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
MINUTES OF APRIL 10, 2008, COMMISSION MEETING

The Commission approved the Minutes of the April 10, 2008, Commission meeting as submitted by the staff.

ADMINISTRATIVE MATTERS

Meeting Schedule

The Commission considered Memorandum 2008-30, relating to the schedule of future meetings. The meeting scheduled for August 15, 2008, in Burbank was rescheduled for September 3, 2008.

Election of Officers


Report of the Executive Secretary

The Executive Secretary reported that the Commission’s proposed budget had not been changed in the May Revision of the Governor’s proposed budget.

Mary Pat Toups provided written materials to the Commission relating to Assembly Bill 250 (DeVore). Those materials will be distributed as an exhibit to the Fifth Supplement to Memorandum 2008-12.
Executive Session

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

LEGISLATIVE PROGRAM

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

AB 250 (DeVore) — Revocable Transfer on Death Deed

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

AB 1868 (Walters) — Governmental Liability and Charter Schools

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

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

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

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

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

The Commission will examine whether there is a typographical error in existing Civil Code Section 1365(b) that should be corrected.
AB 2166 (Tran) — Trial Court Restructuring: Appellate Jurisdiction of Bail
Forfeiture

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

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

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

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

AB 2299 (Silva) — References to Recording Technology

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

SB 1691 (Lowenthal) — Mechanics Lien Law

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

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

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

STUDY H-850 — COMMON INTEREST DEVELOPMENT LAW

The Commission considered Memorandum 2008-28 and its First and Second Supplements, discussing future priorities for continued work on common interest development law. The Commission also considered material handed out at the meeting, which will be attached to the Third Supplement to Memorandum 2008-28.
The Commission decided to suspend new work on common interest development law until after the Commission’s recommendation on Statutory Clarification and Simplification of CID Law (Dec. 2007) is either enacted or fails to be enacted. The matter would then be revisited in the Commission’s usual annual consideration of new topics and priorities.

STUDY K-350 — ATTORNEY-CLIENT PRIVILEGE AFTER CLIENT’S DEATH

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

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

STUDY L-622 — DONATIVE TRANSFER RESTRICTIONS

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

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

Care Custodian

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

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

Burden of Proof to Establish Statutory Presumption

The Comment to proposed Probate Code Section 21380 was revised to indicate that a person contesting a gift under the Donative Transfer Restriction
Statute bears the burden of establishing the facts that give rise to the statutory presumption of fraud and undue influence, pursuant to Evidence Code Section 500.

**Statute of Limitations**

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

**Third Party Liability**

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

**STUDY M-300 — NONSUBSTANTIVE REORGANIZATION OF DEADLY WEAPON STATUTES**

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

**Placement of Definitions**

The preliminary part (narrative portion) of the Commission’s report should point out that some definitions were not included in the “Definitions” portion of new Part 6. The preliminary part should note where those definitions were placed and why the Commission took that approach.

**Definition of “Assault Weapon”**

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

The staff explained that any revisions of the Comment to Section 16200, or any other Comment, would have to be consistent with the nonsubstantive nature of the Commission’s study. If a suggested revision is noncontroversial and would simply provide useful information, it may be appropriate. If a suggested
revision raises any concerns about a potential substantive impact, it would not be appropriate in the context of this study.

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

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

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

Violent Use of a Firearm


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

Dirk or Dagger

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

BB Devices and Imitation Firearms

Organizational Issue

Ms. Nichols questioned whether the provisions relating to BB devices and imitation firearms belong in a division entitled “Disguised or Misleading Appearance.” The Commission directed the staff to look into this point and make a recommendation on how to handle it.
Failure to Comply with Federal Law or Regulation on Marking of Toy, Look-alike or Imitation Firearm

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

Firearm Safety Devices and Gun Safes

Title of Division 2

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

Sequence of Provisions in Division 2

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

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

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

(1) The firearm safety device requirement and exemptions from that requirement.

(2) The warning requirement for a long-gun safe that does not comply with the standards for gun safes.

(3) The warning requirement of Section 12088.3.

The possibility of dividing this material into several code sections should be included on the Commission’s list of “Minor Clean-up Issues for Possible Future Legislative Attention.”
Deadlines for Developing Minimum Safety Standard for Firearm Safety Devices

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

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

Obliteration of Identification Marks

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

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

Undetectable Firearm

To fully reflect its content, “Chapter 7. Undetectable Firearm” should be relabeled as “Chapter 7. Undetectable Firearm and Firearm Detection Equipment.”

☐ APPROVED AS SUBMITTED

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

______________________________  ______________________________
Date                                Chairperson
______________________________  ______________________________
                                      Executive Secretary