
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
APRIL 26, 2007
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on April 26, 2007.

Commission:

Present: David Huebner, Chairperson
Sidney Greathouse, Vice Chairperson
Diane F. Boyer-Vine, Legislative Counsel
Edmund L. Regalia
William E. Weinberger

Absent: Ellen Corbett, Senate Member
Noreen Evans, Assembly Member
Pamela L. Hemminger
Frank Kaplan
Susan Duncan Lee

Staff: Brian Hebert, Executive Secretary
Barbara S. Gaal, Chief Deputy Counsel
Catherine Bidart, Staff Counsel
Steve Cohen, Staff Counsel

Consultants: None

Other Persons:

Oliver Burford, Executive Council of Homeowners
Michelle Carey, Office of Assemblyman Chuck DeVore
Tyler Coffin, Executive Council of Homeowners
Frank Collard, Southern California Rock Products Association (CalcIMA)
Jason Davis, Trutanich & Michel, LLP (on behalf of California Rifle & Pistol Ass'n,
National Rifle Ass'n, California Ass'n of Firearms Retailers)
Samuel Hoover, Legal Community Against Violence
Neil F. Horton, State Bar Trusts and Estates Section
Joe Klinger, Government Strategies, Inc. (on behalf of Executive Council of
Homeowners)
Shirley Kovar, State Bar Trusts and Estates Section
David L. Mandel, Senior Legal Hotline
Dick Nash, Building Industry Credit Association
Samuel A. Paredes, Gun Owners of California

Charles Philipps, Association of California Surety Companies, Surety & Fidelity
Association of America
J. David Sackman, California State Council of Laborers
Bob Sheppard, Berkeley
Craig T. Stevens, Mar West Real Estate
Mary Pat Toups, Laguna Woods
Jennifer Wada, Wada Williams Law Group (on behalf of California Association of
Community Managers)
Amanda Wilcox, California Brady Campaign Chapters, Brady Campaign
Nick Wilcox, Brady Campaign to Prevent Gun Violence

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1 MINUTES OF MARCH 1, 2007, COMMISSION MEETING

2 The Commission approved the Minutes of the March 1, 2007, Commission
3 meeting as submitted by the staff.

4 ADMINISTRATIVE MATTERS

5 **Report of Executive Secretary**

6 The Executive Secretary recognized Elizabeth Lyon, a student at U.C.
7 Hastings Law School who is working for the Commission on a part-time basis.

8 LEGISLATIVE PROGRAM

9 The Commission considered Memorandum 2007-9 and its First Supplement,
10 relating to the Commission’s 2007 legislative program. The Commission made
11 the following decisions:

1 **AB 250 (DeVore) — Revocable Transfer on Death Deed**

2 The Commission ratified the amendments to AB 250 described in the
3 memorandum and approved the proposed revisions to related Commission
4 Comments.

5 The Commission took no action in response to an objection that the revocable
6 TOD deed may be unsuitable for use by some owners of interests in stock
7 cooperatives. That issue will be considered for possible study when the
8 Commission next reviews new topics and priorities.

9 **SB 649 (Committee on Judiciary) — Trial Court Restructuring: Part 3**

10 The Commission ratified the decision to delete the amendment of
11 Government Code Section 71601 from this bill.

12 **STUDY H-821 — MECHANICS LIEN LAW**

13 The Commission considered Memorandum 2007-11 and its First Supplement,
14 concerning the tentative recommendation on *Mechanics Lien Law* (June 2006). The
15 Commission approved the staff's recommendations, subject to the following
16 decisions:

17 **Limitation of Owner's Liability by Recording Payment Bond**

18 The staff will analyze whether the "contract price" referenced in proposed
19 Civil Code Section 7602 should include any price change that results from a
20 contract change.

21 The Commission made no change to the requirement in proposed Civil Code
22 Section 7602 that the payment bond be recorded prior to commencement.

