health & Safety Code § 34189(b); 2011 Cal. Stat. ch. 5, § 7.

8. By court order, the operation of the statute was deferred until February 1, 2012. *California Redevelopment Ass'n v. Matosantos*, 53 Cal. 4th 231, 275, 267 P.3d 580, 135 Cal. Rptr. 3d 683 (2011).

9. See 2012 Cal. Stat. ch. 26, § 31.

## **2013 Legislative Program**

In 2013, the Commission plans to seek the introduction of legislation effectuating Commission recommendations on the following subjects:

- Commercial and industrial common interest developments
- Statutory clarification and simplification of CID law (clean-up legislation)

## **Major Studies in Progress**

During 2013, the Commission intends to work on the following major topics: the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA), mediation confidentiality, [commercial and industrial subdivisions,] revision of the Fish and Game Code[, and exemptions from enforcement of judgments: third decennial review]. The Commission will work on other topics as time permits.

### **Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA)**

The Commission will continue to study whether the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) should be adopted in California, and, if so, in what form it should be adopted.

### **Mediation Confidentiality**

The Commission will analyze the relationship under current law between mediation confidentiality and attorney malpractice and other misconduct, including the purposes for and impact of mediation confidentiality on public protection, professional ethics, attorney discipline, client rights, the willingness of parties to participate in voluntary and mandatory mediation, the effectiveness of mediation, and other relevant issues.<sup>10</sup>

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10. See 2012 Cal. Stat. res. ch. 108.

**[Commercial and Industrial Subdivisions**

The Commission will continue to study whether to clarify the application of two related provisions, Business and Professions Code Section 11010.3 and Civil Code Section 1373, which exempt commercial and industrial subdivisions from the Subdivided Lands Act and portions of the Davis-Stirling Common Interest Development Act.]

**Revision of the Fish and Game Code**

The Commission will study revision of the Fish and Game Code and related statutory law to improve organization, clarify meaning, resolve inconsistencies, eliminate unnecessary or obsolete provisions, standardize terminology, clarify program authority and funding sources, and make other minor improvements, without making any significant substantive change to the effect of the law.<sup>11</sup>

**[Exemptions from Enforcement of Judgments: Third Decennial Review**

As directed by the Legislature,<sup>12</sup> the Commission will continue its review of the existing exemptions from enforcement of judgments, and will recommend any needed revisions in those provisions.]

**Other Subjects**

The major studies in progress described above will dominate the Commission's time and resources during 2013. As time permits, the Commission will continue its work on trial court restructuring and consider other subjects authorized for study.

**Calendar of Topics for Study**

The Commission's calendar includes 23 topics authorized by the Legislature for study.<sup>13</sup>

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11. See *id.*

12. See Code Civ. Proc. § 703.120.

13. See *Calendar of Topics Authorized for Study*, Appendix 2 *infra*.

## Function and Procedure of Commission

The principal duties of the Commission are to:<sup>14</sup>

- (1) Examine the common law and statutes for the purpose of discovering defects and anachronisms.
- (2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws,<sup>15</sup> bar associations, and other learned bodies, and from judges, public officials, lawyers, and the public generally.
- (3) Recommend such changes in the law as it deems necessary to bring California law into harmony with modern conditions.<sup>16</sup>

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. Under its general authority, the Commission may study only topics that the Legislature, by concurrent resolution, authorizes for study.<sup>17</sup> However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a

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14. Gov't Code §§ 8280-8298 (statute governing California Law Revision Commission). See Appendix 1 *infra*.

15. The Legislative Counsel, an ex officio member of the Law Revision Commission, serves as a Commissioner of the Commission on Uniform State Laws. See Gov't Code § 8261.

16. Gov't Code § 8289. The Commission is also directed to recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the California Supreme Court or the United States Supreme Court. Gov't Code § 8290. See "Report on Statutes Repealed by Implication or Held Unconstitutional" *infra*.

17. Gov't Code § 8293. Section 8293 requires a concurrent resolution authorizing the Commission to study topics contained in the calendar of topics set forth in the Commission's regular report to the Legislature. Section 8293 also requires that the Commission study any topic that the Legislature by concurrent resolution or statute refers to the Commission for study.

prior concurrent resolution.<sup>18</sup> Additionally, a concurrent resolution<sup>19</sup> or statute<sup>20</sup> may directly confer authority to study a particular subject.

### **Background Studies**

The Commission's work on a recommendation typically begins after a background study has been prepared. The background study may be prepared by a member of the Commission's staff or by a specialist in the field who is retained as a consultant.<sup>21</sup> Law professors and practicing attorneys who serve as consultants have already acquired the considerable knowledge necessary to understand the specific problems under consideration, and receive little more than an honorarium for their services. From time to

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18. Gov't Code § 8298.

19. For an example of a concurrent resolution referring a specific topic to the Commission for study, see 2006 Cal. Stat. res. ch. 128 [ACR 73] (nonsubstantive reorganization of weapon statutes).

20. For example, Code of Civil Procedure Section 703.120(a) requires the Commission to review statutes providing for exemptions from enforcement of money judgments every 10 years and to recommend any needed revisions. The Commission also has continuing statutory authority to study enforcement of judgments pursuant to Code of Civil Procedure Section 703.120(b).

