

Admin.

December 9, 2020

## Memorandum 2020-66

**2020-2021 Annual Report (Staff Draft)**

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Attached to this memorandum is a staff draft of the Commission's *2020-2021 Annual Report*.<sup>1</sup> We have not reproduced some of the recurring appendices to the Annual Report (i.e., the text of the Commission's governing statute, its calendar of topics, the cumulative table of legislative action on Commission recommendations, and the list of Commission publications). After approval of the text of the Annual Report, the staff will add these appendices.

The attached draft does include the recurring appendix that contains Commissioner biographies. The Commission's general practice relating to the content of these biographies is to start with the biographical information in the Governor's press release announcing a Commissioner's appointment, and thereafter add updates modeled after that information, as needed. **Staff requests that Commissioners review this draft appendix, and advise if any content needs to be changed.**

Much of the content of the Annual Report is routine, and does not change significantly from year to year. Two matters for which the staff requests special attention from Commissioners are noted below.

## ACTIVITIES OF COMMISSION MEMBERS AND STAFF

The Annual Report notes any outside activities of Commission members and staff relating to the Commission's work that were engaged in since approval of the previous Annual Report.<sup>2</sup> **Staff requests that Commissioners advise of any activities of this type to report for this time period.**<sup>3</sup>

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1. 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.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. The Commission's 2019-20 Annual Report was approved on November 21, 2019.

3. See attached draft, p. 28.

#### EDITORIAL SUGGESTIONS

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

#### CONCLUSION

**The Commission needs to decide whether to approve the attached draft report, with or without changes, for publication.**

Respectfully submitted,

Steve Cohen  
Staff Counsel

2020]

*STAFF DRAFT* 2020-2021 ANNUAL REPORT

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

**STAFF DRAFT**

2020-2021 Annual Report

California Law Revision Commission  
c/o UC Davis School of Law  
Davis, CA 95616  
[www.clrc.ca.gov](http://www.clrc.ca.gov)

Cite this report as *2020-2021 Annual Report*,  
47 Cal. L. Revision Comm'n Reports \_\_ (2020).

## SUMMARY OF WORK OF COMMISSION

### **Recommendations to the 2020 Legislature**

In 2020, legislation was approved to implement the following Commission recommendations:

- Trial Court Restructuring Clean-Up: Obsolete “Constable” References
- Trial Court Restructuring Clean-Up: Task Force on Trial Court Employees
- Statutes Made Obsolete by Trial Court Restructuring (Part 6): Court Facilities
- Trial Court Restructuring Clean-up: Obsolete References to Marshals
- Resolution of Commission Authority

Legislation was introduced to implement the following Commission recommendations, but was later withdrawn due disruption of the legislative process that resulted from the COVID-19 pandemic:

- Revocable Transfer on Death Deeds: Follow-up Study
- California Public Records Act Clean-up
- California Public Records Act Clean-up: Conforming Revisions

Finally, the Commission submitted a report to the Legislature that identified sunset dates that might need to be temporarily extended as a consequence of the disruption caused by the COVID-19 pandemic.

### **2021 Legislative Program**

In 2021, the Commission plans to seek the introduction of legislation effectuating Commission recommendations on the following subjects:

- Nonprobate Transfers: Liability of a Surviving Spouse Under Probate Code Sections 13550 and 13551
- Revocable Transfer on Death Deeds: Follow-up Study
- California Public Records Act Clean-up
- California Public Records Act Clean-up: Conforming Revisions
- Disposition of Estate Without Administration: Liability of Transferee
- Eminent Domain: Pre-Condemnation Activities
- Trial Court Restructuring Clean-Up: Regional Justice Facilities Acts
- Statutes Made Obsolete by Trial Court Restructuring (Part 7): Completion of Studies Under Government Code Section 70219
- Emergency-Related Reforms: Common Interest Development Meetings
- Resolution of Commission Authority

**Commission Activities Planned for 2021**

During 2021, the Commission intends to work on the following major topics: recodification of toxic substance statutes, state and local agency access to customer information from communications service providers, fish and game law, trial court restructuring, the use of the Uniform TOD Registration Act to transfer an interest in a stock cooperative, and emergency-related reforms.

The Commission may work on other topics as time permits.

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STATE OF CALIFORNIA

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**CALIFORNIA LAW REVISION COMMISSION**

c/o UC Davis School of Law  
Davis, CA 95616

CRYSTAL MILLER-O'BRIEN, Chairperson  
RICHARD SIMPSON, Vice-Chairperson  
DAVID A. CARRILLO  
ASSEMBLY MEMBER ED CHAU  
ANA CUBAS  
CARA JENKINS  
VICTOR KING  
JANE McALLISTER  
SENATOR RICHARD ROTH  
RICHARD RUBIN

December 17, 2020

To: The Honorable Gavin Newsom  
*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 2020 and its plans for 2021.