23 **Notice Prior to Enforcement of Payment Bond Claim**

24 The Commission revised proposed Civil Code Section 7612 as follows:

25 **Civ. Code § 7612. Notice prerequisite to enforcement**

26 ~~7612. A claimant may not enforce the liability on a payment~~
27 ~~bond unless any of the following conditions is satisfied:~~

28 ~~(a) The claimant has given preliminary notice to the extent~~
29 ~~required by Chapter 2 (commencing with Section 7200).~~

30 ~~(b) The claimant has given notice to the principal and surety~~
31 ~~within the earlier of 75 days after completion of the work of~~
32 ~~improvement or 15 days after recordation of a notice of completion.~~

1 ~~The notice shall comply with the requirements of Article 4~~
2 ~~(commencing with Section 7100).~~

3 (a) In order to enforce a claim against a payment bond under
4 this part, a claimant shall give the preliminary notice provided in
5 Chapter 2 (commencing with Section 7200).

6 (b) If preliminary notice was not given as provided in Chapter 2
7 (commencing with Section 7200), a claimant may enforce a claim by
8 giving written notice to the surety and the bond principal within 15
9 days after recordation of a notice of completion. If no notice of
10 completion has been recorded, the time for giving written notice to
11 the surety and the bond principal is extended to 75 days after
12 completion of the work of improvement.

13 **Additional Notice in Conjunction with Stop Work Notice**

14 The staff will analyze whether a direct contractor, when giving a notice under
15 proposed Civil Code Sections 7834 and 7840, should be required to give a copy of
16 the notice to every claimant that has given the direct contractor a preliminary
17 notice.

18 **Judicial Resolution of a Disputed Stop Work Notice**

19 The reference to an “expedited” proceeding in proposed Civil Code Section
20 7844 will be revised to incorporate language similar to language used in Code of
21 Civil Procedure Sections 1062.3 and 1260.010.

22 STUDY H-855 — STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW

23 The Commission considered Memorandum 2007-4 and its First through Fifth
24 Supplements.

25 The Commission made the following changes to the proposed law:

26 **Cumulative Voting**

27 Proposed Civil Code Section 4640(f) was revised to read as follows:

28 Notwithstanding Section 7615 of the Corporations Code, if the
29 governing documents of an association permit the use of
30 cumulative voting, cumulative voting shall be used by the
31 association in any election of a director or other officer.

32 **Optional In-Person Voting Procedure**

33 The following provision was added to the proposed law:

1 (a) Notwithstanding Section 4640, an association may opt to use
2 the procedure provided in this section for a ballot that is cast in
3 person. This section does not apply to a mailed ballot.

4 (b) The election inspector shall determine the identity,
5 eligibility, voting class, and voting power of a member who votes
6 in person. The election inspector shall provide the member with
7 one ballot for each vote the member may cast. If the members of the
8 association are divided into classes for the purposes of voting, the
9 ballot shall be marked to indicate the voting class of the member.
10 The ballot shall not identify the member in any other way.

11 (c) If the association allows proxy voting, a member who votes
12 in person shall present to the election inspector any proxy held by
13 the member. The election inspector shall verify the proxy and
14 provide a ballot to the proxyholder to vote pursuant to the proxy. If
15 the proxy includes specific instructions on how to vote, the election
16 inspector shall indelibly mark the ballot to implement the
17 instructions.

18 (d) The association shall provide a voting booth or other private
19 space in which the member can mark the ballot without revealing
20 how the member voted.

21 (e) The member shall place the marked ballot into a sealed ballot
22 box.

23 (f) The ballot shall be counted pursuant to subdivisions (c) and
24 (d) of Section 4645 and is governed by Section 4650.

25 **Nonresidential Associations**

26 Proposed Civil Code Section 4020 was revised to exempt nonresidential
27 associations from the proposed election provisions (i.e., proposed Civil Code
28 Sections 4625-4680).