Government Code Section 70219 requires the Commission, in consultation with the Judicial Council, to perform follow-up studies taking into consideration the experience in courts that have unified. For a list of specific studies, see *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 82-86 (1998).

Government Code Section 71674 requires the Commission to recommend repeal of provisions made obsolete by the Trial Court Employment Protection and Governance Act (Gov't Code § 71600 *et seq.*), Lockyer-Isenberg Trial Court Funding Act of 1997 (1997 Cal. Stat. ch. 850), and the implementation of trial court unification.

Statutory authority may be uncodified. See, e.g., 2005 Cal. Stat. ch. 422 (beneficiary deeds).

21. The following persons are presently under contract as Commission consultants, or have served in that capacity on presently active studies: James E. Acret, Pacific Palisades; Professor Susan F. French, UCLA School of Law; Keith Honda, Monterey; Gordon Hunt, Hunt Ortmann; Professor J. Clark Kelso, McGeorge School of Law; Professor Miguel A. Méndez, UC Davis School of Law; Nathaniel Sterling, former Executive Secretary, California Law Revision Commission, Palo Alto; Professor Gregory S. Weber, McGeorge School of Law.

time, expert consultants are also retained to advise the Commission at meetings.

### **Recommendations**

After making its preliminary decisions on a subject, the Commission ordinarily distributes a tentative recommendation to interested persons and organizations, including the State Bar, local and specialized bar associations, public interest organizations, and business and professional associations. Notice of the availability of the tentative recommendation is mailed to interested persons on the Commission's mailing list and publicized in legal newspapers and other relevant publications. Notice is also posted on the Commission's website and emailed to interested persons.

Comments received on the tentative recommendation are considered by the Commission in determining what recommendation, if any, will be made to the Legislature.<sup>22</sup> When the Commission has reached a conclusion on the matter,<sup>23</sup> its recommendation to the Legislature (including a draft of any necessary legislation) is published and distributed in printed form and on the Internet. If a background study has been prepared in connection with the recommendation, it may be published by the Commission or in a law review.<sup>24</sup>

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22. For a step-by-step description of the procedure followed by the Commission in preparing the 1963 governmental liability statute, see DeMouly, *Fact Finding for Legislation: A Case Study*, 50 A.B.A. J. 285 (1964). The procedure followed in preparing the Evidence Code is described in 7 Cal. L. Revision Comm'n Reports 3 (1965). See also Gaal, *Evidence Legislation in California*, 36 S.W.U. L. Rev. 561, 563-69 (2008); Quillinan, *The Role and Procedures of the California Law Revision Commission in Probate and Trust Law Changes*, 8 Est. Plan. & Cal. Prob. Rep. 130-31 (Cal. Cont. Ed. Bar 1987).

23. Occasionally, one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission. Dissents are noted in the minutes of the meeting at which the recommendation is approved.

24. For recent background studies published in law reviews, see Méndez, *California Evidence Code - Federal Rules of Evidence, IX. General Provisions*, 44 U.S.F. L. Rev. 891 (2010); Méndez, *California Evidence Code - Federal Rules of Evidence, VIII. Judicial Notice*, 44 U.S.F. L. Rev. 141 (2009); Méndez, *California Evidence Code - Federal Rules of Evidence, VII. Relevance*:

## Official Comments

The Commission ordinarily prepares an official Comment explaining each section it recommends for enactment, amendment, or repeal. The Comments are included in the Commission's published recommendations. A Comment indicates the derivation of a section and often explains its purpose, its relation to other law, and potential issues concerning its meaning or application.<sup>25</sup>

## Commission Materials as Legislative History

Commission recommendations are printed and sent to both houses of the Legislature, as well as to the Legislative Counsel and

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*Definition and Limitations*, 42 U.S.F. L. Rev. 329 (2007); Méndez, *California Evidence Code – Federal Rules of Evidence*, VI. *Authentication and the Best and Secondary Evidence Rules*, 41 U.S.F. L. Rev. 1 (2006); Méndez, *California Evidence Code - Federal Rules of Evidence*, V. *Witnesses: Conforming the California Evidence Code to the Federal Rules of Evidence*, 39 U.S.F. L. Rev. 455 (2005); Alford, *Report to Law Revision Commission Regarding Recommendations for Changes to California Arbitration Law*, 4 Pepp. Disp. Resol. L.J. 1 (2004); Méndez, *California Evidence Code - Federal Rules of Evidence*, IV. *Presumptions and Burden of Proof: Conforming the California Evidence Code to the Federal Rules of Evidence*, 38 U.S.F. L. Rev. 139 (2003); Méndez, *California Evidence Code - Federal Rules of Evidence*, I. *Hearsay and Its Exceptions: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 351 (2003); Méndez, *California Evidence Code - Federal Rules of Evidence*, II. *Expert Testimony and the Opinion Rule: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 411 (2003); Méndez, *California Evidence Code - Federal Rules of Evidence*, III. *The Role of Judge and Jury: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 1003 (2003).

