
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
JUNE 5, 2008
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on June 5, 2008.

Commission:

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

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

Darren Bevan, Community Associations Institute, Sacramento
Jason Davis, Trutanich & Michel LLP, Long Beach
Skip Daum, Community Associations Institute / American Subcontractors
Association of California, Sacramento
Neil Horton, Executive Committee, State Bar Trusts and Estates Section, Oakland
Kerry Mazoni, Executive Council of Homeowners
Lindsay Nichols, Legal Community Against Violence
Dick Pruess, Community Associations Institute, Pasadena
Bob Sheppard, Walnut House Cooperative
Mary Pat Toups, Emeritus Attorney, Laguna Woods
Nick and Amanda Wilcox, California Chapters Brady Campaign
Jim Weixel, San Francisco

1 **Executive Session**

2 The Commission met in executive session to discuss personnel matters,
3 pursuant to Government Code Section 11126. No reportable decisions were
4 made.

5 LEGISLATIVE PROGRAM

6 The Commission considered Memorandum 2008-12 and its First, Second,
7 Third, and Fourth Supplements, discussing the Commission's 2008 Legislative
8 Program. The Commission made the following decisions:

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

10 The Commission approved the proposed amendments discussed at pages 1-3
11 of the Second Supplement to Memorandum 2008-12.

12 **AB 1868 (Walters) — Governmental Liability and Charter Schools**

13 The Commission discussed Assembly Bill 1868 (Walters), an urgency measure
14 that would direct the Commission to complete a study relating to governmental
15 liability and charter schools, by December 1, 2008.

16 The Commission noted that the very short deadline would not provide
17 sufficient time for the normal Commission deliberative process. If AB 1868 is
18 enacted, the Commission's report will make clear that the ordinary process was
19 not followed and that such a truncated process is not the best use of the
20 Commission's resources.

21 In anticipation of the possible enactment of AB 1868, the staff will familiarize
22 itself with the Commission's prior work on governmental liability, and will
23 review the recent case of *Stockton v. Super. Ct.*, 42 Cal.4th 730, 171 P.3d 20, 68 Cal.
24 Rptr. 3d 295 (2007), discussing the scope of statutory limitations on governmental
25 liability. The staff will also contact relevant government agencies and private
26 entities to establish a working relationship for the conduct of the proposed study.

27 **AB 1921 (Saldaña) — Clarification and Simplification of CID Law**

28 The Commission approved the proposed amendments and Comment
29 revisions discussed in the First Supplement to Memorandum 2008-12 and on
30 page 3 of the Second Supplement to Memorandum 2008-12.

31 The Commission will examine whether there is a typographical error in
32 existing Civil Code Section 1365(b) that should be corrected.

1 **AB 2166 (Tran) — Trial Court Restructuring: Appellate Jurisdiction of Bail**
2 **Forfeiture**

3 The staff should contact the Judicial Council about this matter after the
4 legislative session ends, and then report back to the Commission.

5 **AB 2193 (Tran) — Deposition in Out-of-State Litigation**

6 The Commission ratified the amendments coordinating AB 2193 (Tran) with
7 AB 926 (Evans), which are discussed at pages 2-3 of Memorandum 2008-12.
8 Contingent on enactment of AB 926 and its current approach to “inspection,
9 copying, testing, or sampling,” the Comment to proposed Section 2029.200
10 should be revised as shown on page 3 of that memorandum.

11 The Commission approved the amendments and Comment revisions
12 discussed in the Third Supplement to Memorandum 2008-12.

13 **AB 2299 (Silva) — References to Recording Technology**

14 The Commission ratified the amendments to AB 2299 and the revised
15 Comment described at pages 3-4 of Memorandum 2008-12.

16 **SB 1691 (Lowenthal) — Mechanics Lien Law**

17 The Commission ratified the amendment and Comment language described
18 at pages 4-6 of the Second Supplement to Memorandum 2008-12. The
19 Commission also authorized the future amendment of SB 1691, to avoid conflicts
20 with other pending bills.

21 **SB 1264 (Harman) — Revision of No Contest Clause Statute**

22 The Commission indicated that it would not oppose amendment of SB 1264 to
23 remove the existing declaratory relief provisions, if that is the will of the
24 Legislature.

25 **STUDY H-850 — COMMON INTEREST DEVELOPMENT LAW**

26 The Commission considered Memorandum 2008-28 and its First and Second
27 Supplements, discussing future priorities for continued work on common
28 interest development law. The Commission also considered material handed out
29 at the meeting, which will be attached to the Third Supplement to Memorandum
30 2008-28.