29 **Revocation of Proxy**

30 Proposed Civil Code Section 4655(g) was revised along the following lines:

31 A proxy is revocable until ~~it~~ a ballot cast pursuant to the proxy
32 is received by the election inspector.

33 **Nomination Procedure**

34 Proposed Civil Code Section 4660(e) was revised along the following lines:

35 (e) The governing documents may provide a reasonable period
36 for the submission of nominations. ~~If~~ The governing documents
37 may authorize the board to declare that all of the qualified
38 nominees are elected without further action, if after the close of
39 nominations, the number of qualified ~~people nominated~~ nominees
40 is equal to or less than the number of directors to be elected, ~~the~~
41 ~~board may declare the nominees elected without further action.~~

1 STUDY L-637 — REVISION OF NO CONTEST CLAUSE STATUTE

2 The Commission considered Memorandum 2007-10, presenting a staff draft
3 of proposed legislation. The Commission approved the staff draft for circulation
4 as a tentative recommendation, subject to the following decisions:

5 **Definitions**

6 Proposed Probate Code Section 21330 was revised to correct a technical error
7 in the designation of subdivisions.

8 The definition of “protected instrument” was revised to replace the phrase
9 “expressly described” with the phrase “expressly identified.”

10 **Probable Cause**

11 Proposed Probate Code Section 21333 was revised along the following lines:

12 **§ 21333. Enforcement of no contest clause**

13 21333. (a) A no contest clause may be enforced against a
14 beneficiary who brings a direct contest that is within the terms of
15 the no contest clause.

16 (b) A no contest clause shall not be enforced against a contest
17 that is not a direct contest, regardless of the terms of the
18 instrument.

19 (c) Notwithstanding subdivision (a), a no contest clause shall
20 not be enforced if the contest is brought with probable cause.
21 Probable cause exists if, at the time of instituting the contest, ~~there~~
22 is evidence that the evidence available to the person who instituted
23 the contest would lead a reasonable person, properly informed and
24 advised, to conclude that it is more likely than not that the contest
25 will be successful.

26 **Prospectivity**

27 Proposed Probate Code Section 21335 was revised along the following lines:

28 **§ 21335. Application of part**

29 21335. (a) This part becomes operative on January 1, 2010.

30 (b) This part ~~applies~~ does not apply to an instrument ~~of a person~~
31 ~~who dies on or after~~ if either of the following conditions is satisfied:

32 (1) The person who created the instrument dies before January
33 1, 2010.

34 (2) The instrument is or becomes irrevocable before January 1,
35 2010.

36 **Preliminary Part**

37 The staff will prepare the narrative “preliminary part” of the tentative
38 recommendation, in consultation with the Commission Chair.

1 STUDY J-1450 — TRIAL COURT RESTRUCTURING:
2 APPELLATE JURISDICTION OF BAIL FORFEITURE

3 The Commission considered Memorandum 2007-14 and its First Supplement,
4 discussing appellate jurisdiction of bail forfeiture. The Commission directed the
5 staff to prepare a draft of a tentative recommendation clarifying appellate
6 jurisdiction of bail forfeiture along the following lines:

7 **Penal Code § 1305.5 (added). Appeal from order denying motion**
8 **to vacate bail forfeiture declaration**

9 1305.5. Notwithstanding Sections 85, 580, 904.1, and 904.2 of the
10 Code of Civil Procedure, if a surety or other person appeals from
11 an order of the superior court denying a motion to vacate a bail
12 forfeiture declared under Section 1305, the following rules apply:

13 (a) If the bail forfeiture was in a felony case, or in a case in
14 which both a felony and a misdemeanor were charged, and the
15 failure to appear occurred after the indictment or filing of the
16 information, the appeal is to the court of appeal and it shall be
17 treated as an appeal in an unlimited civil case, regardless of the
18 amount of bail.

19 (b) If the bail forfeiture was in a felony case, or in a case in
20 which both a felony and a misdemeanor were charged, and the
21 failure to appear occurred at the preliminary hearing or other
22 proceeding before the filing of an information, the appeal is to the
23 appellate division of the superior court and it shall be treated as an
24 appeal in a limited civil case, regardless of the amount of bail.

25 (c) If the bail forfeiture was in a misdemeanor case, the appeal is
26 to the appellate division of the superior court and it shall be treated
27 as a limited civil case, regardless of the amount of bail.

28 **Comment.** Section 1305.5 is added to clarify the appellate
29 jurisdiction of bail forfeiture matters after trial court unification.
30 The provision preserves the pre-unification status quo. See, e.g.,
31 Newman v. Superior Court of Los Angeles County, 67 Cal. 2d 620,
32 623, 432 P.2d 972, 63 Cal. Rptr. 284 (1967) (amount of bail does not
33 determine jurisdiction of appeal relating to bail forfeiture order);
34 People v. Topa Ins. Co., 32 Cal. App. 4th 296, 38 Cal. Rptr. 2d 167
35 (1995) (court of appeal heard bail forfeiture appeal involving failure
36 to appear before superior court in felony case, even though bail was
37 less than jurisdictional limit of municipal court); County of Los
38 Angeles v. Am. Bankers Ins. Co., 202 Cal. App. 3d 1291, 249 Cal.
39 Rptr. 540 (1988) (same); see also People v. Clark, 17 Cal. App. 3d
40 890, 897-898, 95 Cal. Rptr. 411 (1971) (superior court has jurisdiction
41 to try connected misdemeanor even if felony charge eliminated
42 before trial); People v. Leney, 213 Cal. App. 3d 265, 268, 261 Cal.
43 Rptr. 541 (1989) (superior court has jurisdiction to try remaining
44 misdemeanor even if felony charge eliminated before judgment).

1 **Penal Code § 1306 (amended). Procedures after court declares bail**
2 **forfeiture**

3 1306. (a) When any bond is forfeited and the period of time
4 specified in Section 1305 has elapsed without the forfeiture having
5 been set aside, the court which has declared the forfeiture,
6 ~~regardless of the amount of the bail,~~ shall enter a summary
7 judgment against each bondsman named in the bond in the amount
8 for which the bondsman is bound. The judgment shall be the
9 amount of the bond plus costs, and notwithstanding any other law,
10 no penalty assessments shall be levied or added to the judgment.

11 (b) If a court grants relief from bail forfeiture, it shall impose a
12 monetary payment as a condition of relief to compensate the
13 people for the costs of returning a defendant to custody pursuant to
14 Section 1305, except for cases where the court determines that in the
15 best interest of justice no costs should be imposed. The amount
16 imposed shall reflect the actual costs of returning the defendant to
17 custody. Failure to act within the required time to make the
18 payment imposed pursuant to this subdivision shall not be the
19 basis for a summary judgment against any or all of the underlying
20 amount of the bail. A summary judgment entered for failure to
21 make the payment imposed under this subdivision is subject to the
22 provisions of Section 1308, and shall apply only to the amount of
23 the costs owing at the time the summary judgment is entered, plus
24 administrative costs and interests.

25 (c) If, because of the failure of any court to promptly perform
26 the duties enjoined upon it pursuant to this section, summary
27 judgment is not entered within 90 days after the date upon which it
28 may first be entered, the right to do so expires and the bail is
29 exonerated.

30 (d) A dismissal of the complaint, indictment, or information
31 after the default of the defendant shall not release or affect the
32 obligation of the bail bond or undertaking.

33 (e) The district attorney or county counsel shall:

34 (1) Demand immediate payment of the judgment within 30 days
35 after the summary judgment becomes final.

36 (2) If the judgment remains unpaid for a period of 20 days after
37 demand has been made, shall forthwith enforce the judgment in the
38 manner provided for enforcement of money judgments generally. If
39 the judgment is appealed by the surety or bondsman, the
40 undertaking required to be given in these cases shall be provided
41 by a surety other than the one filing the appeal. The undertaking
42 shall comply with the enforcement requirements of Section 917.1 of
43 the Code of Civil Procedure. Notwithstanding Sections 85, 580,
44 904.1, and 904.2, jurisdiction of the appeal, and treatment of the
45 appeal as a limited civil case or an unlimited civil case, is governed
46 by Section 1305.5.

47 (f) The right to enforce a summary judgment entered against a
48 bondsman pursuant to this section shall expire two years after the
49 entry of the judgment.

1 **Comment.** Subdivision (a) of Section 1306 is amended to delete
2 language that is obsolete due to trial court unification. Before
3 unification, it was necessary to make clear that a municipal court
4 was authorized to enter summary judgment based on a bail
5 forfeiture even though the amount of bail exceeded the
6 jurisdictional limit of the municipal court. See 1977 Cal. Stat. ch.
7 889, § 3.5; *Newman v. Superior Court of Los Angeles County*, 67
8 Cal. 2d 620, 622, 432 P.2d 972, 63 Cal. Rptr. 284 (1967); see also
9 Department of Consumer Affairs, Analyst’s Report SB 1107 (Song),
10 p. 2. Because municipal courts have been eliminated and the
11 superior court has no jurisdictional limit, that language is no longer
12 needed.

13 Subdivision (e)(2) is amended to clarify the jurisdiction and
14 treatment of an appeal from a summary judgment based on a bail
15 bond. The amendment preserves the pre-unification status quo. See
16 Section 1305.5 Comment.

17 STUDY M-300 — NONSUBSTANTIVE REORGANIZATION
18 OF DEADLY WEAPON STATUTES

19 The Commission considered Memorandum 2007-15 and Memorandum 2007-
20 17, relating to nonsubstantive reorganization of the statutes governing deadly
21 weapons.

22 The Commission made the following decisions:

23 **General Structure**

24 Title 2 of Part 4 of the Penal Code (hereafter, “Title 2”) should be relabeled as
25 “Sentence Enhancements” instead of “Control of Deadly Weapons.” A new Part
26 6 should be added to the Penal Code, entitled “Control of Deadly Weapons.” The
27 material now in Title 2, other than the sentence enhancement provisions (Penal
28 Code §§ 12021.5-12022.95), should be relocated to new Part 6. A five-part
29 hierarchy of headings (Part/Title/Division/Chapter/Article) should be used in
30 new Part 6.

31 **Tentative Outline**

32 The Commission discussed the tentative outline attached as Exhibit pages 1-
33 14 to Memorandum 2007-15.

34 The tentative outline does not include Penal Code Section 12078, a lengthy
35 provision consisting of numerous exceptions to other provisions. The
36 Commission considered the possibility of dividing up the material in that statute,
37 such that each exception is stated close to each general rule it modifies. The

1 Commission decided to try that approach. The staff should not attempt to revise
2 the tentative outline to reflect this decision.

3 The tentative outline should be revised, however, to reflect the following
4 decisions regarding other provisions in Title 2 that are not yet incorporated:

5 *Penal Code § 12020. Manufacture, Import, Sale, Gift, Loan, or Possession of Specified*
6 *Weapons*

7 As described at pages 8-9 of Memorandum 2007-15, the material in Penal
8 Code Section 12020 should be divided up according to the type of weapon or
9 equipment covered.

10 *Penal Code Section 12028. Unlawful Concealed Carrying of Specified Weapons as*
11 *Nuisance*

12 As described in detail at page 10 of Memorandum 2007-15, the material in
13 Penal Code Section 12028 should be divided up according to the type of weapon
14 or equipment covered, with generally applicable language placed in the title on
15 “Weapons Generally.”

16 *Penal Code Section 12029. Deadly Weapons that Constitute Nuisance*

17 As described in detail at page 11 of Memorandum 2007-15, the material in
18 Penal Code Section 12029 should be divided up according to the type of weapon
19 or equipment covered, with generally applicable language placed in the title on
20 “Weapons Generally.”

21 *Penal Code Section 12079. Permit for Possession, Transportation, or Sale of Large*
22 *Capacity Magazines*

23 The material in Penal Code Section 12079 should be placed close to the
24 material on large capacity magazines that is now in Penal Code Section 12020.

25 **Destructive Devices**

26 Penal Code Sections 12301-12312 relate to “destructive devices.” The tentative
27 outline would place this material in “Title 2. Weapons Generally” of new Part 6
28 of the Penal Code.

29 Jason Davis of Trutanich & Michel, LLP, suggested dividing up this material
30 according to the type of weapon or equipment covered, instead of placing all of
31 the material in “Title 2. Weapons Generally.” The Chief Deputy Counsel
32 commented that such an approach might be difficult to implement because not
33 all of the weapons and equipment statutorily defined as “destructive devices” fit

1 clearly into independent categories; there seems to be some overlap. The Chief
2 Deputy Counsel also said that most people probably do not associate the term
3 “destructive device” with a particular type of weapon. Consequently, it may be
4 reasonable to expect a person to check the portion of the code relating to
5 “destructive devices” in determining what rules apply to a particular weapon.

6 The Commission decided to encourage further input on treatment of the
7 provisions governing destructive devices, and to revisit the matter later in this
8 study.

9 **Definitions**

10 As described in detail at pages 5-6 of Memorandum 2007-15, the material in
11 Penal Code Section 12001 should be placed in a division entitled “Definitions” at
12 the beginning of new Part 6 of the Penal Code. As the staff prepares proposed
13 legislation, it should consider each of the other definitions in Title 2 and make a
14 preliminary determination of whether to place the definition at the beginning of
15 Part 6, or keep it in closer proximity to the substantive material in which the
16 definition is used.

17 **Judicial Decisions Interpreting or Determining the Constitutionality of** 18 **Provisions in Title 2**

19 The preliminary part of the Commission’s recommendation should make
20 clear that the legislation proposed by the Commission (1) is not intended to
21 reflect any assessment of the constitutionality of any provision, and (2) is not
22 intended as an endorsement or a disapproval of any judicial decision relating to
23 any of the provisions affected by the reform. The recommendation should
24 include an uncodified provision to the same effect. The staff should prepare a
25 draft of such a provision and present it to the Commission for review.

26 The substance of Penal Code Section 12091 should be continued in new Part 6
27 of the Penal Code, even though the provision was held unconstitutional in *In re*
28 *Christopher K.*, 91 Cal. App. 4th 853, 110 Cal. Rptr. 2d 914 (2001). The Comment to
29 the section continuing the substance of Section 12091 should state that the
30 recodification is not intended to reflect any assessment of the constitutionality of
31 the provision. In general, the same approach should be followed with regard to
32 any other provision in Title 2 that has been held unconstitutional, in whole or in
33 part.

1 **Provisions Outside Title 2**

2 As proposed at page 3 of the tentative outline, the substance of Penal Code
3 Section 653k, relating to switchblade knives, should be included in new Part 6 of
4 the Penal Code.

5 The Commission discussed the extent to which other provisions not presently
6 located in Title 2 should be incorporated into new Part 6. Among the factors to
7 consider in deciding whether to incorporate a provision are: (1) whether there is
8 a reason for the provision to be in its current location, and (2) for a provision
9 outside the Penal Code, whether it is included in desktop editions of the Penal
10 Code, which are meant to encompass all provisions frequently referenced by
11 persons using the Penal Code.

12 The Commission did not establish a rule regarding which provisions to
13 incorporate in new Part 6. As the staff works on this study, it should alert the
14 Commission to provisions on deadly weapons that are not in Title 2, and make
15 specific recommendations regarding incorporation of those provisions in new
16 Part 6. The Commission also welcomes input from interested persons regarding
17 which provisions outside Title 2 should be incorporated in new Part 6.

18 **Next Step**

19 The staff should revise the tentative outline consistent with the Commission's
20 decisions. The staff should also begin preparing proposed legislation for the
21 Commission to review.

22 **STUDY T-101 — TECHNICAL AND MINOR SUBSTANTIVE STATUTORY CORRECTIONS**

23 The Commission considered Memorandum 2007-16, which presents a staff
24 draft tentative recommendation to update statutory references to recording
25 technology. The Commission approved the staff draft to be circulated for
26 comment.

APPROVED AS SUBMITTED

Date

APPROVED AS CORRECTED
(for corrections, see Minutes of next meeting)

Chairperson

Executive Secretary