For a list of background studies published in law reviews before 2003, see 32 Cal. L. Revision Comm'n Reports 585 n.14 (2002); 20 Cal. L. Revision Comm'n Reports 198 n.16 (1990); 19 Cal. L. Revision Comm'n Reports 513 n.22 (1988); 18 Cal. L. Revision Comm'n Reports 212 n.17, 1713 n.20 (1986); 17 Cal. L. Revision Comm'n Reports 819 n.6 (1984); 16 Cal. L. Revision Comm'n Reports 2021 n.6 (1982); 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976); 11 Cal. L. Revision Comm'n Reports 1008 n.5, 1108 n.5 (1973); 10 Cal. L. Revision Comm'n Reports 1108 n.5 (1971).

25. Commission Comments are published by LexisNexis and Thomson Reuters in their print and CD-ROM editions of the annotated codes, and printed in selected codes prepared by other publishers. Comments are also available on Westlaw, Westlaw Next, and LexisNexis.

Governor.<sup>26</sup> Receipt of a recommendation by the Legislature is noted in the legislative journals, and the recommendation is referred to the appropriate policy committee.<sup>27</sup>

The bill introduced to effectuate a Commission recommendation is assigned to legislative committees charged with study of the matter in depth.<sup>28</sup> A copy of the recommendation is provided to legislative committee members and staff before the bill is heard and throughout the legislative process. The legislative committees rely on the recommendation in analyzing the bill and making recommendations to the Legislature concerning it.<sup>29</sup>

If an amendment is made to the bill that renders one of the Commission's original Comments inconsistent, the Commission generally will adopt a revised Comment and provide it to the committee. The Commission also provides this material to the Governor's office once the bill has passed the Legislature and is before the Governor for action. These materials are a matter of public record.

Until the mid-1980s, a legislative committee, on approving a bill implementing a Commission recommendation, would adopt the Commission's recommendation as indicative of the committee's

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26. See Gov't Code §§ 8291, 9795, 11094-11099; see also *Reynolds v. Superior Court*, 12 Cal. 3d 834, 847 n.18, 528 P.2d 45, 53 n.18, 117 Cal. Rptr. 437, 445 n.18 (1974) (Commission "submitted to the Governor and the Legislature an elaborate and thoroughly researched study").

27. See, e.g., Senate J. Aug. 18, 2003, at 2031 (noting receipt of 2002-2003 recommendations and their transmittal to the Committee on Judiciary).

28. See, e.g., Office of Chief Clerk, California State Assembly, California's Legislature 126-27 (2000) (discussing purpose and function of legislative committee system).

29. The Commission does not concur with the suggestion of the court in *Conservatorship of Wendland*, 26 Cal. 4th 519, 542, 28 P.3d 151, 166, 110 Cal. Rptr. 2d 412, 430 (2001), that a Commission Comment might be entitled to less weight based on speculation that the Legislature may not have read and endorsed every statement in the Commission's report. That suggestion belies the operation of the committee system in the Legislature. See White, *Sources of Legislative Intent in California*, 3 Pac. L.J. 63, 85 (1972) ("The best evidence of legislative intent must surely be the records of the legislature itself and the reports which the committees relied on in recommending passage of the legislation.").

intent in approving the bill.<sup>30</sup> If a Comment required revision, the revised Comment would be adopted as a legislative committee Comment. The committee's report would be printed in the journal of the relevant house.<sup>31</sup>

The Legislature has discontinued the former practice due to increased committee workloads and an effort to decrease the volume of material reprinted in the legislative journals. Under current practice, a legislative committee relies on Commission materials in its analysis of a bill, but does not separately adopt the materials. Instead, the Commission makes a report detailing the legislative history of the bill, including any revised Comments. Bill reports are published as appendices to the Commission's annual reports.<sup>32</sup>

### **Use of Commission Materials To Determine Legislative Intent**

Commission materials that have been placed before and considered by the Legislature are legislative history, are declarative of legislative intent,<sup>33</sup> and are entitled to great weight in

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30. See, e.g., *Baldwin v. State*, 6 Cal. 3d 424, 433, 491 P.2d 1121, 1126, 99 Cal. Rptr. 145, 150 (1972). For a description of legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno*, 33 Cal. App. 3d 877, 884, 109 Cal. Rptr. 421, 426 (1973).

31. For an example of such a report, see *Report of Senate Committee on Judiciary on Assembly Bill 3472*, Senate J. June 14, 1984, reprinted in 18 Cal. L. Revision Comm'n Reports 1, 115 (1986).

32. Commission reports have in the past been published as well in the legislative journals. See, e.g., *In re Marriage of Neal*, 153 Cal. App. 3d 117, 124, 200 Cal. Rptr. 341, 345 (1984) (noting that Chairman of Senate Judiciary Committee, when reporting on AB 26 on Senate floor, moved that revised Commission report be printed in Senate Journal as evidence of legislative intent).

33. See, e.g., *Fair v. Bakhtiari*, 40 Cal. 4th 189, 195, 147 P.3d 653, 657, 51 Cal. Rptr. 3d 871, 875 (2006) ("The Commission's official comments are deemed to express the Legislature's intent."); *People v. Williams*, 16 Cal. 3d 663, 667-68, 547 P.2d 1000, 128 Cal. Rptr. 888 (1976) ("The official comments of the California Law Revision Commission on the various sections of the Evidence Code are declarative of the intent not only of the draft[ers] of the code but also of the legislators who subsequently enacted it.").

construing statutes.<sup>34</sup> The materials are a key interpretive aid for practitioners as well as courts,<sup>35</sup> and courts may judicially notice and rely on them.<sup>36</sup> Courts at all levels of the state<sup>37</sup> and federal<sup>38</sup> judicial systems depend on Commission materials to construe statutes enacted on Commission recommendation.<sup>39</sup> Appellate

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34. See, e.g., *Dep't of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*, 40 Cal. 4th 1, 12-13 n.9, 145 P.3d 462, 469 n.9, 50 Cal. Rptr. 3d 585, 593 n.9 (2006) (Commission's official comments are persuasive evidence of Legislature's intent); *Hale v. S. Cal. IPA Med. Group, Inc.*, 86 Cal. App. 4th 919, 927, 103 Cal. Rptr. 2d 773, 778 (2001):

In an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute. (*Kern v. County of Imperial* (1990) 226 Cal.App.3d 391, 400, fn. 8 [276 Cal. Rptr. 524]; *Coopers & Lybrand v. Superior Court* (1989) 212 Cal.App.3d 524, 535, fn. 7 [260 Cal. Rptr. 713].) In particular, reports and interpretive opinions of the Law Revision Commission are entitled to great weight. (*Schmidt v. Southern Cal. Rapid Transit Dist.* (1993) 14 Cal.App.4th 23, 30, fn. 10 [17 Cal. Rptr. 2d 340].)

35. *Cf.* 7 B. Witkin, *Summary of California Law Constitutional Law* § 123, at 230 (10th ed. 2005) (Commission reports as aid to construction); Gaylord, *An Approach to Statutory Construction*, 5 Sw. U. L. Rev. 349, 384 (1973).

36. See, e.g., *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*, 133 Cal. App. 4th 26, 34 Cal. Rptr. 3d 520 (2005) (providing overview of materials that may be judicially noticed in determining legislative intent); *Hale*, 86 Cal. App. 4th at 927; *Barkley v. City of Blue Lake*, 18 Cal. App. 4th 1745, 1751 n.3, 23 Cal. Rptr. 2d 315, 318-19 n.3 (1993).

37. See, e.g., *Sullivan v. Delta Air Lines, Inc.*, 15 Cal. 4th 288, 298, 935 P.2d 781, 63 Cal. Rptr. 2d 74 (1997) (California Supreme Court); *Admin. Mgmt. Services, Inc. v. Fid. Deposit Co. of Md.*, 129 Cal. App. 3d 484, 488, 181 Cal. Rptr. 141 (1982) (court of appeal); *Rossetto v. Barross*, 90 Cal. App. 4th Supp. 1, 110 Cal. Rptr. 2d 255 (2001) (appellate division of superior court).

38. See, e.g., *California v. Green*, 399 U.S. 149, 154 n.3 (1970) (United States Supreme Court); *S. Cal. Bank v. Zimmerman (In re Hilde)*, 120 F.3d 950, 953 (9th Cir. 1997) (federal court of appeals); *Williams v. Townsend*, 283 F. Supp. 580, 582 (C.D. Cal. 1968) (federal district court); *Ford Consumer Fin. Co. v. McDonell (In re McDonell)*, 204 B.R. 976, 978-79 (B.A.P. 9th Cir. 1996) (bankruptcy appellate panel); *In re Garrido*, 43 B.R. 289, 292-93 (Bankr. S.D. Cal. 1984) (bankruptcy court).

39. See, e.g., *Jevne v. Superior Court*, 35 Cal. 4th 935, 947, 111 P.3d 954, 962, 28 Cal. Rptr. 3d 685, 694-95 (2005) (Commission report entitled to substantial weight in construing statute); *Collection Bureau of San Jose v.*

courts have cited Commission materials in more than a thousand published opinions.<sup>40</sup>

Commission materials have been used as direct support for a court's interpretation of a statute,<sup>41</sup> as one of several indicia of legislative intent,<sup>42</sup> to explain the public policy behind a statute,<sup>43</sup> and on occasion to demonstrate (by their silence) the Legislature's intention not to change the law.<sup>44</sup> The Legislature's failure to adopt a Commission recommendation may be used as evidence of legislative intent to reject the proposed rule.<sup>45</sup>

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Rumsey, 24 Cal. 4th 301, 308 & n.6, 6 P.3d 713, 718 & n.6, 99 Cal. Rptr. 2d 792, 797 & n.6 (2000) (Comments to reenacted statute reiterate the clear understanding and intent of original enactment); *Brian W. v. Superior Court*, 20 Cal. 3d 618, 623, 574 P.2d 788, 791, 143 Cal. Rptr. 717, 720 (1978) (Comments persuasive evidence of Legislature's intent); *Volkswagen Pac., Inc. v. City of Los Angeles*, 7 Cal. 3d 48, 61-63, 496 P.2d 1237, 1247-48, 101 Cal. Rptr. 869, 879-80 (1972) (Comments evidence clear legislative intent of law); *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968) (Comments entitled to substantial weight), overruled on other grounds by *Privette v. Superior Court*, 5 Cal. 4th 689, 854 P.2d 721, 21 Cal. Rptr. 2d 72 (1993); *County of Los Angeles v. Superior Court*, 62 Cal. 2d 839, 843-44, 402 P.2d 868, 870-71, 44 Cal. Rptr. 796, 798-99 (1965) (statutes reflect policy recommended by Commission).