In 2020, five Commission recommendations were enacted into law. The Commission expresses its gratitude to the following legislators for carrying the implementing legislation:

Assembly Member Brian Maienschein

- Trial Court Restructuring Clean-Up: Obsolete "Constable" References
- Trial Court Restructuring Clean-Up: Task Force on Trial Court Employees
- Statutes Made Obsolete by Trial Court Restructuring (Part 6): Court Facilities
- Trial Court Restructuring Clean-up: Obsolete References to Marshals

Assembly Member James Gallagher

- Resolution of Commission Authority

In addition, legislation was introduced to implement three other Commission recommendations, but was later withdrawn as a consequence of the COVID-19 pandemic. The Commission also expresses its gratitude to the authors of that legislation:

Assembly Member Ed Chau

- California Public Records Act Clean-up
- California Public Records Act Clean-up: Conforming Revisions

Senator Richard Roth

- Revocable Transfer on Death Deeds: Follow-up Study

In 2020 the Commission held one physical meeting, in Sacramento. Because of the COVID-19 pandemic, the Commission held seven meetings by video conference. This was made possible by Executive Order N-29-20.

Respectfully submitted,

Crystal Miller-O'Brien  
*Chairperson*

## 2020-2021 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., 2016 Cal. Stat. ch. 179 [AB 1779] and 2015 Cal. Stat. ch. 293 [AB 139] (revocable transfer on death deeds); 2014 Cal. Stat. ch. 243 [SB 406] (standards for recognition of tribal and foreign court money

The Commission has prepared 417 final recommendations with proposed reforms it sought to implement. Of those, 393 (more than 90%) have been enacted or otherwise implemented in whole or in substantial part.<sup>5</sup> Commission recommendations have resulted in the enactment of legislation affecting 25,379 sections of California law: 5,273 sections amended, 11,101 sections added, and 9,005 sections repealed.

The Commission's recommendations, reports, and other selected materials are regularly published 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>

### **The COVID-19 Pandemic**

The Commission's work was significantly affected by the 2020 COVID-19 pandemic:

- Beginning in March, the Commission's staff began working almost entirely from their homes. In addition, the Commission was required to designate one employee for reassignment as a contract tracer.
- Beginning in May, the Commission held all of its public meetings by video conference. This was made possible by Executive Order N-29-20.
- Within its existing subject matter authority, the Commission dedicated part of its resources to developing statutory reforms to address emergency conditions. The Commission also decided to request

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judgments); 2013 Cal. Stat. res. ch. 115 [SCR 54] (state and local agency access to customer information from communications service providers); 2006 Cal. Stat. res. ch. 128 [ACR 73] (nonsubstantive reorganization of weapon statutes); 2006 Cal. Stat. ch. 216 [AB 2034] (donative transfer restrictions).

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

6. See *Commission Publications*, Appendix 5 *infra*.

broad authority to study emergency-related reforms in all subject areas.

- The strain that the pandemic placed on the legislative process caused the withdrawal of legislation to implement three Commission recommendations. The Commission hopes that legislation to implement those recommendations will be introduced in 2021.

### **2021 Legislative Program**

In 2021, the Commission plans to seek the introduction of legislation effectuating Commission recommendations on the following subjects:

- Nonprobate Transfers: Liability of a Surviving Spouse Under Probate Code Sections 13550 and 13551
- Revocable Transfer on Death Deeds: Follow-up Study
- California Public Records Act Clean-up
- California Public Records Act Clean-up: Conforming Revisions
- Disposition of Estate Without Administration: Liability of Transferee
- Eminent Domain: Pre-Condemnation Activities
- Trial Court Restructuring Clean-Up: Regional Justice Facilities Acts
- Statutes Made Obsolete by Trial Court Restructuring (Part 7): Completion of Studies Under Government Code Section 70219
- Emergency-Related Reforms: Common Interest Development Meetings
- Resolution of Authority

### **Commission Activities Planned for 2021**

During 2021, the Commission intends to work on the following major topics: recodification of toxic substance statutes, state and

local agency access to customer information from communications service providers, fish and game law, trial court restructuring, the use of the Uniform TOD Registration Act to transfer an interest in a stock cooperative, and emergency-related reforms.

The Commission may work on other topics as time permits.

#### **Recodification of Toxic Substance Statutes**

The Commission will continue to study the nonsubstantive revision of two chapters of the Health and Safety Code relating to toxic substances.<sup>7</sup>

#### **State and Local Agency Access to Customer Information Held by Communications Service Providers**

The Commission will continue to study revision of statutes that govern state and local agency access to customer information held by communications service providers.<sup>8</sup>

#### **Fish and Game Law**

The Commission will continue to study the 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>9</sup>

#### **Trial Court Restructuring**

The Commission will continue to work on determining whether any statutory provisions are obsolete, in whole or in part, due to the major restructuring of California's trial court system that occurred at the turn of the century.<sup>10</sup>

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7. See 2020 Cal. Stat. res. ch. 46.

8. See 2013 Cal. Stat. res. ch. 115.

9. See 2020 Cal. Stat. res. ch. 46.

10. See Gov't Code § 71674; see also 2020 Cal. Stat. res. ch. 46.

### **Use of Uniform TOD Registration Act to Transfer Interest in Stock Cooperative**

The Commission will continue to study whether the Uniform TOD Registration Act (Probate Code §§ 5500-5512) can be adapted to provide a means of transferring an ownership interest in a stock cooperative.<sup>11</sup>

### **Emergency-Related Reforms**

The Commission will continue to study emergency-related reforms. It will do so within its existing subject matter authority and will request a new grant of authority to study such reforms more broadly.

### **Other Subjects**

The studies described above will dominate the Commission's time and resources during 2021. As time permits, the Commission may consider other subjects that are authorized for study.

### **Calendar of Topics for Study**

The Commission's calendar of topics includes 13 topics that have been authorized by the Legislature for study.<sup>12</sup>

### **Function and Procedure of Commission**

The principal duties of the Commission are to:<sup>13</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

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11. See 2020 Cal. Stat. res. ch. 46.

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

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

Uniform State Laws,<sup>14</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>15</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>16</sup> However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution.<sup>17</sup> Additionally, a concurrent resolution<sup>18</sup> or statute<sup>19</sup> may directly confer authority to study a particular subject.

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14. 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 § 10271.

15. 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*.

16. 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.

17. Gov't Code § 8298.

18. For an example of a concurrent resolution referring a specific topic to the Commission for study, see 2013 Cal. Stat. res. ch. 115 [SCR 54] (state and local agency access to customer information from communications service providers).

19. For example, 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



**Background Studies and Expert Consultants**

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. 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 time, the Commission requests expert assistance from law professors and other legal professionals, who may provide written input or testify 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

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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.

Pursuant to Code of Civil Procedure Section 681.035, the Commission also has continuing authority to study enforcement of judgments.

Statutory authority may be uncodedified. See, e.g., 2016 Cal. Stat. ch. 179 (revocable transfer on death deeds).

recommendation, if any, will be made to the Legislature.<sup>20</sup> When the Commission has reached a conclusion on the matter,<sup>21</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>22</sup>

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20. 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).

21. 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.

22. 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: 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).

**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>23</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 Governor.<sup>24</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>25</sup>

The bill introduced to effectuate a Commission recommendation is assigned to legislative committees charged with study of the matter in depth.<sup>26</sup> A copy of the recommendation is provided to legislative committee members and staff before the bill is heard

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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).

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

24. 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, 117 Cal. Rptr. 437 (1974) (Commission "submitted to the Governor and the Legislature an elaborate and thoroughly researched study").

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

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

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>27</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 intent in approving the bill.<sup>28</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>29</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

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27. The Commission does not concur with the suggestion of the court in *Conservatorship of Wendland*, 26 Cal. 4th 519, 542, 28 P.3d 151, 110 Cal. Rptr. 2d 412 (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.").

28. See, e.g., *Baldwin v. State*, 6 Cal. 3d 424, 433, 491 P.2d 1121, 99 Cal. Rptr. 145 (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 (1973).

29. 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).

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>30</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>31</sup> and are entitled to great weight in construing statutes.<sup>32</sup> The materials are a key interpretive aid for

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30. 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 (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).

31. See, e.g., *Guardianship of Ann S.*, 45 Cal. 4th 1110, 1137 n.20, 202 P.3d 1089, 90 Cal. Rptr. 3d 701 (2009) (Commission's official comments deemed to express Legislature's intent); *Metcalf v. County of San Joaquin*, 42 Cal. 4th 1121, 1132, 176 P.3d 654, 72 Cal. Rptr. 3d 382 (2008) (official comments of California Law Revision Commission are declarative of intent not only of drafters of code but also of legislators who subsequently enacted it); *Collection Bureau of San Jose v. Rumsey*, 24 Cal. 4th 301, 308 & n.6, 6 P.3d 713, 99 Cal. Rptr. 2d 792 (2000) (Comments to reenacted statute reiterate clear understanding and intent of original enactment); *County of Los Angeles v. Superior Court*, 62 Cal. 2d 839, 843-44, 402 P.2d 868, 44 Cal. Rptr. 796 (1965) (statutes reflect policy recommended by Commission).