1 The Commission decided to suspend new work on common interest
2 development law until after the Commission's recommendation on *Statutory*
3 *Clarification and Simplification of CID Law* (Dec. 2007) is either enacted or fails to be
4 enacted. The matter would then be revisited in the Commission's usual annual
5 consideration of new topics and priorities.

6 STUDY K-350 — ATTORNEY-CLIENT PRIVILEGE AFTER CLIENT'S DEATH

7 The Commission considered Memoranda 2008-19, 2008-20, and 2008-29,
8 relating to the study on whether the attorney-client privilege should survive the
9 client's death, and if so, under what circumstances.

10 The Commission made no decisions on this topic. The Commission began
11 discussing specific approaches to a posthumous attorney-client privilege, set
12 forth in Memorandum 2008-20. Additional approaches will be presented in
13 future memoranda and discussed at the next meeting.

14 STUDY L-622 — DONATIVE TRANSFER RESTRICTIONS

15 The Commission considered Memorandum 2008-21 and its First and Second
16 Supplements, presenting a staff draft tentative recommendation on revision of
17 the Donative Transfer Restriction Statute.

18 The Commission approved circulation of the draft as a tentative
19 recommendation, with an approximately 45 day public comment period, subject
20 to the following decisions:

21 **Care Custodian**

22 The definition of "care custodian" in proposed Probate Code Section 21362(a)
23 should be revised to use the word "remuneration" rather than "compensation,"
24 unless staff research uncovers a better approach.

25 The list of care custodian services in proposed Probate Code Section 21362(b)
26 should be revised to include "companionship" as a service. A note following the
27 section will invite comment on whether "social services" should be excluded
28 from the list and whether the scope of care custodian services should be
29 characterized as services involving intimacy, privacy, and extended duration.

30 **Burden of Proof to Establish Statutory Presumption**

31 The Comment to proposed Probate Code Section 21380 was revised to
32 indicate that a person contesting a gift under the Donative Transfer Restriction

1 Statute bears the burden of establishing the facts that give rise to the statutory
2 presumption of fraud and undue influence, pursuant to Evidence Code Section
3 500.

4 **Statute of Limitations**

5 The special rules for the time to commence an action under the Donative
6 Transfer Restriction Statute were deleted.

7 **Third Party Liability**

8 Proposed Probate Code Section 21388 was revised as indicated on page 2 of
9 the Second Supplement to Memorandum 2008-21.

10 STUDY M-300 — NONSUBSTANTIVE REORGANIZATION OF
11 DEADLY WEAPON STATUTES

12 The Commission considered Memoranda 2008-22, 2008-23, 2008-24, 2008-25,
13 2008-26, and 2008-27, relating to nonsubstantive reorganization of the deadly
14 weapon statutes. The Commission made the following decisions relating to those
15 memoranda and the attached drafts:

16 **Placement of Definitions**

17 The preliminary part (narrative portion) of the Commission's report should
18 point out that some definitions were not included in the "Definitions" portion of
19 new Part 6. The preliminary part should note where those definitions were
20 placed and why the Commission took that approach.

21 **Definition of "Assault Weapon"**

22 Jason Davis, representing the National Rifle Association, requested that the
23 Commission's Comment to proposed Penal Code Section 16200 refer to *Harrott v.*
24 *County of Kings*, 25 Cal. 4th 1138, 25 P.3d 649, 108 Cal. Rptr. 2d 445 (2001), which
25 discusses what constitutes a series assault weapon. Mr. Davis further requested
26 that the Comment refer to the regulation that lists weapons identified by the
27 Attorney General as series assault weapons (Cal. Code Regs., tit. 11, § 979.11,
28 which has been renumbered as Cal. Code Regs., tit. 11, § 5499).

29 The staff explained that any revisions of the Comment to Section 16200, or
30 any other Comment, would have to be consistent with the nonsubstantive nature
31 of the Commission's study. If a suggested revision is noncontroversial and
32 would simply provide useful information, it may be appropriate. If a suggested

1 revision raises any concerns about a potential substantive impact, it would not be
2 appropriate in the context of this study.

3 On behalf of the Legal Community Against Violence, Lindsay Nichols said
4 she would have to examine the sources cited by Mr. Davis before taking a
5 position on his request. It was agreed that Ms. Nichols and Mr. Davis would
6 confer about the matter at another time and report back to the Commission.