40. In this connection it should be noted that the Law Revision Commission should not be cited as the "Law Revision Committee" or as the "Law Review Commission." See, e.g., *Venerable v. City of Sacramento*, 185 F. Supp. 2d 1128, 1132 (E.D. Cal. 2002) (Law Revision "Committee"); *Ryan v. Garcia*, 27 Cal. App. 4th 1006, 1010 n.2, 33 Cal. Rptr. 2d 158, 160 n.2 (1994) (Law "Review" Commission).

41. See, e.g., *People v. Ainsworth*, 45 Cal. 3d 984, 1015, 755 P.2d 1017, 1036, 248 Cal. Rptr. 568, 586 (1988).

42. See, e.g., *Heieck & Moran v. City of Modesto*, 64 Cal. 2d 229, 233 n.3, 411 P.2d 105, 108 n.3, 49 Cal. Rptr. 377, 380 n.3 (1966).

43. See, e.g., *Southern Cal. Gas Co. v. Public Utils. Comm'n*, 50 Cal. 3d 31, 38 n.8, 784 P.2d 1373, 1376 n.8, 265 Cal. Rptr. 801, 804 n.8 (1990).

44. See, e.g., *State ex rel. State Pub. Works Bd. v. Stevenson*, 5 Cal. App. 3d 60, 64-65, 84 Cal. Rptr. 742, 745-46 (1970) (finding that Legislature had no intention of changing existing law where "not a word" in Commission's reports indicated intent to abolish or emasculate well-settled rule).

45. See, e.g., *Nestle v. City of Santa Monica*, 6 Cal. 3d 920, 935-36, 496 P.2d 480, 490, 101 Cal. Rptr. 568, 578 (1972).

Commission materials are entitled to great weight, but they are not conclusive.<sup>46</sup> While the Commission endeavors in Comments to explain any changes in the law made by a section, the Commission does not claim that every consistent or inconsistent case is noted in the Comments,<sup>47</sup> nor can it anticipate judicial conclusions as to the significance of existing case authorities.<sup>48</sup> Hence, failure of the Comment to note every change the recommendation would make in prior law, or to refer to a consistent or inconsistent judicial decision, is not intended to, and should not, influence the construction of a clearly stated statutory provision.<sup>49</sup>

Some types of Commission materials may not properly be relied on as evidence of legislative intent. Courts have on occasion cited preliminary Commission materials such as tentative recommendations, correspondence, and staff memoranda and drafts in support of their construction of a statute.<sup>50</sup> While these

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46. See, e.g., *Redevelopment Agency v. Metropolitan Theatres Corp.*, 215 Cal. App. 3d 808, 812, 263 Cal. Rptr. 637, 639 (1989) (Comment does not override clear and unambiguous statute). Commission materials are but one indicium of legislative intent. See, e.g., *Estate of Joseph*, 17 Cal. 4th 203, 216, 949 P.2d 472, 480, 70 Cal. Rptr. 2d 619, 627 (1998). The accuracy of a Comment may also be questioned. See, e.g., *Buzgheia v. Leasco Sierra Grove*, 30 Cal. App. 4th 766, 774, 36 Cal. Rptr. 2d 144, 149 (1994); *In re Thomas*, 102 B.R. 199, 202 (Bankr. E.D. Cal. 1989).

47. *Cf. People v. Coleman*, 8 Cal. App. 3d 722, 731, 87 Cal. Rptr. 554, 559 (1970) (Comments make clear intent to reflect existing law even if not all supporting cases are cited).

48. See, e.g., *Arellano v. Moreno*, 33 Cal. App. 3d 877, 885, 109 Cal. Rptr. 421, 426-27 (1973) (noting that decisional law cited in Comment was distinguished by the California Supreme Court in a case decided after enactment of the Commission recommendation).

49. The Commission does not concur in the *Kaplan* approach to statutory construction. See *Kaplan v. Superior Court*, 6 Cal. 3d 150, 158-59, 491 P.2d 1, 5-6, 98 Cal. Rptr. 649, 653-54 (1971). For a reaction to the problem created by the *Kaplan* approach, see *Recommendation Relating to Erroneously Ordered Disclosure of Privileged Information*, 11 Cal. L. Revision Comm'n Reports 1163 (1973); 1974 Cal. Stat. ch. 227.

50. See, e.g., *Rojas v. Superior Court*, 33 Cal. 4th 407, 93 P.3d 260, 15 Cal. Rptr. 3d 643 (2005) (tentative recommendation, correspondence, and staff memorandum and draft); *Yamaha Corp. v. State Bd. of Equalization*, 19 Cal. 4th

materials may be indicative of the Commission's intent in proposing the legislation, only the Legislature's intent in adopting the legislation is entitled to weight in construing the statute.<sup>51</sup> Unless preliminary Commission materials were placed before the Legislature during its consideration of the legislation, those materials are not legislative history and are not relevant in determining the Legislature's intention in adopting the legislation.<sup>52</sup>

A Commission study prepared after enactment of a statute that analyzes the statute is not part of the legislative history of the statute.<sup>53</sup> However, documents prepared by or for the Commission may be used by the courts for their analytical value, apart from their role in statutory construction.<sup>54</sup>

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1, 12-13, 960 P.2d 1031, 1037, 78 Cal. Rptr. 2d 1, 7 (1998) (tentative recommendation). However, in some cases, proposed legislation will be based on a tentative, rather than final, Commission recommendation. See, e.g., *Estate of Archer*, 193 Cal. App. 3d 238, 243, 239 Cal. Rptr. 137, 140 (1987). In that event, reliance on the tentative recommendation is proper.