32. See, e.g., *Sargon Enterprises, Inc. v. University of Southern California*, 55 Cal. 4th 747, 770, 288 P.3d 1237, 149 Cal. Rptr. 3d 614 (2012) ("Comments of a commission that proposed a statute are entitled to substantial weight in construing the statute, especially when, as here, the Legislature adopted the statute without change."); *Jevne v. Superior Court*, 35 Cal. 4th 935, 947, 111 P.3d 954, 28 Cal. Rptr. 3d 685 (2005) (Commission report entitled to substantial weight in construing statute); *Utility Consumers' Action Network, Inc. v. AT&T Broadband of Southern Cal., Inc.*, 135 Cal. App. 4th 1023, 1029, 37 Cal. Rptr. 3d 827 (2006) (Commission recommendation enacted without change is entitled to substantial weight when interpreting statutory provision); *Hale v. S. Cal. IPA Med. Group, Inc.*, 86 Cal. App. 4th 919, 927, 103 Cal. Rptr. 2d 773 (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,

practitioners as well as courts,<sup>33</sup> and courts may judicially notice and rely on them.<sup>34</sup> Courts at all levels of the state<sup>35</sup> and federal<sup>36</sup> judicial systems depend on Commission materials to construe statutes enacted on Commission recommendation. Appellate courts have cited Commission materials in more than a thousand published opinions.<sup>37</sup>

Commission materials have been used as direct support for a court's interpretation of a statute,<sup>38</sup> as one of several indicia of

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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].)

33. Cf. 11 B. Witkin, Summary of California Law *Constitutional Law* § 138(d) (2020) (Commission reports as aid to construction); Gaylord, *An Approach to Statutory Construction*, 5 Sw. U. L. Rev. 349, 384 (1973).

34. See, e.g., *Lang v. Roché*, 201 Cal. App. 4th 254, 263 n.8, 133 Cal. Rptr. 3d 675 (2011); *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 (1993).

35. 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); *Branches Neighborhood Corp. v. CalAtlantic Group, Inc.* 26 Cal. App. 5th 743, 754, n.5, 237 Cal. Rptr. 3d 411 (2018) (court of appeal); *Rossetto v. Barross*, 90 Cal. App. 4th Supp. 1, 110 Cal. Rptr. 2d 255 (2001) (appellate division of superior court).

36. 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); *Mortgage Electronic Registration Systems v. Robinson*, 45 F. Supp. 3d 1207, 1210 (C.D. Cal. 2014) (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 3 MB, LLC*, 609 B.R. 841, 851-52 (Bankr. E.D. Cal. 2019) (bankruptcy court).

37. 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 (1994) (Law "Review" Commission).

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

legislative intent,<sup>39</sup> to explain the public policy behind a statute,<sup>40</sup> and on occasion to demonstrate (by their silence) the Legislature's intention not to change the law.<sup>41</sup> The Legislature's failure to adopt a Commission recommendation may be used as evidence of legislative intent to reject the proposed rule.<sup>42</sup>

Commission materials are entitled to great weight, but they are not conclusive.<sup>43</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>44</sup> nor can it anticipate judicial conclusions as to the significance of existing case authorities.<sup>45</sup>

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

40. See, e.g., *Southern Cal. Gas Co. v. Public Utils. Comm'n*, 50 Cal. 3d 31, 38 n.8, 784 P.2d 1373, 265 Cal. Rptr. 801 (1990); *Altizer v. Highsmith*, 52 Cal. App. 5th 331, 338, 265 Cal. Rptr. 3d 832 (2020).

41. See, e.g., *In re Pikush*, 157 B.R. 155, 157-58 (B.A.P. 9th Cir. 1993) (Commission's recommendation "[n]owhere" suggests that statutory revisions would create new exemption for annuities, thus Legislature did not create such exemption when it made those revisions); *State ex rel. State Pub. Works Bd. v. Stevenson*, 5 Cal. App. 3d 60, 64-65, 84 Cal. Rptr. 742 (1970) (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).

42. See, e.g., *McWilliams v. City of Long Beach*, 56 Cal. 4th 613, 623-24, 300 P.3d 886, 155 Cal. Rptr. 3d 817 (2013); *Nestle v. City of Santa Monica*, 6 Cal. 3d 920, 935-36, 496 P.2d 480, 101 Cal. Rptr. 568 (1972).

43. See, e.g., *Wilson v. County of San Joaquin*, 38 Cal. App. 5th 1, 11, 250 Cal. Rptr. 3d 56 (2019); *Redevelopment Agency v. Metropolitan Theatres Corp.*, 215 Cal. App. 3d 808, 812, 263 Cal. Rptr. 637 (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, 70 Cal. Rptr. 2d 619 (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 (1994); *In re Thomas*, 102 B.R. 199, 202 (Bankr. E.D. Cal. 1989).

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

45. See, e.g., *Arellano v. Moreno*, 33 Cal. App. 3d 877, 885, 109 Cal. Rptr. 421 (1973) (noting that decisional law cited in Comment was distinguished by

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>46</sup>

Some types of Commission materials are not properly relied on as evidence of legislative intent. On occasion, courts have cited preliminary Commission materials such as tentative recommendations, correspondence, and staff memoranda and drafts in support of their construction of a statute.<sup>47</sup> While these 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>48</sup> Unless preliminary Commission materials were before the Legislature during its consideration of the legislation, those materials are not legislative history and are not relevant in

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the California Supreme Court in a case decided after enactment of the Commission recommendation).

46. 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, 98 Cal. Rptr. 649 (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.

47. 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 1, 12-13, 960 P.2d 1031, 78 Cal. Rptr. 2d 1 (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 (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 (1995) (letter responding to tentative recommendation); D. Henke, *California Legal Research Handbook* § 3.51 (1971) (background studies).

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



determining the Legislature's intention in adopting the legislation.<sup>49</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>50</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>51</sup>

### **Publications**

Commission publications are distributed to the Governor, the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel.<sup>52</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 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

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49. 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 (1994), that staff memoranda to the Commission should generally not be considered as legislative history.

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

51. See, e.g., *Sierra Club v. San Joaquin Local Agency Formation Comm'n*, 21 Cal. 4th 489, 502-03, 981 P.2d 543, 87 Cal. Rptr. 2d 702 (1999) (unenacted Commission recommendation useful as "opinion of a learned panel"); *Hall v. Hall*, 222 Cal. App. 3d 578, 585, 271 Cal. Rptr. 773 (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 (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 (1975) (court indebted to many studies of Commission for analytical materials).

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

purchase.<sup>53</sup> Publications that are out of print are available as electronic files.<sup>54</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>55</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. They can be downloaded from the Commission's website.

#### **Electronic Mail**

Email commenting on Commission proposals or suggesting issues for study is given the same consideration as letter correspondence. 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>56</sup> or may be purchased in advance from the Commission.

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53. See *Commission Publications*, Appendix 5 *infra*.

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

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

56. See "Electronic Publication and Internet Access" *supra*.

### **Personnel of Commission<sup>57</sup>**

As of December 19, 2020, the following persons were members of the Law Revision Commission:

#### **Legislative Members<sup>58</sup>**

Assembly Member Ed Chau  
Senator Richard Roth

#### **Legislative Counsel<sup>59</sup>**

Cara Jenkins

Diane F. Boyer-Vine, was one of the Commission's longest-serving members. She joined the Commission as Legislative Counsel in 2002 and served for 18 years, retiring from her position as Legislative Counsel on September 30, 2020. The Commission expresses deep gratitude for her dedicated and excellent service to the Commission and to the People of California. In addition to regularly bringing important insights in her work as a Commissioner, Ms. Boyer-Vine also took several steps to help the Commission weather a number of fiscal crises that the state suffered over the last two decades. Most significantly, she agreed to fund the Commission's entire budget out of the funds provided to the Office of Legislative Counsel. If she had not, there is a significant chance the Commission would have been dissolved. That funding arrangement continues today.

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57. See also *Biographies of 2020 Commissioners*, Appendix 4 *infra*.

58. 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.

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

<b>Members Appointed by Governor<sup>60</sup></b>	<b><i>Term Expires</i></b>
Crystal Miller-O'Brien, Los Angeles <i>Chairperson</i>	October 1, 2021
Richard Simpson, Sacramento <i>Vice-Chairperson</i>	October 1, 2023
David Carrillo, Berkeley	October 1, 2023
Ana Cubas, Los Angeles	October 1, 2021
Victor King, La Crescenta	October 1, 2023
Jane McAllister, Hilmar	October 1, 2023
Richard Rubin, Mill Valley	October 1, 2021

The following persons are on the Commission's staff:<sup>61</sup>

*Legal*

BRIAN HEBERT  
*Executive Director*

BARBARA S. GAAL  
*Chief Deputy Director*

KRISTIN BURFORD  
*Staff Counsel*

STEVE COHEN  
*Staff Counsel*

*Administrative-Secretarial*

DEBORA LARRABEE  
*Associate Governmental  
Program Analyst*

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

61. The Commission also employs two attorneys who work exclusively for the Committee on Revision of the Penal Code, Thomas Nosewicz and Richard Owen.