7 **Definition of “Passenger’s or Driver’s Area”**

8 Ms. Nichols requested that the definition of “passenger’s or driver’s area”
9 (proposed Penal Code Section 16965) be placed in proximity to the substantive
10 provision that uses the term (now Penal Code § 653k), instead of in the
11 “Definitions” portion of new Part 6. The Commission decided not to move that
12 definition.

13 **Violent Use of a Firearm**

14 Proposed Penal Code Section 23515 would specify what constitutes violent
15 use of a firearm in a particular context. It would continue existing Penal Code
16 Section 12001.6. See Memorandum 2008-26, pp. 2-3. Ms. Nichols suggested that
17 this provision be moved to the “Definitions” portion of new Part 6.

18 The Commission decided to leave the provision in its current location. The
19 Commission made clear that it might be willing to reconsider this decision after
20 the staff drafts the provision that would continue existing Penal Code Section
21 12021(b) (stating that certain offenses constitute a “violent offense” for purposes
22 of Section 12021).

23 **Dirk or Dagger**

24 Throughout new Part 6, the traditional phrase “dirk or dagger” should be
25 used, instead of placing those terms in alphabetical order.

26 **BB Devices and Imitation Firearms**

27 *Organizational Issue*

28 Ms. Nichols questioned whether the provisions relating to BB devices and
29 imitation firearms belong in a division entitled “Disguised or Misleading
30 Appearance.” The Commission directed the staff to look into this point and make
31 a recommendation on how to handle it.

1 *Failure to Comply with Federal Law or Regulation on Marking of Toy, Look-alike or*
2 *Imitation Firearm*

3 A staff note on proposed Penal Code Section 24115 points out an ambiguity
4 regarding interpretation of the term “imitation firearm” in this provision, which
5 would continue existing Penal Code Section 12553(b). See Memorandum 2008-26,
6 Attachment p. 18. The note asks (1) whether to refer to the definition of
7 “imitation firearm” in the Comment, and (2) whether to include the ambiguity
8 on the Commission’s list of “Minor Clean-up Issues for Possible Future
9 Legislative Attention.” The Commission answered both questions in the
10 affirmative.

11 **Firearm Safety Devices and Gun Safes**

12 *Title of Division 2*

13 To fully reflect its content, “Division 2. Firearm Safety Devices and Gun
14 Safes” should be relabeled as “Division 2. Firearm Safety Devices, Gun Safes, and
15 Related Warnings.”

16 *Sequence of Provisions in Division 2*

17 In the draft attached to Memorandum 2008-26, proposed Penal Code Section
18 23625 (limitations on application) precedes proposed Penal Code Section 23630
19 (legislative findings). The order of those provisions should be reversed and the
20 provisions should be renumbered accordingly.

21 *Proposed Penal Code Section 23635 (existing Penal Code Section 12088.1)*

22 Proposed Penal Code Section 23635 would continue Penal Code Section
23 12088.1, which addresses three distinct subjects:

- 24 (1) The firearm safety device requirement and exemptions from that
25 requirement.
26 (2) The warning requirement for a long-gun safe that does not comply
27 with the standards for gun safes.
28 (3) The warning requirement of Section 12088.3.

29 The possibility of dividing this material into several code sections should be
30 included on the Commission’s list of “Minor Clean-up Issues for Possible Future
31 Legislative Attention.”

1 *Deadlines for Developing Minimum Safety Standard for Firearm Safety Devices*

2 Proposed Penal Code Section 23650(c) would continue existing language
3 specifying deadlines for the Attorney General to meet in developing a minimum
4 safety standard for firearm safety devices. Those deadlines passed long ago,
5 causing the staff to wonder whether the language was obsolete. The staff
6 suggested that this matter be included on the Commission's list of "Minor Clean-
7 up Issues for Possible Future Legislative Attention." See Memorandum 2008-26,
8 Attachment pp. 9-10.

9 Ms. Nichols and Mr. Davis agreed, however, that this statutory language
10 remains useful. The possibility of deleting it as obsolete should not be included
11 on the Commission's list of "Minor Clean-up Issues for Possible Future
12 Legislative Attention." In general, statutory language referring to past deadlines,
13 operative dates, and the like should be retained in this recodification project.

14 **Obliteration of Identification Marks**

15 As requested by Ms. Nichols, proposed Penal Code Section 23925(d)(5)
16 should be revised as follows:

17 (5) The firearm is transported in a locked container as defined in
18 Section 16850.

19 **Undetectable Firearm**

20 To fully reflect its content, "Chapter 7. Undetectable Firearm" should be
21 relabeled as "Chapter 7. Undetectable Firearm and Firearm Detection
22 Equipment."

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary