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MINUTES OF MEETING  
CALIFORNIA LAW REVISION COMMISSION  
APRIL 10, 2008  
SACRAMENTO

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A meeting of the California Law Revision Commission was held in Sacramento on April 10, 2008.

**Commission:**

*Present:* Sidney Greathouse, Chairperson  
Diane F. Boyer-Vine, Legislative Counsel  
Susan Duncan Lee  
Edmund L. Regalia  
William E. Weinberger

*Absent:* Pamela L. Hemminger, Vice Chairperson  
Ellen Corbett, Senate Member  
Noreen Evans, Assembly Member  
Frank Kaplan

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

**Consultants:** None

**Other Persons:**

David Baer, State Bar Trusts and Estates Section  
Jason Davis, National Rifle Association  
Neil I. Horton, State Bar Trusts and Estates Section  
Paul S. Levine, Venice  
Lindsay Nichols, Legal Community Against Violence  
Sean Rashkis, Protection & Advocacy, Inc.  
Andrew Slade, Davis  
Mary Pat Toups, Laguna Woods





1 **Persons Related by Blood or Marriage**

2 The draft will include a single definition of “blood or marriage” along the  
3 lines recommended by the staff, while preserving the existing distinction  
4 between the scope of derivative disqualification of a relative of a disqualified  
5 person (third degree of kinship) and the exemption of a relative of the transferor  
6 (fifth degree of kinship). The draft tentative recommendation will solicit  
7 comment on whether those scope rules should be adjusted.

8 In drafting the definition, the staff will consider whether special rules should  
9 be stated for former spouses and domestic partners and predeceased spouses  
10 and domestic partners.

11 The term “heir” will not be used in defining “related by blood or marriage.”

12 The exception for an instrument drafted by a relative will be extended to  
13 include an instrument transcribed by a relative who is also a fiduciary of the  
14 transferor.

15 Provisions defining the meaning of “degree of kinship” will be added to the  
16 proposed law as general provisions of the Probate Code, along the lines  
17 recommended by the staff.

18 **Cohabitant**

19 The proposed law will make clear that the definition of “cohabitant” applies  
20 to all uses of the term in the proposed law.

21 **Gift by Conservator**

22 The proposed law will continue the existing exception for a gift made by a  
23 conservator.

24 **Gift to Nonprofit**

25 The proposed law will continue the existing exception for a gift made to a  
26 nonprofit.

27 **Small Gift**

28 The proposed law will continue the existing exception for a small gift. The  
29 provision will be clarified and the small gift amount will be increased to \$5,000.

30 **Instrument Drafted Outside of California by Nonresident**

31 The proposed law will continue the existing exception for an instrument  
32 drafted outside of California by a nonresident.

1 **Interested Witness**

2 The proposed law will incorporate the substance of Probate Code Section  
3 6112. Section 6112 will be replaced with a provision cross-referring to Section  
4 21350.

5 **Independent Attorney Certification**

6 The proposed law will authorize an attorney who drafts a donative  
7 instrument making a gift to a care custodian, who is independent of any interest  
8 in the beneficiary, to certify that the gift is not the product of fraud or undue  
9 influence.

10 The meaning of “independence” from the interests of a beneficiary will be  
11 defined using language borrowed from California Rules of Professional Conduct  
12 3-310(b)(1) & (3).

13 **Rebuttal of Statutory Presumption of Fraud or Undue Influence**

14 The burden of proof to rebut the statutory presumption of fraud or undue  
15 influence will be changed, from clear and convincing evidence to a  
16 preponderance of the evidence.

17 The proposed law will not continue the rule precluding rebuttal when the  
18 only evidence is the testimony of the beneficiary.

19 The proposed law will not continue the existing limitations on who may  
20 rebut the presumption.

21 **STUDY M-300 – NONSUBSTANTIVE REORGANIZATION OF**  
22 **DEADLY WEAPON STATUTES**

23 The Commission considered Memorandums 2007-59, 2008-16, and 2008-17,  
24 relating to nonsubstantive reorganization of the deadly weapon statutes. The  
25 Commission made the following decisions:

26 **Judicial Decisions Interpreting or Determining the Constitutionality of**  
27 **Provisions in Title 2**

28 The Commission continues to agree with the approach it adopted in April  
29 2007. If a provision has been invalidated by the court of last resort, then it should  
30 not be continued in the Commission’s proposed nonsubstantive reorganization  
31 of the deadly weapon statutes. Short of that, the provision should be included in  
32 the proposed legislation but (1) the Commission’s report should make clear that  
33 the Commission has not passed judgment on its constitutionality or the

1 correctness of any judicial decision interpreting it, and (2) the proposed  
2 legislation should include an uncodified provision to similar effect.

3 **Penal Code Section 12131**

4 As detailed at pages 6-7 of Memorandum 2008-17, the Commission would  
5 appreciate input from knowledgeable persons regarding the status of the two  
6 versions of Penal Code Section 12131 shown in West's 2008 Desktop Edition of  
7 the Penal Code.

8 **References to "Pistol, Revolver, or Firearm Capable of Being Concealed Upon  
9 the Person"**

10 In the nonsubstantive reorganization, references to "pistol, revolver, or  
11 firearm capable of being concealed upon the person" should be left as is. The  
12 possibility of replacing such references with the term "handgun" should be  
13 included in the list of "Minor Clean-up Issues for Possible Future Legislative  
14 Attention."

15 **Placement of Definitions**

16 In general, definitions should be placed in "Division 2. Definitions" of "Title  
17 1. Preliminary Provisions" of new Part 6 of the Penal Code. Some deviations  
18 from this rule may be appropriate, particularly when a commonplace word is  
19 defined only for purposes of a particular provision. The staff should use its  
20 discretion in determining where to place each definition, subject to subsequent  
21 review by the Commission. Statutory cross-references may be useful in some  
22 instances.

23 The staff should discuss with Legislative Counsel the possibility of putting  
24 each defined term in quotes every time it is used in the statutes to which the  
25 definition applies. If Legislative Counsel is open to that approach, the staff  
26 should experiment with it in future drafts for the Commission.

27 **Definitions of "Pistol" and "Revolver"**

28 The possibility of defining "pistol" and "revolver" should be added to the list  
29 of "Minor Clean-up Issues for Possible Future Legislative Attention." At present,  
30 the terms are not separately defined in Title 2 of Part 4 of the Penal Code. Section

- 1 12001(a)(1) specifies characteristics of any “pistol, revolver, or firearm capable of  
2 being concealed upon the person,” but it does not differentiate a “pistol” from a  
3 “revolver.”

APPROVED AS SUBMITTED

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Date

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

\_\_\_\_\_  
Chairperson

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Executive Secretary