### **Commission Budget**

The Commission's operations for the 2020-21 fiscal year, including the operations of the Committee on Revision of the Penal Code, have been funded through a reimbursement from the California Office of Legislative Counsel, in the amount of \$1,525,000.

That reimbursement is supplemented by monies 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 some benchbooks from the California Center for Judicial Education and Research (CJER). The Commission also receives a copy of the *McGeorge Law Review*, annually. 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.

### **Committee on Revision of the Penal Code**

On January 1, 2020, the Committee on Revision of the Penal Code was formed as a part of the California Law Revision Commission.<sup>62</sup>

The Commission provides staffing for that new function, but the membership, authority, and deliberative processes of the two bodies are separate and non-overlapping.<sup>63</sup>

The Committee will describe its activities and recommendations in a separate Annual Report.<sup>64</sup> They are not reported here.

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62. Gov't Code § 8280(b).

63. Gov't Code §§ 8281 (Commission membership), 8281.5 (Committee membership), 8289 (Commission duties), 8290.5 (Committee duties), 8293(a) (Commission authority).

### **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>65</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>66</sup> Legislative Counsel and Commission member Cara Jenkins is a member of the California Commission on Uniform State Laws and the National Conference. Diane Boyer-Vine served in the same capacity in 2020. The Commission's Executive Director, Brian Hebert, is an associate member of the National Conference.

#### **Other Commissioner and Staff Activities**

On October 27, 2020, Executive Director Brian Hebert participated in a panel discussion at the UC Davis School of Law on "California State Legislative Externship and Career Opportunities."

### **Legislative History of Recommendations in the 2020 Legislative Session**

In 2020, bills to effectuate eight Commission recommendations were introduced.

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64. Gov't Code § 8293(b).

65. Gov't Code § 8296.

66. Gov't Code § 8289.

**Trial Court Restructuring**

Assembly Bill 1984 (2020 Cal. Stat. ch. 210) was introduced in 2020 by Assembly Member Brian Maienschein. The bill effectuated the Commission's recommendations on *Trial Court Restructuring Clean-Up: Obsolete "Constable" References*, 45 Cal. L. Revision Comm'n Reports 467 (2018); *Trial Court Restructuring Clean-Up: Task Force on Trial Court Employees*, 46 Cal. L. Revision Comm'n Reports 1 (2019); *Statutes Made Obsolete by Trial Court Restructuring (Part 6): Court Facilities*, 46 Cal. L. Revision Comm'n Reports 25 (2019); and *Trial Court Restructuring Clean-Up: Obsolete References to Marshals*, 46 Cal. L. Revision Comm'n Reports 105 (2019).

The measure was enacted.

**Revocable Transfer on Death Deeds: Follow-up Study**

Senate Bill 1305 (2020 Cal. Stat. ch. 238) was introduced in 2020 by Senator Richard Roth. As introduced, the bill would have effectuated the Commission's recommendation on *Revocable Transfer on Death Deeds: Follow-up Study*. However, due to the effects of the COVID-19 pandemic, the bill was amended to remove the Commission's recommendation. As enacted, it made a one-year extension of the sunset date that governs the Revocable Transfer on Death Deeds statute. It is expected that a bill to effectuate the Commission's recommendation will be introduced in 2021. If enacted, it would take effect before the sunset date operates.

**California Public Records Act Clean-Up****California Public Records Act Clean-Up: Conforming Revisions**

Assembly Bills 2138 and 2438 were introduced in 2020 by Assembly Member Ed Chau. As introduced, the bills would have effectuated the Commission's recommendations on *California Public Records Act Clean-up* and *California Public Records Act Clean-up: Conforming Revisions*. However, due to the effects of the COVID-19 pandemic, the bills were withdrawn by the author. It is expected that implementing legislation will be introduced in 2021.

**Resolution Authorizing Topics for Study**

Assembly Concurrent Resolution 173 (2020 Cal. Stat. res. ch. 46) was introduced in 2020 by Assembly Member James Gallagher. The resolution authorized the Commission's continued study of 13 topics previously authorized with an expansion of the scope of one, and the removal of 11 topics previously approved for study.

The resolution was adopted.

**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 of the United States Supreme Court holding a California state statute unconstitutional or repealed by implication has been found.
- One decision of the California Supreme Court holding a state statute repealed by implication has been found.<sup>68</sup>

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67. This study has been carried through opinions published on or before November 30, 2020.

68. In *Wishnev v. The Northwestern Mutual Life Ins. Co.*, 8 Cal. 5th 199, 218, 451 P.3d 777, 254 Cal. Rptr. 3d 638 (2019), the California Supreme Court held that former Article XX, Section 22 of the California Constitution (now Article XV, Section 1), addressing the charging of interest by lenders, repealed an uncodified provision 1916-2 of Initiative Measure, Stats.1919, p. lxxxiii, § 2, by implication, to the extent the uncodified provision limited the charging of compound interest by lenders that were exempted from the uncodified provision by Article XX, Section 22.



- Two decisions of the California Supreme Court holding a state statute unconstitutional have been found.<sup>69</sup>

### Recommendations

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

In addition, 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 repealed by implication or held unconstitutional, and have not been amended, reformed, or repealed.

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69. In *Patterson v. Padilla*, 8 Cal. 5th 220, 451 P.3d 1171, 254 Cal. Rptr. 3d 816 (2019), the California Supreme Court held that Election Code Sections 6683 and 6684 violate Article II, Section 5(c) of the California Constitution, to the extent the two code sections purport to require someone who is “recognized...throughout the nation or throughout California” as a candidate for the office of President of the United States to file federal income tax returns with the Secretary of State as a necessary condition for appearing on the primary election ballot of a political party that has qualified to participate in that election.

In *People v. Guzman*, 8 Cal. 5th 673, 453 P.3d 1130, 256 Cal. Rptr. 3d 112 (2019), the California Supreme Court held that Penal Code Section 632(d), which renders specified evidence obtained as a result of eavesdropping upon or recording a confidential communication inadmissible, was abrogated by Article I, Section 28(f)(2) of the California Constitution (“Right to Truth in Evidence” provision), to the extent Section 632(d) would require suppression of such evidence in a criminal proceeding.

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



## **APPENDIX 4**

### **BIOGRAPHIES OF 2020 COMMISSIONERS**

Crystal Miller-O'Brien, of Los Angeles, serves as the Chairperson of the Commission. She has been general counsel for Medical Management Consultants, Inc., since 2006, and was previously an associate with the law firm of Anderson McPharlin and Connors LLP from 2005 to 2006, an associate with the law firm of Robie and Matthai PC from 2003 to 2004, an associate with the law firm of Bullivant Houser Bailey PC from 2002 to 2003, and a judicial clerk for the Honorable Faith Ireland of the Washington State Supreme Court from 2001 to 2002. She also served on the board of directors of the Conference of California Bar Associations from 2009 to 2012, and is a member of Corporate Counsel Women of Color, the Black Women Lawyers Association of Los Angeles, and the National Association of Women Business Owners. Commissioner Miller-O'Brien received a Juris Doctor degree and a Joint Certificate in Alternative Dispute Resolution from Willamette University College of Law.

Richard Simpson, of Sacramento, serves as the Vice-Chairperson of the Commission. He was chief of staff for the Office of Senator Hertzberg in 2019, and was previously deputy chief of staff and education advisor for the Office of the Assembly Speaker from 1999 to 2016, legislative secretary for the Office of Governor Gray Davis from 1998 to 1999, deputy chief of staff for the Office of Assembly Speaker Villaraigosa in 1998, a legislative advocate for the California Teachers Association from 1996 to 1998, staff director for the Senate Education Committee from 1995 to 1996, and education advisor for the Office of the Assembly Speaker Willie Brown, Jr., from 1991 to 1994. He is a member of the Commission on Judicial Performance, and served as a member of the Sacramento Board of Education from 1990 to 2002. Commissioner Simpson received a Master of Public Policy degree from the University of California, Berkeley.

Diane Boyer-Vine, of Sacramento, served as Legislative Counsel for the State of California since 2002, and retired from that position in 2020. She was previously a deputy and thereafter a chief deputy in the Legislative Counsel's office from 1988 to 2002, and before that an associate with the law firm of Martorana and Stockman. She also serves as a member of the California Commission on Uniform State Laws. Commissioner Boyer-Vine received a Juris Doctor degree from the University of California, Davis School of Law.

David A. Carrillo, of Berkeley, has been executive director and lecturer in residence at the California Constitution Center, University of California, Berkeley School of Law since 2012. He was previously a deputy attorney general for the California Department of Justice from 2001 to 2003 and from 2007 to 2012, a deputy city attorney for the City of San Francisco from 2003 to 2007, a senior litigation associate for Seyfarth Shaw from 1999 to 2000, a litigation associate for Nossaman LLP in 1999, and a deputy district attorney for Contra Costa County from 1995 to 1998. Commissioner Carrillo received a Juris Doctor degree, a Master of Laws degree, and a Doctor of the Science of Jurisprudence degree from the University of California, Berkeley School of Law.

Assembly Member Ed Chau, of Monterey Park, has been a member of the Assembly since 2012. He was previously a general law practitioner in the Law Office of Edwin Chau, a small business owner for over 20 years, an engineer for IBM, and a programmer for Unisys Corporation. He has also previously served as a board member of the Montebello Unified School District, where he acted as Board President three times, and has served as Judge Pro Tem for the Los Angeles Superior Court. Commissioner Chau received a Juris Doctor degree from Southwestern University.

Ana Cubas, of Los Angeles, has been an adjunct professor with the Los Angeles Community College District since 2017. She was previously government affairs manager at Vanir Construction Management from 2016 to 2017, and chief of staff for District 14

of the City of Los Angeles from 2009 to 2012. She is a member of the United States Green Building Council, and the California Hispanic Chambers of Commerce. Commissioner Cubas received a Master of Arts degree in Public Affairs and Urban/Regional Planning from Princeton University, and a Master of Business Administration degree from the University of Southern California.

Cara Jenkins, of Sacramento, was appointed Legislative Counsel for the State of California on December 7, 2020. She was previously a deputy and thereafter chief deputy in the Legislative Counsel's office from 2010 to 2020, an associate at a private law firm in Sacramento, an intern at the Sacramento City Attorney's office and the California Department of Justice, and a corporate communications manager at DST Output. She also serves as a member of the California Commission on Uniform State Laws. Commissioner Jenkins received a Juris Doctor degree from the University of the Pacific, McGeorge School of Law.

Victor King, of La Crescenta, serves as the Chairperson of the Commission, and has been university legal counsel for California State University, Los Angeles, since 2002. He was previously a partner with the law firm of Lewis Brisbois Bisgaard and Smith LLP from 2001 to 2002, an associate with the law firm of Lewis Brisbois Bisgaard and Smith LLP from 1999 to 2001, an associate with the law firm of Bottum and Felton from 1996 to 1999, and an associate with the law firm of Ochoa and Sillas from 1991 to 1995. He was also a trustee of the Glendale Community College District from 1997 to 2009. Commissioner King received a Juris Doctor degree from the University of Michigan Law School.

Jane McAllister, of Hilmar, has been a partner with McAllister and McAllister, Inc., since 1996. She was previously an associate attorney with Damrell, Nelson, Schrimp, Pallios, Pacher and Silva from 1988 to 1996. She has also served as a court-ordered arbitrator for Merced County, and is a member of the Stanislaus County Estate Planning Council. Commissioner McAllister received a Juris Doctor degree from Humphreys College School of Law.

Senator Richard Roth, of Riverside, has been a member of the Senate since 2012. He previously was a managing partner in the law firm of Roth Carney APC, engaged in the practice of labor and employment law with other Riverside-based firms for over 30 years, an attorney with the National Labor Relations Board, an adjunct instructor at the University of California at Riverside's Anderson School of Management and in the University's extension division, a Legal Advisor to the Airlift/Tanker Association, and a Lawyer Representative to the Ninth Circuit Court of Appeals Judicial Conference. He has also served in the United States Air Force, and was a member of the JAG Corps, including service in the Pentagon as Mobilization Assistant to the Judge Advocate General of the U.S. Air Force, retiring with the rank of major general. He has also previously served as Chairman of the Board for the Greater Riverside Chambers of Commerce, president of the Monday Morning Group, vice-chairperson of the Parkview Community Hospital Board, and trustee of the March Field Museum. He is a member of the Raincross Club, the Riverside Community Hospital Advisory Board, the Thomas W. Wathen Foundation Board (Flabob Airport), the Riverside County Bar Association Board of Directors, the Path of Life Ministries Advisory Board, the Air Force Judge Advocate General's School Foundation Board, and the La Sierra University Foundation Board, and a past member of the Riverside Public Library Foundation Board, and the Riverside Art Museum Board. Commissioner Roth received a Juris Doctor degree from Emory University.

Richard Rubin, of Mill Valley, has been a contributing columnist on the Fox and Hounds media site since 2015, and for the Marin Independent Journal since 1998. Presently a non-practicing attorney, he previously founded the San Francisco firm Richard Rubin & Associates in 1984 where he was president until 2019, was an adjunct professor at the University of San Francisco's Fromm Institute from 2004 to 2012, and a legislative assistant in Washington, D.C., for Senator John Tunney (D-CA) from 1970 to 1973, and for Senator Harrison Williams (D-NJ) from 1966 to 1970. He has chaired the California Commonwealth

Club Board of Governors, served as a Vice President on the California State Bar Board for nine years, and chaired both the Berkeley Repertory Theater and the San Francisco Self Help for the Elderly Boards. Commissioner Rubin received a Juris Doctor degree from George Washington Law School, and a Master of Arts degree in international affairs from Columbia University.

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