See also *Ilkhchooyi v. Best*, 37 Cal. App. 4th 395, 406, 45 Cal. Rptr. 2d 766, 772-73 (1995) (letter responding to tentative recommendation); D. Henke, *California Legal Research Handbook* § 3.51 (1971) (background studies).

51. *Cf. Rittenhouse v. Superior Court*, 235 Cal. App. 3d 1584, 1589, 1 Cal. Rptr. 2d 595, 598 (1991) (linking Commission's intent and Legislature's intent); *Guthman v. Moss*, 150 Cal. App. 3d 501, 508, 198 Cal. Rptr. 54, 58 (1984) (determination of Commission's intent used to infer Legislature's intent).

52. The Commission concurs with the opinion of the court in *Juran v. Epstein*, 23 Cal. App. 4th 882, 894 n.5, 28 Cal. Rptr. 2d 588, 594 n.5 (1994), that staff memoranda to the Commission should not be considered as legislative history.

53. See, e.g., *Duarte v. Chino Community Hosp.*, 72 Cal. App. 4th 849, 856 n.3, 85 Cal. Rptr. 2d 521, 525 n.3 (1999).

54. See, e.g., *Sierra Club v. San Joaquin Local Agency Formation Comm'n*, 21 Cal. 4th 489, 502-03, 981 P.2d 543, 551-52, 87 Cal. Rptr. 2d 702, 712 (1999) (unenacted Commission recommendation useful as "opinion of a learned panel"); *Hall v. Hall*, 222 Cal. App. 3d 578, 585, 271 Cal. Rptr. 773, 777 (1990) (Commission staff report most detailed analysis of statute available); *W.E.J. v. Superior Court*, 100 Cal. App. 3d 303, 309-10, 160 Cal. Rptr. 862, 866 (1979) (law review article prepared for Commission provides insight into development of law); *Schonfeld v. City of Vallejo*, 50 Cal. App. 3d 401, 407 n.4, 123 Cal. Rptr. 669, 673 n.4 (1975) (court indebted to many studies of Commission for analytical materials).

## **Publications**

Commission publications are distributed to the Governor, the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel.<sup>55</sup> Commission materials are also distributed to interest groups, lawyers, law professors, courts, district attorneys, law libraries, and other individuals requesting materials.

The Commission's reports, recommendations, and studies are published in hardcover volumes that serve as a permanent record of the Commission's work and, it is believed, are a valuable contribution to the legal literature of California. These volumes are available at many county law libraries and at some other libraries. About half of the hardcover volumes are out of print, but others are available for purchase.<sup>56</sup> Publications that are out of print are available as electronic files.<sup>57</sup>

## **Electronic Publication and Internet Access**

Since 1995, the Commission has provided a variety of information on the Internet, including online material and downloadable files.<sup>58</sup> Interested persons with Internet access can find the current agenda, meeting minutes, background studies, tentative and final recommendations, staff memoranda, and general background information.

Since 2002, all Commission publications and staff memoranda are available as electronic files. Recent publications and memoranda may be downloaded from the Commission's website. Files that are not on the website are available on request.<sup>59</sup>

## **Electronic Mail**

Email commenting on Commission proposals or suggesting issues for study is given the same consideration as letter

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55. See Gov't Code § 8291. For limitations on Section 8291, see Gov't Code §§ 9795, 11094-11099.

56. See *Commission Publications*, Appendix 6 *infra*.

57. See "Electronic Publication and Internet Access" *infra*.

58. The URL for the Commission's website is <<http://www.clrc.ca.gov>>.

59. See *Commission Publications*, Appendix 6 *infra*.

correspondence, if the email message includes the name and regular mailing address of the sender. Email to the Commission may be sent to *commission@clrc.ca.gov*.

The Commission distributes the majority of its meeting agendas, staff memoranda, and other written materials electronically, by means of its website and email distribution lists. The Commission encourages use of email as an inexpensive and expedient means of communication with the Commission.

### **MCLE Credit**

The Commission is approved by the State Bar of California as a minimum continuing legal education provider. Participants and attendees at Commission meetings may be eligible to receive MCLE credit. To receive credit for participation or attendance at a meeting, a person must register at the meeting. Meeting materials are available free of charge on the Internet<sup>60</sup> or may be purchased in advance from the Commission.

### **Personnel of Commission**

As of [October 18], 2012, the following persons were members of the Law Revision Commission:

#### **Legislative Members<sup>61</sup>**

Assembly Member Roger Dickinson, Sacramento  
 Senator Tom Harman, Costa Mesa

#### **Members Appointed by Governor<sup>62</sup>**

*Term Expires*

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60. See “Electronic Publication and Internet Access” *supra*.

61. The Senate and Assembly members of the Commission serve at the pleasure of their respective appointing powers, the Senate Committee on Rules and the Speaker of the Assembly. Gov’t Code § 8281.

62. Seven Commission members are appointed by the Governor with the advice and consent of the Senate. Gov’t Code § 8281. These Commissioners serve staggered four-year terms. *Id.* The provision in Government Code Section 8281 to the effect that Commission members appointed by the Governor hold office until the appointment and qualification of their successors has been superseded by the rule in Government Code Section 1774 declaring a vacancy if there is no reappointment 60 days following expiration of the term of office. See

Xochitl Carrion, San Francisco <i>Chairperson</i>	October 1, 2015
Damian Capozzola, Hermosa Beach <i>Vice Chairperson</i>	October 1, 2013
Judge Patricia Cowett (ret.), San Diego	October 1, 2015
Victor King, La Crescenta	October 1, 2015
Crystal Miller-O'Brien, Los Angeles	October 1, 2013
Susan Duncan Lee, San Francisco	October 1, 2015
Taras Kihiczak, Pacific Palisades	October 1, 2013

### **Legislative Counsel<sup>63</sup>**

Diane F. Boyer-Vine, Sacramento

On July 25, 2012, Damian Capozzola was reappointed to the Commission.

The following persons are on the Commission's staff:

#### *Legal*

BRIAN HEBERT  
*Executive Director*

BARBARA S. GAAL  
*Chief Deputy Counsel*

STEVE COHEN  
*Staff Counsel*

#### *Administrative-Secretarial*

DEBORA LARRABEE  
*Associate Governmental  
Program Analyst*

VICTORIA V. MATIAS  
*Secretary*

Mina Choi, Hart Ku, Lynn Kirshbaum, Liana Mayilyan, Robert Semones, and Courtney Taylor, all students at the University of California, Davis, School of Law, also worked for the Commission during 2012.

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also Gov't Code § 1774.7 (Section 1774 overrides contrary special rules unless specifically excepted).

63. The Legislative Counsel serves on the Commission by virtue of office. Gov't Code § 8281.

## **Commission Budget**

The Commission's operations for the 2012-13 fiscal year have been funded through a reimbursement from the California Office of Legislative Counsel, in the amount of \$651,000.

That reimbursement is supplemented by \$15,000 budgeted for income generated from the sale of documents to the public, to recover the cost of the documents.

The Commission also receives substantial donations of necessary library materials from the legal publishing community, especially California Continuing Education of the Bar, LexisNexis, and Thomson Reuters. In addition, the Commission receives benchbooks from the California Center for Judicial Education and Research (CJER). The Commission receives additional library materials from other legal publishers and from other law reform agencies on an exchange basis, and has full access to the law libraries at the University of California, Davis, School of Law and at Stanford Law School. The Commission is grateful for these contributions.

## **Other Activities**

The Commission is directed by statute to cooperate with bar associations and other learned, professional, or scientific associations, institutions, or foundations in any manner suitable for the fulfillment of the purposes of the Commission.<sup>64</sup>

### **National Conference of Commissioners on Uniform State Laws**

The Commission is directed by statute to receive and consider proposed changes in the law recommended by the National Conference of Commissioners on Uniform State Laws.<sup>65</sup> Legislative Counsel and Commission member Diane F. Boyer-Vine is a member of the California Commission on Uniform State Laws and the National Conference. The Commission's Executive Secretary, Brian Hebert, is an associate member of the National Conference.

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64. Gov't Code § 8296.

65. Gov't Code § 8289.

**Other Staff Activities**

In May 2012, an article on the Secondary Evidence Rule, co-authored by Professor Edward Imwinkelried, Professor Miguel Méndez, and the Chief Deputy Counsel, was published as the MCLE feature in California Lawyer magazine.<sup>66</sup>

On June 7, 2012, the Executive Director made an informational presentation on the Commission's function and work to a delegation from the Bangladesh Ministry of Law Justice and Parliamentary Affairs. The delegation was headed by Qamrul Islam, the Honorable State Minister.

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66. Edward J. Imwinkelried, Miguel A. Méndez & Barbara S. Gaal, Document Summaries in Court, Cal. Lawyer 37 (May 2012).

## **Legislative History of Recommendations in the 2012 Legislative Session**

In 2012, bills to effectuate six Commission recommendations and part of a seventh were introduced. The Legislature also continued consideration of a two-year bill to effectuate an additional Commission recommendation. All of the proposals were enacted, in whole or substantial part.

A resolution relating to the Commission's calendar of topics was also passed by the Legislature in the 2012-2013 session.

### **Statutory Clarification and Simplification of CID Law**

The Legislature continued consideration of Assembly Bills 805 (2012 Cal. Stat. ch. 180) and 806 (2012 Cal. Stat. ch. 181), introduced by Assembly Member Norma Torres in 2011, to effectuate the Commission's recommendation on *Statutory Clarification and Simplification of CID Law*, 40 Cal. L. Revision Comm'n Reports 235 (2010).

Both measures were enacted, with amendments. See *Report of the California Law Revision Commission on Chapter 180 of the Statutes of 2012 (Assembly Bill 805)*, 42 Cal. L. Revision Comm'n Reports [redacted] (2012) (Appendix 4 *infra*).

### **Trial Court Restructuring**

Assembly Bill 1529 (2012 Cal. Stat. ch. 470) was introduced by Assembly Member Roger Dickinson to effectuate the Commission's recommendations on *Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the Superior Court (Part 1)*, 39 Cal. L. Revision Comm'n Reports 157 (2009), *Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture*, 41 Cal. L. Revision Comm'n Reports 265 (2011), *Trial Court Restructuring: Writ Jurisdiction in a Small Claims Case*, 41 Cal. L. Revision Comm'n Reports 313 (2011), and part of *Trial Court Restructuring: Statutes Made Obsolete by Trial Court Restructuring: Part 5*, 39 Cal. L. Revision Comm'n Reports 109 (2009).

The measure was enacted. See *Report of the California Law Revision Commission on Chapter 470 of the Statutes of 2012*

(*Assembly Bill 1529*), 42 Cal. L. Revision Comm'n Reports (2012) (Appendix 5 *infra*).

### **Statutory Cross-References to “Tort Claims Act”**

Assembly Bill 2690 (2012 Cal. Stat. ch. 759) was introduced by the Assembly Committee on Judiciary to effectuate the Commission’s recommendation on *Statutory Cross-References to “Tort Claims Act,”* 41 Cal. L. Revision Comm’n Reports 285 (2011).

The measure was enacted.

### **Ownership of Amounts Withdrawn From Joint Account**

Assembly Bill 1624 (2012 Cal. Stat. ch. 235), introduced by Assembly Member Gatto, effectuates the Commission’s recommendation on *Ownership Of Amounts Withdrawn From Joint Account*, 34 Cal. L. Revision Comm’n Reports 199 (2004).

The measure was enacted, with amendments.

### **Resolution Authorizing Topics for Study**

Assembly Concurrent Resolution 98 (2012 Cal. Stat. res. ch. 108) was introduced by Assembly Member Donald Wagner. It authorizes the Commission’s continued study of 22 previously authorized topics, removes the Commission’s authority to study special assessments for public improvement, and authorizes the Commission to study two new topics, the revision of the Fish and Game Code and mediation confidentiality.

The measure also directs the Commission, before commencing work on any project within the Commission’s calendar of topics, to submit a detailed description of the scope of work, as well of any major change to the scope of that work that occurs during the course of the project, to the chairs and vice chairs of the Assembly Committee on Judiciary and the Senate Committee on Judiciary, and of any other legislative policy committee that has jurisdiction over the subject matter of the study.

The measure further requests that the Commission provide a copy of a Commission recommendation to each member of a policy committee hearing a bill that would implement the recommendation.

The measure also invites the staff of the Commission to appear and testify at any committee hearing of a bill to implement a Commission recommendation, for the purpose of explaining the recommendation and answering questions posed by committee members, provided that the staff may not advocate for the passage or defeat of the legislation.

### **Report on Statutes Repealed by Implication or Held Unconstitutional**

Government Code Section 8290 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 prepared<sup>67</sup> and has the following to report:

- No decision holding a state statute repealed by implication has been found.
- No decision of the United States Supreme Court holding a state statute unconstitutional has been found.<sup>68</sup>
- Two decisions of the California Supreme Court holding a state statute unconstitutional have been found.<sup>69</sup>

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67. This study has been carried through opinions published on or before September 17, 2012.

68. In *Nationall Meat Ass'n v. Harris*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 965 (2012), the United States Supreme Court held that Penal Code Section 599f, to the extent it governs the treatment of nonambulatory pigs in federally inspected swine slaughterhouses, is preempted by the Federal Meat Inspection Act (21 U.S.C. § 601 et seq.).

69. In addition, in *People v. Caballero*, 55 Cal. 4th 262, 282 P.3d 291, \_\_\_ Cal. Rptr. 3d \_\_\_ (2012), the California Supreme Court held that the statutorily authorized imposition of a "de facto life sentence" on a juvenile, based on conviction of non-homicide offenses, constitutes cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution.

In *California Redevelopment Ass'n v. Matosantos*, 53 Cal. 4th 231, 267 P.3d 580, 135 Cal. Rptr. 3d 683 (2011), the California Supreme Court held that Assembly Bill 27 (2011–2012 1st Ex. Sess.) and Health and Safety Code Section 34172(a)(2), violated Article XIII, Section 25.5(a)(7) of the California Constitution. Those provisions would have conditioned the ability of otherwise dissolved redevelopment agencies to continue operations based on making specified payments to state funds.

In *State Building & Construction Trades Council of California v. City of Vista*, 54 Cal. 4th 547, 279 P.3d 1022, 143 Cal. Rptr. 3d 529 (2012), the California Supreme Court held that the application of California's "prevailing wage law" (Labor Code §§ 1720-1861) to charter cities is barred by Article XI, section 5 of the California Constitution (California's "home rule" doctrine), notwithstanding the express inclusion of charter cities within the scope of the statutory provisions.

### Recommendations

The Commission respectfully recommends that the Legislature authorize the Commission to continue its study of the topics previously authorized.<sup>70</sup>

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

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The court concluded its opinion by stating: "We urge the Legislature to enact legislation establishing a parole eligibility mechanism that provides a defendant serving a de facto life sentence without possibility of parole for nonhomicide crimes that he or she committed as a juvenile with the opportunity to obtain release on a showing of rehabilitation and maturity."

70. See discussion under "Calendar of Topics for Study" *supra*; *Calendar of Topics Authorized for Study*, Appendix 2 *infra*.